

RECEIVED

JUN 23 2014

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

William Jeffrey Young, Circuit Court Judge

LANCE Q. HOLLOWAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000288

A P P E N D I X

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

KAREN RATIGAN
Senior Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX.....	i
GUILTY PLEA HEARING TRANSCRIPT (APRIL 9, 2010).....	1
APPLICATION FOR POST-CONVICTION RELIEF.....	24
RETURN	57
POST-CONVICTION RELIEF HEARING TRANSCRIPT (FEBRUARY 13, 2013)	63
PLEA AGREEMENT	142
ORDER OF DISMISSAL	148
SUPERSEDING INDICTMENT FOR UNLAWFUL DRUGS	157

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO: 2008-GS-47-11

COUNTY OF PICKENS)

STATE OF SOUTH CAROLINA,)

Plaintiff,)

-vs-)

TRANSCRIPT OF RECORD

LANCE HOLLOWAY,)

Defendant.)

APRIL 9, 2010

-----))

PICKENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

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

JOHN K. CROUT, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE

H. CHASE HARBIN, ESQ.
LAW OFFICE OF H. CHASE HARBIN, PA
ATTORNEY FOR THE DEFENDANT

APRIL HERRON,
CIRCUIT COURT REPORTER

I N D E X

	<u>Page</u>
Plea	4
Sentence of The Court	22
Certificate of Transcription	23

E X H I B I T S

NO EXHIBITS INTRODUCED

LANCE QUITMAN HOLLOWAY,
first being duly sworn,
testified as follows:

THE COURT: Mr. Harbin, you represent Mr.
Holloway?

MR. HARBIN: Yes, sir.

THE COURT: Have you had an opportunity to review
with your client all The State's evidence?

MR. HARBIN: Yes, sir.

THE COURT: Have you explained to your client the
charges pending against him, the possible punishments he faces
and his constitutional rights?

MR. HARBIN: Yes, sir.

THE COURT: Do you believe he understands those
discussions you've had with him?

MR. HARBIN: I do.

THE COURT: Based upon your investigation of all
the facts and circumstances surrounding this matter do you
believe The State could produce sufficient evidence to
convince a jury of his guilt beyond a reasonable doubt?

MR. HARBIN: Yes, sir, I do.

THE COURT: You believe if a trial were held his
conviction would be probable?

MR. HARBIN: Yes, sir.

1 THE COURT: Mr. Holloway, how old are you,
2 please, sir?

3 DEFENDANT HOLLOWAY: Thirty-four, sir.

4 THE COURT: Are you married?

5 DEFENDANT HOLLOWAY: No, sir.

6 THE COURT: Do you have children?

7 DEFENDANT HOLLOWAY: No, sir.

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

9 DEFENDANT HOLLOWAY: Ninth grade but I ended up
10 getting my high school equivalency diploma.

11 THE COURT: Where did you attend school?

12 DEFENDANT HOLLOWAY: Travelers Rest High School.

13 THE COURT: What kind of work have you done since
14 you've been out of school?

15 DEFENDANT HOLLOWAY: Lead fabricator and
16 mechanic.

17 THE COURT: Have you ever been treated for
18 alcohol or drug abuse?

19 DEFENDANT HOLLOWAY: No, sir.

20 THE COURT: Have you ever been treated for any
21 mental illness?

22 DEFENDANT HOLLOWAY: No, sir.

23 THE COURT: Are you taking any kind of
24 prescriptive medication of any kind?

25 DEFENDANT HOLLOWAY: No, sir.

THE COURT: Do you have a physical, a mental or emotional, nervous condition of any kind that would affect your ability to understand what we're doing here today?

DEFENDANT HOLLOWAY: No, sir.

THE COURT: Mr. Crout, I'll be glad to hear about the facts of the case.

MR. CROUT: May it please The Court, Your Honor, this, again, is a plea that is taking place pursuant to a written plea agreement entered into by The State of South Carolina, the defendant in this case Mr. Lance Holloway. I've signed on behalf of The State and Mr. Holloway along with his attorney Mr. Harbin have signed the agreement.

As indicated earlier, Your Honor, as well, this is the result of a state grand jury investigation lasting through June 1, 2007, to June 10, 2009, taking place in Greenville and Pickens County. Pursuant to that investigation Mr. Holloway was developed as a person of interest. Based upon controlled buys and interviews of individuals Mr. Holloway was identified as an individual who was active in and taking part in the conspiracy charges in this case in both counts, I believe one and two of the indictment.

Mr. Holloway's involvement, let me make sure.

Actually, Your Honor, that's count 2

1 and count 3 of the indictment, not count 1 and 2.

2 Mr. Holloway's participation was
3 determined to be active and present in both conspiracies. The
4 final charge for the distribution of methamphetamine is a
5 result of a controlled transaction that took place between Mr.
6 Holloway and members of law enforcement. That occurred on
7 August 1 of 2008 and as a result of that the distribution, the
8 actual hand-to-hand distribution starts.

9 The State is recommending a sentence
10 of 12 years in this case, Your Honor.

11 And for the record, Your Honor, I
12 know that the jurisdiction of the state grand jury is multi-
13 county. The actual hand-to-hand transaction involving Mr.
14 Holloway took place in Spartanburg County.

15 THE COURT: I write on the sentencing sheet. I
16 think we're okay on the distribution of methamphetamine.
17 That's the one charge. I just want to make sure we've got the
18 CDR codes down right. That carries 0 to 15 years?

19 MR. HARBIN: Yes, sir.

20 THE COURT: You agree with that?

21 MR. CROUT: Yes, sir.

22 THE COURT: CDR code is 4 50 on this, on the
23 trafficking?

24 MR. CROUT: Yes, sir.

25 I think the distribution of meth

1 charge, he's pleading that charge as indicted and the CDR code
2 on that should be 3 1 9 8.

3 THE COURT: Correct.

4 MR. CROUT: Now, the trafficking charge, the CDR
5 code for the trafficking by conspiracy, 28 to 100 grams should
6 be 0 3 9 2.

7 THE COURT: I've got 4 50 in there.

8 MR. CROUT: Is that on the --

9 THE COURT: On the sentencing sheet.

10 MR. CROUT: Oh, I'm sorry, Your Honor. The 4 50,
11 that is correct, Your Honor. I read the trafficking for 28 to
12 a hundred.

13 THE COURT: He's pleading down?

14 MR. COURT: To 10 to 28.

15 THE COURT: Ten to twenty-eight?

16 MR. CROUT: Yes, sir.

17 THE COURT: Okay.

18 MR. CROUT: Zero four five zero. I apologize.

19 THE COURT: And the maximum sentence there is 10
20 years?

21 MR. CROUT: Yes, sir, yes.

22 THE COURT: On each of those.

23 MR. CROUT: Yes, sir.

24 THE COURT: I just want to make sure that the CDR
25 codes are right, so.

1 MR. CROUT: And let me double check that, just
2 while we're here so I've got that. I went through several.
3 The CDR code should be 0 3 9 2, 28 to
4 a hundred.

5 I'm sorry. I filled out the
6 sentencing sheet.

7 The plea agreement is 28 to a hundred
8 grams, 7 30, and I just filled out the actual numbers for
9 trafficking wrong. I'll adjust those.

10 THE COURT: While you're doing that I'll go ahead
11 and I'll be talking to Mr. Holloway.

12 Mr. Holloway, you heard what the
13 solicitor said as far as the charges and the plea agreement
14 that he entered and that you entered and he's making some
15 corrections. I'll give you a chance to look over that again
16 with your attorney in just a few moments but the facts that he
17 talked about, about the drug trafficking and the distribution,
18 are those substantially the facts of which you're here to
19 plead guilty today?

20 DEFENDANT HOLLOWAY: Yes, sir.

21 THE COURT: And I understand that, while the
22 paperwork's being done, you're pleading to a trafficking of
23 between 10 and 28 grams, two different counts of that, is that
24 correct?

25 DEFENDANT HOLLOWAY: Yes, sir.

1 MR. CROUT: Well, no, Your Honor, it's between 28
2 and a hundred.

3 THE COURT: Excuse me. Okay. It's 28 to a
4 hundred.

5 MR. CROUT: The plea agreement was right but
6 sentencing sheets just had it wrong.

7 MR. HARBIN: And for the record, Judge, that was
8 our understanding.

9 THE COURT: Okay.
10 Sentencing sheets, they were in
11 error?

12 MR. CROUT: And they've been corrected and I'm
13 assuming with the approval of Mr. Harbin and his client.

14 MR. HARBIN: Yes, sir.

15 THE COURT: He's pleading to 28 to 100 grams.

16 MR. CROUT: Yes, sir, yes, sir.

17 THE COURT: Is not the CDR code for that 3 92?

18 MR. CROUT: Yes, sir.

19 THE COURT: It still shows 4 50 on here.

20 MR. CROUT: I'm sorry. Okay. I meant to change
21 that.

22 THE COURT: Is the maximum punishment not 25
23 years instead of 30? For that?

24 MR. CROUT: Yes, sir, 7 to 25.

25 MR. HARBIN: And, Judge, so long as I was correct

1 in telling my client that the minimum is seven, we're
2 obviously less more concerned with what I can argue down to.

3 THE COURT: Yeah, there's no question the minimum
4 sentence, whether or not I could give you 30 years or whether
5 I could give you 25 years maximum.

6 MR. HARBIN: Yes, sir.

7 MR. CROUT: Yes, sir.

8 That CDR code, I do apologize.

9 THE COURT: That's okay. I just want to make
10 sure everybody's on the right music, now.

11 Mr. Holloway, you're pleading to two
12 counts of trafficking methamphetamine, 28 to 100 grams, is
13 that correct, today?

14 DEFENDANT HOLLOWAY: Yes, sir.

15 THE COURT: And the maximum sentence on that is
16 25 years in jail. You understand that, on each of these?

17 MR. HOLLOWAY: Yes, sir.

18 THE COURT: And you're also here to plead on the
19 distribution of methamphetamine, first offense. You
20 understand that sentence would carry up to 15 years in jail?

21 DEFENDANT HOLLOWAY: Yes, sir.

22 THE COURT: The facts recited by The State are
23 substantially the facts of which you're here to plead guilty
24 today, is that correct?

25 DEFENDANT HOLLOWAY: Yes, sir.

THE COURT: This plea agreement that has been entered into it had been changed but except for the fact it says your maximum sentence could be from 7 to 30 years.

DEFENDANT HOLLOWAY: Yes, sir.

THE COURT: This plea agreement, you've gone over it with your attorney and you understand it?

DEFENDANT HOLLOWAY: Yes, sir, I do.

THE COURT: Do you understand you're bound by what it says in this agreement?

DEFENDANT HOLLOWAY: Yes, sir, I do.

THE COURT: You don't have any questions about the content of that plea agreement?

DEFENDANT HOLLOWAY: No, sir. Me and my lawyer went over it.

THE COURT: Now, you've indicated you want to plead to these charges. Do you understand that by entering a plea of guilty you're giving up your right to have a trial by jury?

DEFENDANT HOLLOWAY: Yes, sir.

THE COURT: You have other rights that you're giving up. That would include a right to confront witnesses against you and ask questions of them and call witnesses in your own behalf. If you wanted to have them subpoenaed The State would be required to bring them for you to testify.

You'd have a right to be presumed

1 innocent. The State would have to prove your guilt and the
2 very element of the charges beyond a reasonable doubt. You
3 wouldn't have to say anything at all; you could remain silent.
4 You could challenge the evidence The State puts in. You could
5 challenge any incriminating statements you may have made
6 during the course of the investigation.

7 You have these and other rights that
8 you're giving up by pleading guilty. You understand that, Mr.
9 Holloway.

10 DEFENDANT HOLLOWAY: Yes, sir, I do, Your Honor.

11 THE COURT: And you want to give those rights up?

12 DEFENDANT HOLLOWAY: Yes, sir, I do.

13 THE COURT: Are you satisfied with your attorney
14 in this case?

15 MR. HOLLOWAY: Yes, sir, I am.

16 THE COURT: Has he done everything for you you've
17 asked him to do?

18 DEFENDANT HOLLOWAY: Yes, sir, he has.

19 THE COURT: You've met with him as often and as
20 long as you feel necessary?

21 DEFENDANT HOLLOWAY: Yes, sir, I do.

22 THE COURT: Have you understood all the
23 discussions you've had with him?

24 DEFENDANT HOLLOWAY: Yes, sir, I have.

25 THE COURT: And you're completely satisfied with

1 his services?

2 DEFENDANT HOLLOWAY: I am completely satisfied
3 with his services, Your Honor.

4 THE COURT: From the plea agreement is it your
5 understanding The State was going to recommend a sentence of
6 12 years?

7 DEFENDANT HOLLOWAY: Yes, sir.

8 THE COURT: And all would run concurrent?

9 DEFENDANT HOLLOWAY: Yes, sir.

10 THE COURT: And you understand I'm not bound by
11 that?

12 DEFENDANT HOLLOWAY: Yes, sir, I do understand
13 that.

14 THE COURT: Except for that recommendation from
15 The State has anybody promised you anything to get you to
16 plead guilty?

17 DEFENDANT HOLLOWAY: No, sir.

18 THE COURT: Any threats been brought to bear upon
19 you by anyone?

20 DEFENDANT HOLLOWAY: No, sir.

21 THE COURT: Anybody connected with the case, in
22 law enforcement or in the attorney general's office,
23 mistreated you in any way?

24 DEFENDANT HOLLOWAY: No, sir.

25 THE COURT: Are you pleading guilty of your own

1 freewill?

2 DEFENDANT HOLLOWAY: Yes, sir, I am.

3 THE COURT: You're pleading guilty because you
4 are guilty?

5 DEFENDANT HOLLOWAY: Yes, sir.

6 THE COURT: Have you understood the questions
7 I've asked you?

8 DEFENDANT HOLLOWAY: Yes, sir.

9 THE COURT: You've been truthful in your answers
10 to me?

11 DEFENDANT HOLLOWAY: Yes, sir.

12 THE COURT: I find there is a substantial factual
13 basis for the plea; that it's been freely, voluntarily,
14 knowingly and intelligently made by Mr. Holloway with the
15 advice of competent legal counsel with whom he has expressed
16 his satisfaction. I accept your plea.

17 Mr. Harbin, I'll be glad to hear from
18 you, be glad to hear from your client.

19 MR. HARBIN: Thank you, Judge.

20 May it please The Court, I'm gonna
21 profess a little bias because I genuinely like Mr. Holloway.
22 He's a nice fellow. I don't get to say that all the time.
23 I'd like to say it all the time but I don't get to say it all
24 the time.

25 He tells me that he has been using

1 drugs in one form or another since he was 12 or 13. Kind of
2 amazing he's made it this far, to be honest with you.

3 There was a period in his life where
4 he used drugs and he actually stopped. He had an excellent job
5 that he tells me he really liked, he made a good amount of
6 money as a lead fabricator for waste management. You know,
7 worked 12 hours a day, six and seven days a week and that's,
8 actually, ironically, what led to him going back to drugs,
9 which he developed carpal tunnel, had some, you know, pain,
10 self-medicating problems and then led him back to
11 methamphetamine and so he has gotten himself in this
12 predicament now and he is before you.

13 I'm gonna ask you to go under the
14 recommendation. I'm gonna hope to give you a good reason why.
15 He is in SCDC now for methamphetamine charges that are exactly
16 within this conspiracy time, anyway. So I'm gonna ask you to
17 back date it to when he pled on September 15, 2008. He was
18 represented by Frank Eppes at the time.

19 They had become recently aware, I
20 think just in a matter of a day or so before his plea, of
21 these impending charges at that point.

22 DEFENDANT HOLLOWAY: That day.

23 MR. HARBIN: I'm sorry?

24 DEFENDANT HOLLOWAY: That day.

25 MR. HARBIN: That day, Judge, so they were aware

1 they were coming.

2 Mr. Holloway, you know, best I can
3 tell you, Judge, he's in a good place right now, at least in
4 his head, in Tiger River. He's being productive. He works at
5 the commissary eight hours a day. He's got a positive
6 outlook.

7 I enjoy talking to him. I don't get
8 to say that all the time. He's a smart dude. He knows that
9 he has got himself here. He knows that he is gonna have to
10 pay a substantial penalty today, Judge. He absolutely knows
11 that.

12 I told him that he spoke very well
13 for himself and he told me the reason he could do that is
14 because both of his parents are deaf and he has always had to
15 speak for them. And I told him you could tell and he's just a
16 very well spoken guy that it's almost hard for me.

17 I mean I've seen this a lot. I know
18 you've seen it a lot. It's hard for me to understand how the
19 guy that I'm talking to got himself where the attorney
20 general's forced to prosecute this kind of stuff. It's,
21 honestly, amazing to me.

22 He knows it's gone be quite some time
23 before he gets back to his family but he's gonna look forward
24 to. I asked him, I said what are you gonna do when you get
25 out, you know, what reason am I gonna give to you to ask for

1 less than 12 years and he said that he is just looking forward
2 to going back home and being a better son to his mother. I
3 thought that was an honest answer. It's a darn good answer,
4 if you ask me.

5 But, Judge, 12 years, I understand
6 the attorney general's position. I understand where they're
7 coming from. I'm gonna ask you to go under that. I'm gonna
8 give you a reason that I've never heard of before, by the way,
9 is that apparently you cannot remain in Tiger River if your
10 maximum sentence is beyond 10 years.

11 Tiger River is a convenient location
12 for his parents to meet him. He has got his life kind of
13 settled and in a positive direction in Tiger River. So,
14 although I'm not asking you to only go down to 10, I certainly
15 would say that 10 is somehow a magical number for Tiger River.

16 I would ask you to consider maybe
17 going to eight and I would say this. He's pleading to three
18 different counts. It is, certainly, well within the attorney
19 general's right and discretion and, certainly, they can prove
20 what he has done but he is not the biggest fish in this case.
21 He supported his own habit and that was the only reason he did
22 it. He wasn't making money. He didn't get caught with cash.
23 This wasn't a big spender type situation.

24 This is a guy that has something to
25 give to us as a society if he gets out. Or excuse me, when he

1 gets out, if you give him the opportunity to get out just a
2 little bit sooner.

3 I'll probably stop talking now, let
4 him talk to you because he does, probably, better than I can
5 do but, Judge, I would ask you to consider going as low as
6 eight with Mr. Holloway, backdating to the day that he pled
7 and has been in custody since September 15, 2008, for exactly
8 related charges. It is within the conspiracy that he is
9 pleading today. So that's my basis for my request backdating
10 to 2008 for which he was sentenced to five years.

11 Judge, at this point I would just ask
12 to be allowed Mr. Holloway to speak.

13 THE COURT: Yes, sir.

14 Be glad to hear from you, Mr.
15 Holloway.

16 DEFENDANT HOLLOWAY: First and foremost, I'd
17 like to apologize to you, The Court, my family, which couldn't
18 be here because I didn't have an interpreter, and my
19 community. I accept all charges that I've pled to as for I
20 know I'm guilty of them and I apologize but thing is, is I
21 know I was being a loser and I don't want to be a loser
22 anymore, sir. I want to be a winner and I want to be
23 productive in society. I want to be the man that I've never
24 saw myself as because I didn't exactly understand what my
25 problem was, is my addictions and allowing everything, myself

1 to run to and be controlled by.

2 I understand everything and
3 there's no, there's no words, I feel, that can explain how,
4 really, sad and hurtful I am being to my family, which I'm
5 sure you can understand.

6 I just want to thank you
7 for taking the time to take in to consideration anything and I
8 apologize. If there's anything I could do to take it back I
9 would but there's nothing I can do, except for express my
10 sympathy. I hope that you will take it into consideration.

11 THE COURT: All right, thank you, Mr. Holloway.

12 DEFENDANT HOLLOWAY: Thank you, sir.

13 THE COURT: What's the prior record?

14 MR. CROUT: Your Honor, he has the prior
15 conviction of the charge he's in now on.

16 THE COURT: That's all?

17 MR. CROUT: Yes, sir.

18 THE COURT: What is that?

19 MR. CROUT: I believe that was also a --

20 MR. HARBIN: PWID.

21 MR. CROUT: Yeah, a pled meth charge.

22 THE COURT: He got a five year sentence?

23 MR. HARBIN: Yes, sir.

24 THE COURT: No prior offenses?

25 MR. HARBIN: That's my understanding, Your Honor.

1 DEFENDANT HOLLOWAY: Yes, sir, five years.

2 THE COURT: Does he have any prior record and he
3 appeared before a judge, judge sentenced you to five years in
4 jail? Were the other charges dismissed or anything?

5 DEFENDANT HOLLOWAY: NO, sir.

6 MR. HARBIN: Was there a proximity charge
7 dismissed, or anything?

8 DEFENDANT HOLLOWAY: Oh, yeah, yeah, yeah, yeah,
9 yeah. You're saying, like, yeah, proximity of the school that
10 was dismissed.

11 THE COURT: A proximity and a distribution.

12 DEFENDANT HOLLOWAY: And a possession, there was
13 a possession with intent to distribute.

14 THE COURT: Possession with intent to distribute
15 and a proximity.

16 DEFENDANT HOLLOWAY: And a proximity, yeah.

17 MR. HARBIN: And, Judge, I will say I called Mr.
18 Eppes yesterday and wasn't able to get in touch with him,
19 haven't spoken to him as of today but there was some
20 discussions between Mr. Eppes and my client, according to my
21 client, anyway, that somehow this was going to help him or be
22 affected by, or whatever, this particular case. In other
23 words, Mr. Eppes knew that this case was coming and there was
24 some reason for him not to go to trial. They were thinking
25 about going to trial, did not go to trial and pled and I can't

1 explain it. I wish I could, Judge, but I wasn't --

2 THE COURT: Well, I was just wondering why there
3 was a five year sentence for a first offense.

4 DEFENDANT HOLLOWAY: No, the reason why was
5 because I had priors.

6 THE COURT: You had priors?

7 DEFENDANT HOLLOWAY: Yeah, I had priors, yeah.

8 THE COURT: Nobody tell me anything about the
9 priors.

10 There's more than just that one
11 prior?

12 DEFENDANT HOLLOWAY: Yes, sir, I had priors,
13 that was the reason why. But it wasn't methamphetamines.
14 This is the first methamphetamines that I'd ever --

15 THE COURT: The other priors were other drug
16 charges?

17 DEFENDANT HOLLOWAY: Yes, sir.

18 THE COURT: Any break-ins, that kind of stuff?

19 DEFENDANT HOLLOWAY: Well, when I was young, you
20 know.

21 MR. HARBIN: Sorry, Judge, our NCIC I think's
22 clean.

23 MR. CROUT: No, actually, I knew he had that
24 conviction and I was not sure about the other ones. I assumed
25 there was some other ones, too, with respect to the priors.

1 THE COURT: 2008-GS-47-11, count 3, the sentence
2 of The Court is defendant be committed to state department of
3 corrections for a period of 12 years, recommend the ATE
4 program while incarcerated.

5 Court 2 and count 20 the sentence is
6 12 years to be concurrent to that previously imposed.

7 I'm sympathetic with the being in
8 Tiger River. Hopefully, he can be sent back there soon and I
9 think the charge, the time in the other charge, Mr. Harbin,
10 that was for a separate offense. I'm not gone predate it back
11 to September of '08.

12 Thank you very much.

13 -- END OF REQUESTED TRANSCRIPT OF RECORD --
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)

CERTIFICATE OF TRANSCRIPTION

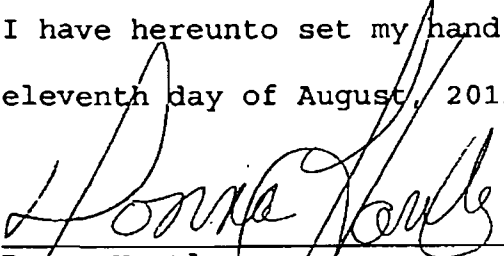
COUNTY OF PICKENS)

I, THE UNDERSIGNED, DONNA HARTLEY, do hereby certify that I transcribed the proceedings in the captioned case that were reported by April Herron, Circuit Court Reporter for the State of South Carolina, in the Court of General Sessions in and for the State of South Carolina on the ninth day of April, 2010

I FURTHER CERTIFY that the foregoing pages constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Beaufort County, this eleventh day of August, 2011.


Donna Hartley,
Court Reporter and Notary Public
for the State of South Carolina.
My Commission expires
April 23, 2017.

FORM 5

STATE OF SOUTH CAROLINA)

County of Pickens Greenville)

IN THE COURT OF COMMON PLEAS

Lance Q. Holloway #245099)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2011-CP-23- 2441

INSTRUCTIONS TO 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 Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Greenville County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) See Multi-County Indictment
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-47-11(20) Distribution of Methamphetamine

RECORDED

VIRGINIA CLEVELAND OFFICE

- (b) 2008-6 147-11(2) Trafficking Methamphetamine (Conspiracy)
 (c) 2008-65-47-11(3) Trafficking Methamphetamine (Conspiracy)

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

- (a) April 9th Nov 2010 12 years Concurrent
 (b) April 9 2010 12 years Concurrent
 (c) April 9 2010 12 years Concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ☒ _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

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

NO

8. If you answered Ayes@ to (7), list:

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

- i. _____
 ii. _____
 iii. _____

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

- i. _____
 ii. _____
 iii. _____

(c) the date of each such result:

- i. _____
 ii. _____
 iii. _____

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

- i. _____
 ii. _____
 iii. _____

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

- (a) Never Informed of Right to Appeal

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attached Sheets NUMBERED #1 THRU #24
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached Sheets NUMBERED #1 THRU #24
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) All Grounds / First PCR Application
 (b) _____
 (c) _____

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

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

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

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

i. CHASE HARBIN

 ii. _____

 iii. _____

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

i. AT PLEA
AT SENTENCING
 ii. _____

 iii. _____

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

To have the unconstitutional conviction vacated

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

Yes

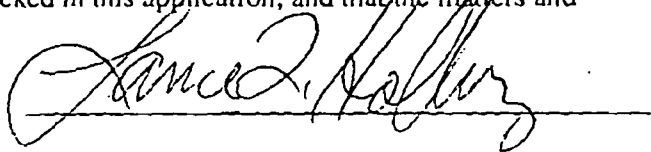
Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, LANCE Q. HOLLOWAY, 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.



SWORN to and subscribed before me this 7th
day of April, 2011.

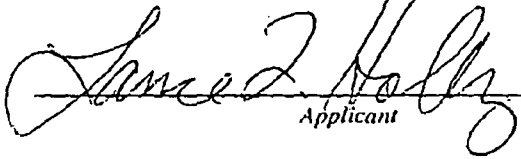
Catherine A. Comeran (L.S.)
Notary Public

My Commission Expires: My Commission Expires December 22, 2013

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

I, Lance A. Holloway, 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.


Applicant

SWORN or affirmed to and subscribed before me this

7th day of April, 2011.


Notary Public

My Commission Expires: Commission Exp. on December 22, 2012

1. THE STATE OF SOUTH CAROLINA FAILED TO FULFILL ITS CONSTITUTIONAL OBLIGATION TO PROVIDE THE APPLICANT, AN INDIGENT FELONY DEFENDANT WITH EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF SOUTH CAROLINA LAW AND THE FIRST, THE SIXTH, AND THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES;

2. THE APPLICANT WAS DENIED AND DEPRIVED OF THE RIGHT TO HAVE THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF SOUTH CAROLINA LAW AND THE FIRST, THE SIXTH, AND THE FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES;

3. THE APPLICANT'S GUILTY PLEA WAS NOT MADE WITH AND IS BASED ON THE ADVICE OF COMPETENT COUNSEL AS IS REQUIRED BY SOUTH CAROLINA LAW AND THE FIRST, THE SIXTH, AND THE FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES;

4. THE APPLICANT'S GUILTY PLEA WAS NOT MADE KNOWINGLY, INTELLIGENTLY, AND OR VOLUNTARILY AS IS REQUIRED BY SOUTH CAROLINA LAW AND THE FIRST, THE SIXTH, AND THE FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES;

5. THE GUILTY PLEA HEARING COURT THAT ACCEPTED THE APPLICANT'S GUILTY PLEA DID NOT HAVE JURISDICTION TO ACCEPT THE APPLICANT'S PLEA AND OR TO SENTENCE THE APPLICANT TO THE SENTENCE HE WAS SENTENCED TO;

6. THE APPLICANT WAS DENIED AND DEPRIVED OF THE RIGHT TO DUE PROCESS IN VIOLATION OF SOUTH CAROLINA LAW AND THE FIRST, THE SIXTH, AND THE

FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES:

THE APPLICANT WAS DENIED AND DEPRIVED OF THE RIGHT TO HAVE THE
EQUAL PROTECTION OF THE LAWS IN VIOLATION OF SOUTH CAROLINA LAW
AND THE FIRST, THE SIXTH, AND THE FOURTEENTH AMENDMENTS TO THE
CONSTITUTION OF THE UNITED STATES.

1. THE APPLICANT WAS INDICTED ON ONE COUNT OF DISTRIBUTION OF METHAMPHETAMINE AND TWO COUNTS OF TRAFFICKING METHAMPHETAMINE (CONSPIRACY) BY THE STATE GRAND JURY DURING THE GRAND JURY'S OCTOBER 2008 TERM.

2. A WARRANT FOR THE APPLICANT'S ARREST ON THE TRAFFICKING METHAMPHETAMINE (CONSPIRACY) AND THE DISTRIBUTION OF METHAMPHETAMINE CHARGES WAS ISSUED ON OCTOBER 20, 2008 BY THE PRESIDING JUDGE OF THE GRAND JURY.

3. ON OCTOBER 25, 2008 THE APPLICANT WAS ARRESTED AND SERVED WITH A COPY OF THE ARREST WARRANT AND THE INDICTMENT.

4. H. CHASE HARBIN WAS APPOINTED TO REPRESENT THE APPLICANT ON THE TRAFFICKING METHAMPHETAMINE (CONSPIRACY) AND THE DISTRIBUTION OF METHAMPHETAMINE CHARGES.

5. MR. HARBIN WAS A PUBLIC DEFENDER WITH THE PICKENS COUNTY PUBLIC DEFENDER'S OFFICE.

6. THE APPLICANT HAD ONE BRIEF MEETING WITH MR. HARBIN IN JULY OR AUGUST OF 2009.

7. THE APPLICANT HAD ANOTHER BRIEF MEETING WITH MR. HARBIN ON MARCH 8, 2010.

8. THE ONLY THING THAT MR. HARBIN WANTED TO TALK ABOUT DURING THESE TWO BRIEF MEETINGS WAS THE APPLICANT PLEADING GUILTY TO THE CHARGES.

9. FROM THE MOMENT THAT MR. HARBIN WAS APPOINTED TO REPRESENT THE APPLICANT HIS ONLY OBJECTIVE WAS TO GET THE APPLICANT TO PLEAD GUILTY TO THE CHARGES.

10. ON APRIL 9, 2010 THE APPLICANT WENT TO COURT AND PLEAD GUILTY TO THE TRAFFICKING METHAMPHETAMINE (CONSPIRACY) AND THE DISTRIBUTION OF METHAMPHETAMINE CHARGES.

11. THE APPLICANT'S GUILTY PLEA WAS NOT MADE KNOWINGLY.
12. THE APPLICANT'S GUILTY PLEA WAS NOT MADE INTELLIGENTLY.
13. THE APPLICANT'S GUILTY PLEA WAS NOT MADE VOLUNTARILY.
14. THE APPLICANT'S GUILTY PLEA WAS NOT MADE WITH AND OR BASED ON THE ADVICE OF COMPETENT COUNSEL.
15. THE APPLICANT DID NOT HAVE COMPETENT COUNSEL.
16. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROVIDE THE APPLICANT WITH COMPETENT LEGAL REPRESENTATION.
17. MR. HARBIN WAS ON A MISSION.
18. MR. HARBIN'S MISSION DID NOT INCLUDE HIM PROVIDING THE APPLICANT WITH COMPETENT LEGAL REPRESENTATION.
19. INSTEAD OF PROVIDING THE APPLICANT WITH COMPETENT LEGAL REPRESENTATION MR. HARBIN DID EVERYTHING HE COULD DO TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.
20. INSTEAD OF PROVIDING THE APPLICANT WITH COMPETENT LEGAL REPRESENTATION MR. HARBIN DID EVERYTHING HE COULD DO TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES EXCEPT TELL HIM THE TRUTH.
21. MR. HARBIN USED EVERY DIRTY UNETHICAL TRICK AT HIS DISPOSAL TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.
22. MR. HARBIN LIED TO THE APPLICANT.
23. MR. HARBIN DECEIVED THE APPLICANT.
24. MR. HARBIN DELIBERATELY CONCEALED INFORMATION FROM THE APPLICANT.
25. MR. HARBIN FAILED TO PROPERLY PROVIDE THE APPLICANT WITH ANY NECESSARY UP TO DATE AND OR RELEVANT INFORMATION ABOUT HIS CASE.
26. MR. HARBIN DEALT WITH THE APPLICANT IN A DISTONEST AND DECEITFUL MANNER.
27. MR. HARBIN WORKED IN COLLUSION WITH AND OR PERATED WITH THE PROSECUTION.

TO OBTAIN THE APPLICANT'S GUILTY PLEA.

28. MR. HARBIN WORKED IN COLLUSION WITH AND COOPERATED WITH THE

PROSECUTION IN ORDER TO OBTAIN THE APPLICANT'S CONVICTION.

29. MR. HARBIN FAILED TO DO ANY OF THE ROUTINE THINGS THAT ANY REASONABLY

COMPETENT DEFENSE ATTORNEY WOULD HAVE DONE WHEN TAKING ON A NEW CASE.

30. MR. HARBIN FAILED TO DO ANY OF THE ROUTINE THINGS THAT ANY REASONABLY

COMPETENT DEFENSE ATTORNEY WOULD HAVE DONE BEFORE HE GAVE A NEW

CLIENT ANY KIND OF LEGAL ADVICE.

31. MR. HARBIN FAILED TO DO ANY OF THE ROUTINE THINGS THAT ANY REASONABLY

COMPETENT DEFENSE ATTORNEY WOULD HAVE DONE BEFORE HE STARTED

ADVISING A CLIENT TO PLEAD GUILTY TO THE CHARGES.

32. MR. HARBIN FAILED TO DO ANY OF THE ROUTINE THINGS THAT ANY REASONABLY

COMPETENT DEFENSE ATTORNEY WOULD HAVE DONE BEFORE HE STARTED

TALKING TO TALK A CLIENT INTO PLEADING GUILTY.

33. MR. HARBIN FAILED TO DO ANY OF THE ROUTINE THINGS THAT ANY REASONABLY

COMPETENT DEFENSE ATTORNEY WOULD HAVE KNOWN THAT HE HAD TO DO

BEFORE HE STARTED HAMMERING AWAY AND PRESSURING A CLIENT TO

PLEAD GUILTY.

34. A SHORT WHILE AFTER MR. HARBIN WAS APPOINTED AS COUNSEL IN THE APPLICANT'S

CASE HE WAS GIVEN A COPY OF THE CASE FILE.

35. AFTER A cursory inspection of the contents of that file MR. HARBIN

DECIDED THAT HE WAS GOING TO DO EVERYTHING HE COULD DO TO TRY TO TALK

THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

36. MR. HARBIN MADE THAT DECISION BECAUSE THAT IS HOW HE NORMALLY

OPERATES.

37. MR. HARBIN NEVER DID ANYTHING MORE THAN A PERFUNCTORY INSPECTION

OF THE MATERIAL IN THE APPLICANT'S CASE FILE BEFORE HE DECIDED THAT

HE WAS GOING TO TRY TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

38. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY FAMILIARIZE HIMSELF WITH ANY OF THE RELEVANT FACTS AND/OR CIRCUMSTANCES SURROUNDING THE APPLICANT'S CASE AT ANY TIME PRIOR TO THE TIME THAT HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

39. MR. HARBIN NEVER MADE ANY ATTEMPT TO ACTUALLY CHECK OUT ANY OF THE FACTS HIMSELF AT ANY TIME PRIOR TO THE TIME THAT HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

40. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY ANALYZE ANY OF THE FACTS HIMSELF BEFORE HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

41. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY ASSESS ANY OF THE FACTS HIMSELF BEFORE HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

42. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY IDENTIFY ANY OF THE LEGAL ISSUES RAISED BY THE FACTS BEFORE HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

43. MR. HARBIN NEVER MADE ANY ATTEMPT TO CONDUCT ANY KIND OF AN INDEPENDANT FACTUAL INVESTIGATION OF HIS OWN AT ANY TIME PRIOR TO THE TIME THAT HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

44. MR. HARBIN'S DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES BEFORE HE HIMSELF HAD A GOOD FIRM GRASP ON THE FACTS WAS NOT A DECISION THAT WAS BASED ON GOOD, SOUND, AND/OR REASONABLE LEGAL JUDGMENT.

45. AT NO TIME PRIOR TO THE TIME THAT MR. HARBIN STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES DID HE EVER MAKE

ANY ATTEMPT TO DETERMINE WHETHER OR NOT THE CHARGES THE

APPLICANT WAS FACING WERE CHARGES HE SHOULD HAVE BEEN FACING.

46. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY FAMILIARIZE HIMSELF

WITH ANY OF THE SO-CALLED EVIDENCE IN THE CASE BEFORE HE STARTED

TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

47. MR. HARBIN NEVER MADE ANY ATTEMPT TO VISUALLY INSPECT AND OR

PHYSICALLY EXAMINE ANY OF THE SO-CALLED EVIDENCE BEFORE HE STARTED

TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

48. MR. HARBIN NEVER MADE ANY ATTEMPT TO IN ANY WAY ANALYZE AND OR MAKE

ANY KIND OF PERSONAL EVALUATION OF ANY OF THE EVIDENCE BEFORE HE

STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE

CHARGES.

49. MR. HARBIN NEVER MADE ANY ATTEMPT TO MAKE ANY KIND OF ASSESSMENT

AS TO THE PROBATIVE VALUE OF ANY OF THE PROSECUTION'S EVIDENCE

BEFORE HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY

TO THE CHARGES.

50. MR. HARBIN NEVER MADE ANY ATTEMPT TO MAKE ANY KIND OF ASSESSMENT

AS TO THE RELEVANCE, THE SIGNIFICANCE, AND OR THE ADMISSIBILITY OF

ANY OF THE SO-CALLED EVIDENCE BEFORE HE STARTED TRYING TO TALK

THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

51. MR. HARBIN'S DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING GUILTY

TO THE CHARGES BEFORE HE EVER MADE ANY ATTEMPT TO PROPERLY

EVALUATE ANY OF THE EVIDENCE IN THE CASE WAS NOT A DECISION THAT WAS

BASED ON GOOD, SOUND, AND OR REASONABLE LEGAL JUDGMENT.

52. MR. HARBIN NEVER MADE ANY ATTEMPT TO CONTACT, TO LOCATE, TO INTERVIEW,

AND OR TO IN ANY OTHER WAY TALK TO ANY OF THE WITNESSES AND OR ANY OF THE POTENTIAL WITNESSES IN THE CASE BEFORE HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

53. MR. HARBIN NEVER MADE ANY ATTEMPT TO CONTACT, TO LOCATE, TO INTERVIEW AND OR TO IN ANY OTHER WAY TALK TO ANY OF THE APPLICANT'S SO-CALLED CO-DEFENDANTS BEFORE HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

54. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY INTERVIEW THE APPLICANT AS TO ANY OF THE FACTS OF THE CASE BEFORE HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

55. MR. HARBIN'S DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES BEFORE HE EVER MADE ANY ATTEMPT TO PROPERLY INTERVIEW ANY OF THE WITNESSES AND OR ANY OF THE POTENTIAL WITNESSES IN THE CASE WAS NOT A DECISION THAT WAS BASED ON GOOD, SOUND, AND OR REASONABLE LEGAL JUDGMENT.

56. MR. HARBIN'S DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES BEFORE HE EVER MADE ANY ATTEMPT TO INTERVIEW ANY OF THE SO-CALLED CO-DEFENDANTS IN THE CASE WAS NOT A DECISION THAT WAS MADE AND OR BASED ON GOOD, SOUND, AND OR REASONABLE LEGAL JUDGMENT.

57. MR. HARBIN'S DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES BEFORE HE EVER MADE ANY ATTEMPT TO PROPERLY INTERVIEW THE APPLICANT AS TO THE MATERIAL FACTS OF THE CASE WAS NOT A DECISION THAT WAS MADE AND OR BASED ON GOOD, SOUND, AND OR REASONABLE LEGAL JUDGMENT.

58. MR. HARBIN NEVER MADE ANY ATTEMPT TO CHECK THE FACTUAL BASIS FOR ANY OF THE CHARGES BEFORE HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

59. MR. HARBIN'S DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING

GUILITY TO THE CHARGES BEFORE HE EVER MADE ANY ATTEMPT TO ACTUALLY

CHECK THE SO-CALLED FACTUAL BASIS FOR THE CHARGES THAT THE APPLICANT

WAS FACING WAS NOT A DECISION THAT WAS MADE AND OR BASED ON GOOD,

SECOND, AND OR REASONABLE LEGAL JUDGMENT.

60. MR. HARBIN NEVER MADE ANY ATTEMPT TO GATHER INFO OR IN ANY OTHER WAY

OBTAIN ANY INFORMATION ABOUT THE APPLICANT'S CASE ON HIS OWN BEFORE

HE STARTED TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

61. MR. HARBIN NEVER TOOK THE TIME TO ACTUALLY CHECK CREDIT HISTORY THAT

HAD ANYTHING TO DO WITH THE APPLICANT'S CASE BEFORE HE STARTED

TRYING TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

62. MR. HARBIN'S DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING

GUILITY TO THE CHARGES AS SOON AS HE WAS APPOINTED TO REPRESENT HIM

WAS NOT A DECISION THAT WAS MADE AND OR BASED ON GOOD, SECOND, AND

OR REASONABLE LEGAL JUDGMENT.

63. MR. HARBIN WAS NOT USING GOOD, SECOND, AND OR REASONABLE LEGAL

JUDGMENT WHEN HE MADE THE DECISION TO TRY TO TALK THE APPLICANT

INTO PLEADING GUILTY TO THE CHARGES.

64. MR. HARBIN ~~WAS~~ WAS NOT THINKING ABOUT WHAT WOULD HAVE BEEN IN THE

APPLICANT'S BEST INTERESTS WHEN HE MADE THE DECISION TO TRY TO TALK

THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

65. MR. HARBIN DID NOT HAVE THE APPLICANT'S BEST INTERESTS IN MIND WHEN

HE MADE THE DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING

GUILITY TO THE CHARGES.

66. MR. HARBIN FAILED TO TAKE THE APPLICANT'S INTERESTS INTO CONSIDERATION

WHEN HE WAS MAKING THE DECISION TO TRY TO TALK THE APPLICANT

INTO PLEADING GUILTY TO THE CHARGES.

67. WHEN MR. HARBIN MADE THE DECISION TO TRY TO TALK THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES MR. HARBIN WAS PUTTING HIS OWN PERSONAL INTERESTS AHEAD OF THE APPLICANT'S INTERESTS.

68. MR. HARBIN ALLOWED HIS OWN PERSONAL INTERESTS TO OVERSHADOW THE APPLICANT'S INTERESTS.

69. MR. HARBIN ALLOWED HIS OWN PERSONAL INTERESTS TO HAVE AN ADVERSE EFFECT ON THE DECISIONS THAT HE MADE WHILE HE WAS HANDLING THE APPLICANT'S CASE.

70. MR. HARBIN ALLOWED HIS OWN PERSONAL INTERESTS TO CAUSE HIM TO ACT CONTRARY TO THE APPLICANT'S INTERESTS.

71. MR. HARBIN ALLOWED HIS OWN PERSONAL INTERESTS TO PREVENT HIM FROM PROPERLY CARRYING OUT HIS PROFESSIONAL RESPONSIBILITIES.

72. MR. HARBIN NEVER TOOK THE APPLICANT'S CASE SERIOUSLY.

73. MR. HARBIN NEVER TREATED THE APPLICANT'S CASE LIKE THE SERIOUS MATTER THAT IT WAS.

74. MR. HARBIN GROSSLY NEGLECTED THE APPLICANT'S CASE.

75. MR. HARBIN NEVER GAVE THE APPLICANT'S CASE THE KIND OF ATTENTION IT NEEDED.

76. MR. HARBIN NEVER GAVE THE APPLICANT'S CASE THE KIND OF ATTENTION IT REQUIRED.

77. MR. HARBIN NEVER PROPERLY CONSULTED WITH THE APPLICANT.

78. MR. HARBIN NEVER PROPERLY ADVISED THE APPLICANT.

79. MR. HARBIN NEVER PROPERLY PROVIDED THE APPLICANT WITH ANY OF THE INFORMATION THAT HE ACTUALLY NEEDED TO KNOW ABOUT HIS CASE.

80. MR. HARBIN NEVER PROPERLY PROVIDED THE APPLICANT WITH ANY OF THE INFORMATION THAT WOULD HAVE ALLOWED HIM TO HAVE BEEN ABLE TO MAKE ANY

WELL REASONED REASONABLY INFORMED DECISIONS ABOUT HIS CASE.

81. MR. HARBIN NEVER PROVIDED THE APPLICANT WITH ANY PERTINENT INFORMATION ABOUT HIS CASE.

82. MR. HARBIN NEVER PROVIDED THE APPLICANT WITH ANY RELEVANT INFORMATION ABOUT HIS CASE.

83. MR. HARBIN NEVER PROVIDED THE APPLICANT WITH ANY USEFUL INFORMATION ABOUT HIS CASE.

84. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROVIDE THE APPLICANT WITH ANY KIND OF A THOUGHTFUL AND OBJECTIVE EVALUATION OF HIS CASE.

85. MR. HARBIN NEVER MADE ANY ATTEMPT TO DISCUSS ALL OF THE APPLICANT'S LEGAL OPTIONS WITH HIM.

86. THE ONLY OPTION THAT MR. HARBIN DISCUSSED WITH THE APPLICANT WAS THE OPTION OF PLEADING GUILTY.

87. THE ONLY OPTION THAT MR. HARBIN WANTED TO DISCUSS WITH THE APPLICANT WAS THE OPTION OF PLEADING GUILTY.

88. MR. HARBIN NEVER GAVE THE APPLICANT ANY OPTION BUT THE OPTION OF PLEADING GUILTY.

89. MR. HARBIN NEVER DISCUSSED ANY OTHER OPTION WITH THE APPLICANT.

90. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY COMMUNICATE AND OR COLLABORATE WITH THE APPLICANT.

91. MR. HARBIN NEVER DISCUSSED A DEFENSE WITH THE APPLICANT.

92. MR. HARBIN NEVER DISCUSSED THE POSSIBILITY OF A DEFENSE WITH THE APPLICANT.

93. MR. HARBIN NEVER EXPLORED THE POSSIBILITY OF A DEFENSE WITH THE APPLICANT.

94. MR. HARBIN NEVER TALKED ABOUT GOING TO TRIAL WITH THE APPLICANT.

95. MR. HARBIN NEVER INTENDED TO TAKE THE APPLICANT'S CASE TO TRIAL.

96. MR. HARBIN DID EVERYTHING THAT HE COULD DO TO TALK THE APPLICANT OUT OF EXERCISING

HIS RIGHT TO STAND TRIAL.

97. MR. HARBIN NEVER HONESTLY DISCUSSED THE APPLICANT'S CASE WITH HIM.

98. MR. HARBIN NEVER MADE ANY ATTEMPT TO HONESTLY DISCUSS THE APPLICANT'S CASE WITH HIM.

99. MR. HARBIN NEVER PROPERLY DISCUSSED THE APPLICANT'S LEGAL POSITION IN THE MATTER WITH HIM.

100. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY DISCUSS THE APPLICANT'S LEGAL POSITION IN THE MATTER WITH HIM.

101. MR. HARBIN NEVER DISCUSSED THE STATEMENTS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE ARREST WARRANT WITH THE APPLICANT.

102. MR. HARBIN NEVER MADE ANY ATTEMPT TO DISCUSS THE STATEMENTS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE ARREST WARRANT WITH THE APPLICANT.

103. MR. HARBIN NEVER DID ANYTHING TO IN ANY WAY DRAW THE APPLICANT'S ATTENTION TO THE STATEMENTS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE ARREST WARRANT.

104. MR. HARBIN NEVER DID AND OR SAID ANYTHING TO IN ANY WAY DRAW THE APPLICANT'S ATTENTION TO THE RELEVANCE AND OR THE SIGNIFICANCE OF THE STATEMENTS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE ARREST WARRANT.

105. MR. HARBIN NEVER DISCUSSED THE STATEMENTS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE INDICTMENT WITH THE APPLICANT.

106. MR. HARBIN NEVER MADE ANY ATTEMPT TO DISCUSS THE STATEMENTS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE INDICTMENT WITH THE APPLICANT.

107. MR. HARBIN NEVER DID AND OR SAID ANYTHING TO IN ANY WAY DRAW THE APPLICANT'S ATTENTION TO THE STATEMENTS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE INDICTMENT.

108. MR. HARBIN NEVER DID ANYTHING AND OR SAID ANYTHING TO IN ANY WAY DRAW THE APPLICANT'S ATTENTION TO THE RELEVANCE AND OR THE SIGNIFICANCE OF THE STATEMENTS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE INDICTMENT.

109. MR. HARBIN NEVER DISCUSSED AND OR EVER MADE ANY ATTEMPT TO DISCUSS ANY OF THE STATEMENTS CONTAINED IN ANY OF THE AFFIDAVITS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE HARVEST WARRANT WITH THE APPLICANT.

110. MR. HARBIN NEVER DISCUSSED AND OR EVER MADE ANY ATTEMPT TO DISCUSS ANY OF THE STATEMENTS THAT WERE CONTAINED IN ANY OF THE AFFIDAVITS THAT FORMED THE LEGAL BASIS FOR THE CHARGES ALLEGED IN THE INDICTMENT WITH THE APPLICANT.

111. MR. HARBIN NEVER DISCUSSED ANY OF THE AFFIDAVITS WITH THE APPLICANT.

112. MR. HARBIN NEVER MADE ANY ATTEMPT TO DISCUSS ANY OF THE AFFIDAVITS WITH THE APPLICANT.

113. MR. HARBIN NEVER TOLD THE APPLICANT THAT AN AFFIDAVIT WAS.

114. MR. HARBIN NEVER TOLD THE APPLICANT THAT AN AFFIDAVIT WAS A VOLUNTARY EX PARTE STATEMENT, REDUCED TO WRITING AND SWORN TO OR AFFIRMED BEFORE SOME PERSON LEGALLY AUTHORIZED TO ADMINISTER AN OATH OR AFFIRMATION.

115. MR. HARBIN NEVER TOLD THE APPLICANT THAT AN AFFIDAVIT WAS DIFFERENT FROM AN OATH IN THAT AN AFFIDAVIT CONSISTS OF A STATEMENT OF FACT WHICH IS SWORN TO OR AFFIRMED WHILE AN OATH IS A PLEDGE.

116. MR. HARBIN NEVER EXPLAINED THE LEGAL SIGNIFICANCE OF THE SWORN AFFIDAVITS THAT CONTAINED THE STATEMENTS THAT FORMED THE BASIS FOR THE CHARGES THAT HE WAS FACING TO THE APPLICANT.

117. MR. HARBIN NEVER EXPLAINED THE RELEVANCE OF THE SWORN AFFIDAVITS THAT CONTAINED THE STATEMENTS THAT FORMED THE BASIS FOR THE CHARGES THAT HE WAS FACING TO THE APPLICANT.

118. MR. HARBIN NEVER EXPLAINED THE LEGAL CONNECTION BETWEEN THE MATERIAL FACTS OF

THE CASE AND THE SWORN AFFIDAVITS TO THE APPLICANT

119. MR. HARBIN NEVER MADE ANY ATTEMPT TO ASCERTAIN AND OR FIND OUT WHETHER OR NOT THE STATEMENTS CONTAINED IN THE SWORN AFFIDAVITS WERE TRUE.

120. MR. HARBIN NEVER ASKED THE APPLICANT WHETHER OR NOT ANY OF THE STATEMENTS CONTAINED IN ANY OF THE SWORN AFFIDAVITS WERE TRUE.

121. MR. HARBIN DID NOT CARE WHETHER OR NOT THE STATEMENTS THAT FORMED THE BASIS FOR THE CHARGES THAT THE APPLICANT WAS MAKING WERE TRUE.

122. MR. HARBIN NEVER TOLD THE APPLICANT THAT THE STATEMENTS CONTAINED IN THE SWORN AFFIDAVITS HAD TO BE THE TRUTH.

123. MR. HARBIN NEVER TOLD THE APPLICANT THAT THE SWORN STATEMENTS CONTAINED IN THE AFFIDAVITS HAD TO BE THE TRUTH IN ORDER FOR THE COURT TO LEGALLY HAVE JURISDICTION.

124. MR. HARBIN NEVER TOLD THE APPLICANT THAT THE COURT COULD NOT LEGALLY HAVE JURISDICTION OVER A CASE THAT WAS BASED ON A LIE.

125. MR. HARBIN NEVER TOLD THE APPLICANT THAT THE COURT COULD NOT LEGALLY HAVE JURISDICTION OVER A CASE THAT WAS BASED ON A SERIES OF LIES.

126. MR. HARBIN NEVER DISCUSSED THE JURISDICTION OF THE COURT WITH THE APPLICANT.

127. MR. HARBIN NEVER SAID THE WORDS SUBJECT MATTER JURISDICTION TO THE APPLICANT.

128. MR. HARBIN NEVER EXPLAINED THE LEGAL CONNECTION BETWEEN THE STATEMENTS THAT FORMED THE BASIS FOR THE CHARGES ALLEGED IN THE INDICTMENT AND THE JURISDICTION OF THE COURT TO THE APPLICANT.

129. MR. HARBIN NEVER DISCUSSED ANY OF THE CRIMINAL ELEMENTS OF THE CRIMES CHARGED WITH THE APPLICANT.

130. MR. HARBIN NEVER TOLD THE APPLICANT WHAT A CRIMINAL ELEMENT WAS.

131. MR. HARBIN NEVER SAID THE WORDS CRIMINAL ELEMENT TO THE APPLICANT.

132. MR. HARBIN NEVER EXPLAINED THE CONNECTION BETWEEN THE CRIMINAL ELEMENTS OF THE CHARGES CHARGED AND THE MATERIAL FACTS OF THE CASE TO THE APPLICANT.

133. MR. HARBIN NEVER EXPLAINED THE CONNECTION BETWEEN THE CRIMINAL ELEMENTS OF THE CHARGES CHARGED AND THE EVIDENCE TO THE APPLICANT.

134. MR. HARBIN NEVER DISCUSSED THE PROSECUTOR'S BURDEN OF PROOF WITH THE APPLICANT.

135. MR. HARBIN NEVER DISCUSSED THE CONCEPT OF PROOF BEYOND A REASONABLE DOUBT WITH THE APPLICANT.

136. MR. HARBIN NEVER DISCUSSED THE CONCEPT OF THE PRESUMPTION OF INNOCENCE WITH THE APPLICANT.

137. MR. HARBIN NEVER DISCUSSED THE LEGAL CONCEPT OF A FAIR TRIAL WITH THE APPLICANT.

138. MR. HARBIN USED THE APPLICANT'S LACK OF LEGAL KNOWLEDGE AGAINST HIM.

139. MR. HARBIN NEVER TOLD THE APPLICANT WHAT ALL OF HIS LEGAL RIGHTS WERE.

140. MR. HARBIN NEVER TOLD THE APPLICANT WHAT ALL OF HIS CONSTITUTIONAL RIGHTS WERE.

141. MR. HARBIN NEVER TOLD THE APPLICANT ANYTHING ABOUT THE SELF-INCRIMINATION CLAUSES OF THE CONSTITUTION.

142. MR. HARBIN NEVER TOLD THE APPLICANT ANYTHING ABOUT THE PROHIBITION AGAINST SELF-INCRIMINATION.

143. MR. HARBIN NEVER TOLD THE APPLICANT THAT HE HAD THE RIGHT TO NOT SAY ANYTHING IN COURT THAT MIGHT INCRIMINATE HIM.

144. MR. HARBIN NEVER TOLD THE APPLICANT ANYTHING ABOUT THE CONFRONTATION CLAUSE OF THE CONSTITUTION.

145. MR. HARBIN NEVER TOLD THE APPLICANT ANYTHING ABOUT THE RIGHT TO CONFRONT ONE'S ACCUSERS.

146. MR. HARBIN NEVER TOLD THE APPLICANT THAT HE HAD THE RIGHT TO CONFRONT HIS

ACCUSERS.

147. MR. HARBIN NEVER TOLD THE APPLICANT ANYTHING ABOUT THE NATURE OF THE CONSTITUTIONAL RIGHTS THAT HE WOULD BE WAIVING IF HE PLED GUILTY TO THE CHARGE.
148. MR. HARBIN NEVER TOLD THE APPLICANT WHAT A WAIVER WAS.
149. MR. HARBIN NEVER DISCUSSED A WAIVER WITH THE APPLICANT.
150. MR. HARBIN DID EVERYTHING THAT HE COULD DO TO MAKE SURE THAT THE APPLICANT DID NOT KNOW WHAT HIS RIGHTS WERE.
151. MR. HARBIN DID EVERYTHING THAT HE COULD DO TO MAKE SURE THAT THE APPLICANT DID NOT KNOW WHAT HIS OPTIONS WERE.
152. MR. HARBIN DID EVERYTHING THAT HE COULD DO TO MAKE SURE THAT THE APPLICANT DID NOT KNOW THAT HE EVEN HAD ANY OPTIONS.
153. MR. HARBIN DID EVERYTHING THAT HE COULD DO TO KEEP THE APPLICANT UNINFORMED.
154. MR. HARBIN DID EVERYTHING THAT HE COULD DO TO KEEP THE APPLICANT UNPREPARED.
155. MR. HARBIN DID EVERYTHING THAT HE COULD DO TO KEEP THE APPLICANT IN THE DARK.
156. THE APPLICANT KNEW AS MUCH ABOUT THE LAW BEFORE HE TALKED TO MR. HARBIN AS HE KNEW AFTER HE TALKED TO MR. HARBIN.
157. THE APPLICANT KNEW AS MUCH ABOUT HIS RIGHTS BEFORE HE TALKED TO MR. HARBIN AS HE KNEW AFTER HE TALKED TO MR. HARBIN.
158. THE APPLICANT KNEW AS MUCH ABOUT HIS OPTIONS BEFORE HE TALKED TO MR. HARBIN AS HE KNEW AFTER HE TALKED TO MR. HARBIN.
159. MR. HARBIN NEVER ACTED LIKE THE APPLICANT'S ADVOCATE.
160. MR. HARBIN ACTED LIKE AND WAS ACTING LIKE A FACILITATOR FOR THE STATE THE WHOLE TIME THAT HE WAS HANDLING THE APPLICANT'S CASE.
161. MR. HARBIN NEVER DEVOTED HIMSELF TO THE APPLICANT'S CAUSE.
162. MR. HARBIN NEVER SERVED THE APPLICANT'S CAUSE IN GOOD FAITH.
163. MR. HARBIN NEVER GAVE THE APPLICANT HIS COMPLETE LOYALTY.
164. MR. HARBIN TREATED THE APPLICANT LIKE A FOOL.

165. MR. HARBIN RAN A CON GAME ON THE APPLICANT.

166. MR. HARBIN TRICKED THE APPLICANT INTO WAIVING HIS RIGHTS

167. MR. HARBIN TRICKED THE APPLICANT INTO WAIVING RIGHTS HE DID NOT KNOW THAT HE HAD.

168. MR. HARBIN TRICKED THE APPLICANT INTO WAIVING RIGHTS HE DID NOT UNDERSTAND

169. MR. HARBIN TRICKED THE APPLICANT INTO PLEADING GUILTY TO THE CHARGES.

170. MR. HARBIN USED LIES AND DECEIT TO TRICK THE APPLICANT INTO PLEADING GUILTY.

171. MR. HARBIN TOOK ADVANTAGE OF THE APPLICANT'S LACK OF LEGAL KNOWLEDGE.

172. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT KNEW NOTHING ABOUT THE LAW.

173. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT DID NOT UNDERSTAND THE LEGAL PROCESS.

174. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT KNEW NOTHING ABOUT LEGAL PROCEDURE.

175. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT DID NOT KNOW WHAT HIS LEGAL RIGHTS WERE.

176. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT DID NOT KNOW WHAT ALL OF HIS OPTIONS WERE.

177. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT DID NOT KNOW THAT HE HAD ANY OPTIONS.

178. MR. HARBIN TOOK ADVANTAGE OF AND EXPLOITED EVERY SINGLE WEAKNESS THAT HE COULD DETECT.

179. MR. HARBIN TOOK ADVANTAGE OF THE APPLICANT'S LACK OF EDUCATION.

180. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT WAS NOT THINKING CLEARLY.

181. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT WAS NERVOUS.

182. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT WAS WEARIED.

183. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT WAS AFRAID...

184. MR. HARBIN TOOK ADVANTAGE OF THE FACT THAT THE APPLICANT WAS FILLED WITH ANXIETY...

185. MR. HARBIN TOOK ADVANTAGE OF THE APPLICANT'S STATE OF MIND...

186. MR. HARBIN TOOK ADVANTAGE OF AND EXPLOITED THE FACT THAT HE KNEW THAT THE APPLICANT WANTED TO TRUST HIM...

187. MR. HARBIN TOOK ADVANTAGE OF AND EXPLOITED THE FACT THAT HE KNEW THAT THE APPLICANT THOUGHT THAT HE HAD NO CHOICE OTHER THAN TO DEPEND ON HIM...

188. MR. HARBIN HAD PLAYED THIS GAME BEFORE...

189. MR. HARBIN KNEW ALL THE RIGHT BUTTONS TO PUSH...

190. MR. HARBIN PUSHED ALL THE RIGHT BUTTONS...

191. MR. HARBIN TOOK ADVANTAGE OF AND EXPLOITED HIS POSITION AS THE APPLICANT'S ATTORNEY...

192. MR. HARBIN TOOK ADVANTAGE OF AND EXPLOITED HIS POSITION AS THE APPLICANT'S ATTORNEY IN ORDER TO TALK HIM INTO PLEADING GUILTY TO THE CHARGES...

193. MR. HARBIN TOOK ADVANTAGE OF AND EXPLOITED HIS POSITION AS THE APPLICANT'S ATTORNEY IN AN EFFORT TO ASSIST THE PROSECUTION IN THEIR EFFORT TO OBTAIN A GUILTY PLEA FROM THE APPLICANT...

194. MR. HARBIN TOOK ADVANTAGE OF AND EXPLOITED HIS POSITION AS THE APPLICANT'S ATTORNEY IN ORDER TO HELP THE PROSECUTION TO UNLAWFULLY OBTAIN THE APPLICANT'S CONVICTION...

195. MR. HARBIN BETRAYED THE APPLICANT'S TRUST...

196. MR. HARBIN NEVER MADE ANY ATTEMPT TO TAKE ANY OF THE STEPS THAT WOULD HAVE BEEN NECESSARY TO TRY TO HAVE THE APPLICANT'S CASE SET ASIDE IN A MANNER WHICH WOULD HAVE BEEN TO HIS BEST ADVANTAGE...

197. MR. HARBIN DID NOTHING MORE THAN TO ACT LIKE A RUBBER STAMP FOR THE STATE THE ENTIRE TIME THAT HE WAS HANDLING THE APPLICANT'S CASE...

198. ON APRIL 9, 2010 THE APPLICANT WAS TAKEN TO THE PICKENS COUNTY COURTHOUSE
IN PICKENS TO ATTEND A COUNTY PLEA HEARING.

199. THE APPLICANT MET UP WITH MR. HARBIN WHEN HE GOT TO THE COURTHOUSE.

200. BEFORE THE APPLICANT WENT INTO THE COURTROOM WITH MR. HARBIN TO ENTER HIS
PLEA TO THE CHARGES MR. HARBIN GOT HIM TO SIGN THREE (3) "UNSIGNED" SENTENCE
SHEETS.

201. THE SENTENCE SHEETS TOLD MR. HARBIN GOT THE APPLICANT TO SIGN BEFORE
THE COUNTY PLEA HEARING. BECAUSE HAD NOT BEEN SIGNED BY THE JUDGE, THE
CLERK OF COURT, AND ON THE COURT REPORTER BEFORE MR. HARBIN GOT THE
APPLICANT TO SIGN THEM.

202. MR. HARBIN GOT THE APPLICANT TO SIGN THE THREE (3) "UNSIGNED SENTENCE SHEETS"
BEFORE THE JUDGE PRIOR TO A SENTENCE.

203. MR. HARBIN GOT THE APPLICANT TO SIGN THE THREE (3) "UNSIGNED SENTENCE SHEETS"
WHILE THE APPLICANT WAS UNDER THE IMPRESSION THAT THE SENTENCE SHEETS THAT HE
WAS SIGNING WERE PLEA AGREEMENTS.

204. MR. HARBIN GOT THE APPLICANT TO SIGN THE THREE (3) "UNSIGNED SENTENCE SHEETS"
KNOWING THAT THE WHOLE TIME THAT HE WAS SIGNING THE SENTENCE SHEETS THE
APPLICANT ACTUALLY THOUGHT THAT HE WAS SIGNING PLEA AGREEMENTS.

205. MR. HARBIN NEVER TOLD THE APPLICANT THAT THE SENTENCE SHEETS THAT HE WAS
SIGNING WERE NOT PLEA AGREEMENTS.

206. MR. HARBIN NEVER EXPLAINED WHAT HE WAS SIGNING TO THE APPLICANT.

207. AFTER THE APPLICANT SIGNED THE THREE (3) "UNSIGNED" SENTENCE SHEETS HE
WENT INTO THE COURTROOM WITH MR. HARBIN TO ENTER HIS PLEA TO THE CHARGES.

208. DURING THE PROCEEDINGS THAT FOLLOWED THE ASSISTANT ATTORNEY GENERAL THAT
WAS REPRESENTING THE STATE IN THE MATTER CHANGED THE VENUE OF THE
MCDONALD TAMMINE AND THE CIRCUIT COURT NUMBERS THAT WERE ON THE TWO (2)
"UNSIGNED SENTENCE SHEETS" FOR THE TWO TAMMINE MCDONALD TAMMINE.

(CONSPIRACY) CHARGES.

209. WHEN THE ASSISTANT ATTORNEY GENERAL CHANGED THE WEIGHT OF THE METHAMPHETAMINE AND THE CDR CODE NUMBERS ON THE UNSIGNED SENTENCE SHEETS MR. HARBIN DID NOT SAY ANYTHING.

210. WHEN THE ASSISTANT ATTORNEY GENERAL CHANGED THE WEIGHT OF THE METHAMPHETAMINE AND THE CDR ^{CODE} NUMBERS ON THE UNSIGNED SENTENCE SHEETS MR. HARBIN ACTED LIKE HE HAD NOT DONE ANYTHING WRONG.

211. WHEN THE ASSISTANT ATTORNEY GENERAL CHANGED THE WEIGHT OF THE METHAMPHETAMINE AND THE CDR CODE NUMBERS ON THE UNSIGNED SENTENCE SHEETS MR. HARBIN DID NOT OBJECT.

212. WHEN THE ASSISTANT ATTORNEY GENERAL CHANGED THE WEIGHT OF THE METHAMPHETAMINE AND THE CDR CODE NUMBERS ON THE UNSIGNED SENTENCE SHEETS MR. HARBIN FAILED TO OBJECT FOR THE RECORD.

213. WHEN THE ASSISTANT ATTORNEY GENERAL CHANGED THE WEIGHT OF THE METHAMPHETAMINE AND THE CDR CODE NUMBERS ON THE UNSIGNED SENTENCE SHEETS MR. HARBIN FAILED TO MAKE ANY ATTEMPT TO DRAW THE COURT'S AND/OR THE APPLICANT'S ATTENTION TO THE FACT THAT WHEN THE ASSISTANT ATTORNEY GENERAL CHANGED THE WEIGHT OF THE METHAMPHETAMINE AND THE CDR CODE NUMBERS ON THE UNSIGNED SENTENCE SHEETS HE NULLIFIED THE TERMS OF THE AGREEMENT UNDER WHICH THE APPLICANT AGREED TO PLEAD GUILTY TO THE CHARGES.

214. WHEN THE ASSISTANT ATTORNEY GENERAL CHANGED THE WEIGHT OF THE METHAMPHETAMINE AND THE CDR CODE NUMBERS ON THE UNSIGNED SENTENCE SHEETS MR. HARBIN FAILED TO MAKE ANY ATTEMPT TO DRAW THE COURT'S AND/OR THE APPLICANT'S ATTENTION TO THE FACT THAT WHEN THE ASSISTANT ATTORNEY GENERAL ALTERED THE DOCUMENTS THAT ALTERED THEM HE NULLIFIED THE TERMS OF THE AGREEMENT UNDER WHICH THE APPLICANT AGREED TO PLEAD GUILTY TO THE CHARGES BECAUSE OF THE FACT THAT THE WEIGHT OF THE METHAMPHETAMINE WAS DIFFERENT AND THE CDR

CODE NUMBERS WERE DIFFERENT WHEN THE APPLICANT SIGNED THE UNSIGNED SENTENCE SHEETS.

215. MR. HARBIN FAILED TO MAKE ANY ATTEMPT TO PROTECT THE RECORDS ON THE ISSUES.

216. MR. HARBIN FAILED TO MAKE ANY ATTEMPT TO PROPERLY PRESERVE ANY OF THE ISSUES FOR APPELLATE REVIEW.

217. MR. HARBIN NEVER PROPERLY PREPARED AND/OR TIMELY FILED ANY OF THE NECESSARY AND/OR ANY OF THE APPROPRIATE PRE-TRIAL MOTIONS.

218. MR. HARBIN NEVER PROPERLY PREPARED AND/OR TIMELY FILED A MOTION TO QUASH THE INDICTMENT.

219. MR. HARBIN NEVER MOVED TO QUASH THE INDICTMENT.

220. MR. HARBIN NEVER MADE ANY ATTEMPT TO GET ANY OF THE CHARGES DISMISSED BEFORE THE APPLICANT PLED GUILTY TO THEM.

221. MR. HARBIN NEVER MOVED FOR A SUPPRESSION HEARING.

222. MR. HARBIN NEVER TRIED TO GET ANY OF THE SO-CALLED EVIDENCE SUPPRESSED.

223. MR. HARBIN NEVER PROPERLY PREPARED AND/OR TIMELY FILED A MOTION TO SET ASIDE WITH THE COURT.

224. MR. HARBIN NEVER MADE ANY ATTEMPT TO GET THE APPLICANT'S CASE SEPARATED FROM ANY OF THE OTHER TWENTY-SIX (26) DEFENDANTS IN THE CASE.

225. MR. HARBIN FAILED TO PROVIDE THE APPLICANT WITH COMPETENT LEGAL REPRESENTATION.

226. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROVIDE THE APPLICANT WITH COMPETENT LEGAL REPRESENTATION.

227. MR. HARBIN NEVER TRIED TO CHALLENGE THE PROSECUTION'S CASE.

228. MR. HARBIN NEVER TRIED TO CONFRONT THE PROSECUTION'S CASE HEAD ON.

229. MR. HARBIN NEVER TRIED TO CAST ANY DOUBT ON THE PROSECUTION'S CASE.

230. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROVIDE THE COURT WITH HIS OWN LEGAL ANALYSIS OF THE CASE IN DEFENSE.

231. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROVIDE THE COURT WITH HIS OWN INDEPENDENT

LEGAL ANALYSIS OF THE EVIDENCE.

232. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY USE AND OR PROPERLY UTILIZE ANY OF THE APPROPRIATE ARGUMENTS.

233. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY USE AND OR PROPERLY UTILIZE ANY OF THE NECESSARY ARGUMENTS.

234. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROPERLY USE AND OR PROPERLY UTILIZE ANY OF THE AVAILABLE LEGAL ARGUMENTS.

235. MR. HARBIN DELIBERATELY SUBSTANCED THE APPLICANT'S CASE.

236. MR. HARBIN NEVER MADE ANY ATTEMPT TO TRY TO OPEN THE DOOR TO ANY POSSIBILITY THAT WAS IN ANY WAY CONTRARY TO THE STATE'S CASE.

237. MR. HARBIN NEVER MADE ANY ATTEMPT TO EXPLORE ANY POSSIBILITY THAT WAS IN ANY WAY INCONSISTENT WITH THE PROSECUTION'S VERSION OF THE STATE'S CASE.

238. MR. HARBIN NEVER MADE ANY ATTEMPT TO TRY TO EXPLORE ANY POSSIBILITY THAT IN ANY WAY CONTRICTED WITH THE STATE'S CASE.

239. MR. HARBIN NEVER MADE ANY ATTEMPT TO PICK UP ANY KIND OF FIGHT FOR THE APPLICANT.

240. MR. HARBIN NEVER MADE ANY ATTEMPT TO FOCUS THE COURT'S ATTENTION ON ANY OF THE FUNDAMENTAL FLAWS IN THE PROSECUTION'S CASE.

241. MR. HARBIN NEVER MADE ANY ATTEMPT TO FOCUS THE COURT'S ATTENTION ON ANY OF THE DISCREPANCIES.

242. MR. HARBIN NEVER TRIED TO EMPHASIZE AND OR POINT OUT ANYTHING THAT MIGHT HAVE CAUSED THE COURT AND OR JURY TO HAVE ANY DOUBTS ABOUT THE PROSECUTION'S CASE.

243. MR. HARBIN NEVER ACTED AS THE APPLICANT'S DILIGENT CONSCIENTIOUS ADVOCATE.

244. MR. HARBIN NEVER MADE ANY ATTEMPT TO PROVIDE THE KIND OF THOROUGHNESS ANY ATTORNEY SHOULD HAVE BEEN NECESSARY FOR THE REPRESENTATION.

245. MR. HARBIN NEVER MADE ANY ATTEMPT TO EMPLOY ANY OF HIS BEST EFFORTS.

246. MR. HARBIN NEVER MADE ANY ATTEMPT TO USE BASIC COMMON SENSE AS A TOOL WHILE HE WAS HANDLING THE APPLICANT'S CASE.

247. MR. HARBIN NEVER WANTED TO WIN THE APPLICANT'S CASE.
248. MR. HARBIN NEVER TRIED TO WIN THE APPLICANT'S CASE.
249. MR. HARBIN NEVER TRIED TO WIN ON THE FACTS.
250. MR. HARBIN NEVER TRIED TO WIN ON THE ELEMENTS.
251. MR. HARBIN NEVER TRIED TO WIN ON THE EVIDENCE.
252. MR. HARBIN NEVER TRIED TO DEFEND THE APPLICANT.
253. MR. HARBIN NEVER WANTED TO DEFEND THE APPLICANT.
254. MR. HARBIN NEVER INTENDED TO DEFEND THE APPLICANT.
255. THE WHOLE TIME THAT MR. HARBIN WAS REPRESENTING THE APPLICANT THE ONLY THING HE DID WAS SPIN HIS WHEELS AND GO THROUGH THE MOTIONS.
256. MR. HARBIN ACTED MORE AS A SILENCER TO THE COURT THAN AS AN ADVOCATE FOR THE APPLICANT.
257. MR. HARBIN FAILED TO MAKE ANY ATTEMPT TO PROPERLY PROTECT AND OR PRESERVE ANY OF THE APPLICANT'S RIGHTS.
258. MR. HARBIN FAILED TO DO HIS DUTY TO ASSIST THE APPLICANT IN HIS ENDORSEMENT TO RECEIVE A FAIR ASSESSMENT OF THE FACTS.
259. MR. HARBIN FAILED TO DO HIS DUTY TO ASSIST THE APPLICANT IN HIS ENDORSEMENT TO RECEIVE A FAIR ASSESSMENT OF THE LAW.
260. MR. HARBIN FAILED TO DO HIS DUTY TO ASSIST THE APPLICANT IN HIS ENDORSEMENT TO RECEIVE A FAIR JUDGMENT ON HIS CASE.
261. MR. HARBIN BREACHED HIS DUTY.
262. MR. HARBIN COMMITTED MALPRACTICE.
263. MR. HARBIN FAILED TO DO HIS JOB THAT THE TAXPAYERS PAID HIM TO DO.
264. MR. HARBIN DEFRAUDED THE STATE.
265. MR. HARBIN DEFRAUDED THE TAXPAYERS.
266. MR. HARBIN ACCEPTED PAYMENT OF A SALARY FROM A STATE AGENCY THAT HE WAS NOT LEGALLY AND OR LAWFULLY ENTITLED TO.

267. MR. HARBIN CAUSED THE APPLICANT TO BE DENIED AND DEPRIVED OF HIS CONSTITUTIONAL

RIGHTS

268. MR. HARBIN OBTAINED JUDICIAL

269. MR. HARBIN BROKE THE LAW.

PAUL B. WICKENSIMER

LANCE Q. HOLLEWAY, # 24501

GREENVILLE COUNTY CLERK OF COURT

KERSHAW CORR. INST.

305 EAST NORTH STREET

4848 GOLDMINE HWY.

GREENVILLE, S.C. 29601

KERSHAW, S.C. 29067

APRIL 7, 2011

RE: APPLICATION FOR POST-CONVICTION RELIEF

DEAR MR. WICKENSIMER:

ENCLOSED WITHIN FOR FILING PLEASE FIND ONE (1) COPY OF THE
 ABOVE NAMED APPLICANT'S APPLICATION FOR POST-CONVICTION RELIEF.
 PLEASE FORWARD ONE TIME-STAMPED COPY OF THE APPLICATION TO
 THE APPLICANT AT THE ABOVE MAILING ADDRESS WHEN FILED. THANK
 YOU.

SINCERELY YOURS

Lance Q. Holloway

Sworn to and Subscribed before me this

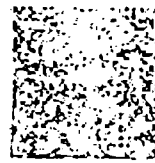
7th day of April, 2011

Catherine A. Cameron

My Commission Expires December 27, 2012

cc: File

156



UNITED STATES POSTAGE

02 10

000800+111

MAILED FROM ZIP CODE 18067

\$01.58

APR 67 2011

CKENSIMER

COUNTY CLERK OF COURT

RTH STREET

SOUTH CAROLINA 29601

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-2441
COUNTY OF GREENVILLE	)	
	)	
Lance Q. Holloway,	)	
S.C.D.C. No. 245099,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed April 12, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The State Grand Jury indicted the Applicant at the June 2009 term for two (2) counts of trafficking methamphetamine (conspiracy), 400 or more grams (2008-CP-GS-47-0011, counts 2 and 3) and distribution of methamphetamine (2008-CP-GS-47-0011, count 20).¹ H. Chase Harbin, Esquire represented the Applicant.

On April 9, 2010, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of twelve (12) years for each count of trafficking methamphetamine (conspiracy), 28-100 grams and twelve (12) years for distribution of methamphetamine. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the State Grand Jury Clerk of Court regarding the subject convictions, the Applicant's records from the

¹ This was a superseding indictment.

South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Plea court lacked jurisdiction to accept the Applicant's plea and impose sentence.
4. Denial of due process, equal protection, and the First, Sixth, and Fourteenth Amendments.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

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

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

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to

trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief

hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

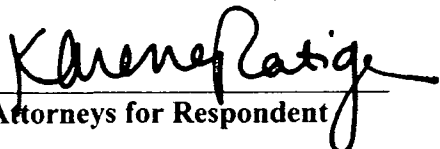
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

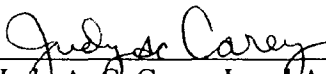
September 20, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2011-CP-23-2441
	)	
LANCE Q. HOLLOWAY, 245099	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

**Lance Q. Holloway, 245099
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw SC 29067**

DATED this 20th day of September, 2011.


Judy A. C. Carey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
3
4 Lance Q. Holloway,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-23-2441
7 The State,)
8 Respondent.) February 13, 2013
9) Greenville, South Carolina
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

B E F O R E:

HONORABLE WILLIAM JEFFREY YOUNG, JUDGE

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

CAROLINE M. HORLBECK, ESQUIRE
Attorney for the Applicant

BRIAN T. PETRANO, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

INDEXWITNESSESPAGE

LANCE QUINTMAN HOLLOWAY

Direct examination by Ms. Horlbeck 10

Cross-examination by Mr. Petrano 37

Redirect examination by Ms. Horlbeck 48

HUNTER CHASE HARBIN

Direct examination by Mr. Petrano 51

Cross-examination by Ms. Horlbeck 61

Certificate of reporter 79

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Plea agreement	45	45

MOTIONS AND MATTERS

1 THE COURT: Yes, sir.

2 MR. PETRANO: Thank you, Your Honor, may it please the
3 Court. My name is Brian Petrano, Assistant Attorney General
4 and, uh, we're here for Mr. Lance Holloway the next PCR for
5 today, it's a, uh, state grand jury case, it's docketed at,
6 uh, the PCR is docketed as 2011-CP-23-2441. The, uh, was a
7 guilty plea in front of Judge Welmaker on April 9th 2010, he
8 was represented by Mr. Chase Harbin who for the record is here
9 present in the courtroom and he is here today represented by
10 Ms. Caroline Horlbeck. Uh, the PCR application was filed
11 April 12th 2011. Your Honor, I have no record of a direct
12 appeal and I will be frank with the Court I had trouble
13 deciphering some of the allegations on some of the pages, uh,
14 if not most of the pages, in his rather lengthy PCR
15 application so there is no formal, uh, motion in regard to
16 what I'm about to say but I would like to point out that it
17 does appear that the PCR application is untimely, uh, I figure
18 there may be some type of explanation for that that I was not
19 able to decipher in the, uh, application, uh, 'cause I
20 couldn't read it.

21 THE COURT: Well what we'll do is we will go ahead and I
22 see the writing this looks like ---

23 MR. PETRANO: And and I'm ready to proceed, I ---

24 THE COURT: --- at least ---

25 (Cross-talk.)

MOTIONS AND MATTERS

1 MR. PETRANO: --- just wanna put that ---

2 THE COURT: --- uh, but yeah, we will proceed and we'll
3 see if we can't find out about when it was filed and when it
4 was, uh, when the statute but we'll good ahead and take the
5 testimony.

6 MR. PETRANO: Of course, Your Honor, thank you and, uh,
7 just go ahead and I'll explain he's currently serving a
8 12-year sentence. This was a state grand jury
9 multi-jurisdictional, uh, drug case, uh, just a series of dope
10 cases, Your Honor, uh, mostly crystal meth. Uh, there were
11 three charges. He was originally, uh, charged it's a
12 multi-count Indictment 2008-GS-4711, uh, all of the defendants
13 are in that indictment, it's a rather lengthy indictment as I
14 just said but we'll see that Count Two, Count Three and Count
15 Twenty are the three that, uh, belong to Mr. Holloway. Count
16 Two is, uh, was originally indicted, uh, CDR Code 0370, it's a
17 trafficking methamphetamine 400 grams or more, uh, he pled to
18 the lesser offense of CDR Code 0392 and I, uh, I can get into
19 the specifics a this, I I believe this is one of the issues as
20 to what pled to, uh, but nonetheless, uh, the second charge
21 was, uh, parallel to the first one and, again, he pled to the
22 lesser, uh, CDR Code 0392 and then finally the third charge
23 Count 20 was a distribution of meth, uh, CDR Code 3014, it was
24 a negotiated plea. I will also like to point out, Your Honor,
25 uh, that and I'm sure this will come up and we can get into it

MOTIONS AND MATTERS

1 further but there was a, uh, written plea agreement, a
2 multi-page signed by, uh, the parties here in this case and
3 one of the clauses is that he waived, uh, waives PCR, uh, but
4 here we are today and the case on point for that is, uh, ---

5 THE COURT: Can ya do that?

6 MR. PETRANO: The case is, uh, ---

7 THE COURT: I have not seen that.

8 MR. PETRANO: --- *Spoone vs. State*, it's a 2008 case, 379
9 S.C.138, that that was the, uh, case first impression here in
10 South Carolina, I, uh, here and here in Greenville, uh, and I
11 believe they, uh, basically just adopted, I'm obviously poorly
12 summarizing the case, basically just adopted the federal, uh,
13 standard and that it could be waived as anything can be waived
14 as long as it's knowing and voluntarily
15 done, ---

16 THE COURT: Yes.

17 MR. PETRANO: --- uh, and, uh, the point, uh, I'm making
18 is it does appear that the State has lived up to its, uh,
19 bargain, uh, in respect to bargain the 12 years so, uh, I
20 don't think we have breached but here we are and like I said,
21 I I didn't file a formal amended return because I couldn't
22 make out a lot of the allegations and wasn't sure if these
23 issues were addressed in there and that's why we are are here
24 for the hearing. I'll turn it over, thank you.

25 THE COURT: Alright, Ms. Horlbeck.

MOTIONS AND MATTERS

1 MS. HORLBECK: Judge, just a couple matters, uh, to
2 take up. Uh, I actually represented one of Mr. Holloway's
3 co-defendants and this was during the, uh, the the case
4 itself, uh, and her name was Kim Holloway ---

5 THE APPLICANT: Taylor.

6 MS. HORLBECK: --- uh, ---

7 THE APPLICANT: Uh, ---

8 MS. HORLBECK: --- I'm sorry, Kim Taylor, this
9 (indicating) is Mr. Holloway, I'm thinkin' too fast, my mouth
10 isn't cooperating with my brain. Uh, her name is Kim Taylor
11 and she went part of the way through her trial and her trial
12 resulted in a guilty plea. Apparently Mr. Holloway and
13 Mr. -- Ms. Taylor were co-defendants and, Judge, I had just
14 not thought of that at the time so I have been representing,
15 uh, Mr. Holloway, uh, but our -- the representation does not
16 overlap. Uh, I ---

17 THE COURT: Uh, so there would be no conflict. I
18 mean, ---

19 MS. HORLBECK: Well ---

20 THE COURT: --- you can give him full attention in this
21 without having to divulge anything else that you learned in
22 the other hearing, is that ---

23 MS. HORLBECK: That's correct. Uh, I believe
24 Mr. Holloway though just has some issues that perhaps the
25 Court should address, uh, one that he has explained to me was

MOTIONS AND MATTERS

1 that he was actually prepared to testify against Ms. Taylor
2 during her trial. I don't believe Mr. Holloway did testify
3 against her, I believe that her case resulted in a guilty plea
4 before his testimony was needed. Uh, I just put this on the
5 record ---

6 THE COURT: Well but the question is do you feel that you
7 have a conflict of interest from that last hearing? I mean,
8 are you -- you're not disclosing any client confidentialities,
9 uh, you can fully vest yourself in representing him today, uh,
10 without any reservation, uh, that it would hurt your prior
11 client so I I don't see where there's any, uh, conflict of
12 interest.

13 MS. HORLBECK: Uh, and, Your Honor, Your Honor's
14 certainly correct, I don't -- I have, am not re -- divulging
15 any client confidentialities in my representation of of
16 Mr. Holloway at all.

17 THE COURT: Alright, I'm gonna let you stay on the case.
18 I see no reason whatsoever, uh, that you can't competently
19 represent him today.

20 MS. HORLBECK: Alright, Judge.

21 THE COURT: Tell me a little bit about this agreement
22 that they had, uh, concerning a waiver of PCR, is that in my
23 package?

24 MR. PETRANO: Uh, Your Honor, it is not in your packet,
25 they did not mention that at the plea transcript itself but it

MOTIONS AND MATTERS

1 was of course, uh, stamped and clocked by the state grand jury
2 clerk the day of the plea so I I I am gonna take the position
3 that it is part a the record but it wasn't listed and so I
4 figured we will just manually move it in so it is not in the
5 packet. If you'd like I could walk you one, ---

6 THE COURT: Yes, please.

7 MR. PETRANO: --- I'm sorry for the long answer.

8 THE COURT: What's your position on that, Ms. Horlbeck?

9 MS. HORLBECK: Well my client I ---

10 THE COURT: That he entered into a contract, uh, ---

11 MS. HORLBECK: Yes, sir, and I think that's part and
12 parcel with the reason that he's filed this post-conviction
13 relief hearing, uh, Judge. He indicates that he did not
14 review this before signing it, that his client -- that his
15 counsel did not sit down with him and review all paragraphs,
16 uh, he just signed it much like you'd sign a sentencing sheet,
17 uh, he was nervous also and did did not, does not -- did not
18 review and does not recall the particulars of the plea
19 agreement.

20 THE COURT: Well I'm not gonna rule on this right now, we
21 got everybody here, I would rather go ahead and take the
22 testimony.

23 MR. PETRANO: Oh, of course, sir, and I just, uh, pointed
24 out it's, uh, the end of Part 9 on Page 5.

25 THE COURT: Okay. Alright, Ms. Horlbeck, you may call

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 your first witness.

2 MS. HORLBECK: Thank you, Judge, we will call
3 Mr. Holloway to the stand.

4 THE COURT: Mr. Holloway, come forward and be sworn.
5 (Whereupon, the applicant came forward.)

6 THE CLERK: Mr. Holloway, please place your left hand on
7 the Bible and raise your right hand.

8 LANCE QUINTMAN HOLLOWAY, having
9 been first duly sworn, testified as follows:

10 THE CLERK: Thank you, you may be seated. Please state
11 your full name for the record.

12 THE APPLICANT: Lance Quintman Holloway.

13 THE COURT: Ms. Horlbeck, you may proceed.

14 MS. HORLBECK: Thank Your Honor.

15 DIRECT EXAMINATION BY MS. HORLBECK:

16 Q. Mr. Holloway, uh, where are you currently incarcerated?

17 A. I'm currently incarcerated at Livesay Correctional
18 Institution.

19 Q. On what charges?

20 A. On the charges of, uh, distribution methamphetamines and
21 conspiracy to traffic methamphetamines.

22 Q. Alright, two counts of the trafficking charges?

23 A. Yes, ma'am.

24 Q. Alright, who represented you on those charges?

25 A. Uh, Chase Harbin.

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 Q. Alright. Do you recall when Mr. Harbin was appointed to
2 represent you?

3 A. Around about yes, ma'am. Uh, it's I think it was in 2009
4 or '10, no, maybe '9, I can't, I'm not sure about exactly but
5 I think it was 2009. Uh, ---

6 Q. Okay. And was Mr. Harbin a -- was Mr. Harbin appointed
7 to represent you before or after you were officially charged
8 with these state grand jury charges?

9 A. After.

10 Q. Alright. Do you recall the date that you were charged
11 with the state grand jury charges?

12 A. I was charged, uh, Oct -- October the 20th I think,
13 around the 20th of ---

14 Q. Of of ---

15 A. --- 2008.

16 Q. Okay.

17 A. October 2008, yeah.

18 Q. And were you -- when you were charged, how was that done?
19 Were you officially -- did they hand you the warrants? did
20 they do it at SCDC? what happened?

21 A. No, ma'am, they carried me from Kirkland back to Pickens
22 County and they s -- they served an indictment on me, just,
23 you know, stay -- statin' that I was, uh, bein' charged with
24 distribution and conspiracy to traffic.

25 Q. Alright. And Mr. Harbin was actually appointed sometime

1 thereafter to represent you.

2 A. Yes, ma'am, uh, probably the following in two thousand
3 and, I believe it was 2009 wanna say.

4 Q. Uh, okay.

5 A. Wanna say 2009 is when ---

6 Q. Right.

7 A. --- I found out who he -- that he was my lawyer.

8 Q. Where were you when you first met with Mr. Harbin?

9 A. I was -- we were bein' I believe arraigned in Pickens
10 County, uh, June 2009.

11 Q. Okay. Where were you when you first met him?

12 A. I was in Pickens County sitting in a, like the jury box
13 when I met him briefly.

14 Q. In the courthouse I'm assuming?

15 A. In the courthouse, yeah.

16 Q. Okay, alright. And did you have the opportunity to speak
17 with Mr. Harbin in June of 2009 at the Pickens County
18 Courthouse?

19 A. Just, uh, pretty much gettin' to know who, uh, a basis of
20 knowin' who he is and for me to say pretty much to the extent
21 of, uh, you know, I'm doin' time right now ---

22 Q. Alright.

23 A. --- and I'm in prison so...

24 Q. How long did you talk with Mr. Harbin about your case
25 that day?

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 A. That was it.

2 Q. But how long, just give us an idea how long.

3 A. Just four, five minutes I guess.

4 Q. Alright. And at that point did Mr. Harbin have any
5 information on your case to share with you like discovery?

6 A. No.

7 Q. Alright. Did you and Mr. Harbin have a bond hearing or
8 anything that day?

9 A. No, I had the bond hearing back in September of 2008.

10 Q. Okay, and that was before Mr. Harbin was actually
11 appointed represent you?

12 A. Yes, ma'am.

13 Q. Okay. Alright, uh, after you met with him in the
14 courthouse what happened?

15 A. We were pretty much shuffled ba, excuse me, shuffled back
16 and sent back to prison. I was sent back to prison.

17 Q. Alright. And when was the next time you think that you
18 met with Mr. Harbin?

19 A. April the 9th, oh it's -- wait a min -- April the, yeah,
20 April the 9th of 2010.

21 Q. Okay. In between June of 2009 and April 9th of 2010,
22 did you receive any correspondence or communication from
23 Mr. Harbin?

24 A. No.

25 Q. Okay. Uh, had you been, I know you said you were

1 incarcerated in the Department a Corrections, were you
2 incarcerated in the same location or had you been transported
3 from prison to prison?

4 A. Same location.

5 Q. And what location was that?

6 A. That was Tyger River.

7 Q. Okay. Where is Tyger River located?

8 A. Uh, Union, South Carolina ar -- Union area, right around
9 nearest to Union but I guess it's called Enoree.

10 Q. Okay. Alright, and on April the 9th was -- that was the
11 day you actually pled guilty, correct?

12 A. April 9th or 10th. I I wanna say it's, I'm sorry, it's
13 Ap -- the meeting was on April the 8th, yes, ---

14 Q. Okay.

15 A. --- April 9th was the day I went to court, ---

16 Q. Alright.

17 A. --- I'm sorry.

18 Q. And when you met with Mr. Harbin on April the 8th 2010,
19 what did you and he -- did you and he discuss your case?

20 A. There was never really a discussion about it, it was the
21 simple fact that he came to me and told me that they had a
22 plea for me and that the plea was consistent of 12 years and
23 that, uh, that was pretty much it. I told him I did not wanna
24 take the plea that I wanted to take it to trial.

25 Q. Okay.

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 A. I and I asked him, you know, he was tellin' me that, you
2 know, there's no reason really that there's nothin' they can
3 do, that he can do pretty much sayin' that he shows me these
4 names, these five names that the, uh, Attorney General gave
5 him, ya know, that these people will testify against you if
6 you don't take the guilty plea so I asked him, you know, --
7 well no, I di -- I told him straight up I did not wanna take
8 it, that I wanted to see my motion a discovery and he told me
9 that it was in his car, that he could not bring it in to me
10 for me to look at.

11 Q. Okay. Uh, did you get to see your motion of discovery at
12 all?

13 A. I have yet to see it.

14 Q. Alright. Did you and Mr. Harbin go over any of the
15 incident reports?

16 A. We haven't went over anything ---

17 Q. Okay.

18 A. --- that pertains to my case.

19 Q. Did you, did you and Mr. Harbin go over any co-defendant
20 statements or audiotapes, videotapes, anything like that?

21 A. I -- no, uh, not at all, not a thing.

22 Q. Okay. Okay. And did you share with Mr. Harbin the fact
23 that you did not want to plead the next day?

24 A. The next day is when he -- we came in, he -- I told him
25 the day before that I would not, I did not wanna take the

1 trial or I didn't wanna take the trial, that I did not wanna
2 gu -- plead guilty. We were met in the little conference
3 room, uh, and he said that no, they won't come off, they won't
4 do anything, that it's either pretty much take it or leave it
5 so I -- but this -- that's, at that time is when he slid me
6 across these sentencin' sheets.

7 Q. Um-hum. Well back -- hang on, before we get to those did
8 you tell Mr. Harbin at any time I've I've got some witnesses I
9 want you to test -- to to subpoena and so they can testify for
10 me, did you tell Mr. Harbin that?

11 A. Yes, I did.

12 Q. Alright, what witnesses, what witnesses did you want?

13 A. I asked him for Trevor Kay, I asked him, for, uh, Pat
14 Bridges, I asked him for, uh, what was a Joel Hall I
15 believe.

16 Q. Okay, alright. And did he subpoena those witnesses?

17 A. No.

18 Q. Alright. Were those all co-defendants in your case?

19 A. Yes, ---

20 Q. Alright.

21 A. --- ma'am.

22 Q. Alright. And -- alright, now you you were about to talk
23 some, talk about some sentencing sheets, go ahead.

24 A. Well as we were s -- as he pulled me, as he had me pulled
25 to the conference room, I was slid these sentencin' sheets

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 which I thought were part of a plea agreement in which I read
2 as it says on here that trafficking methamphetamines where
3 it's now says 28 to a hundred it said 10 to 28 with the
4 non-violent CDR Code of 44-53-375(C)(1)(A) and it had a
5 non-violent, uh, CDR code. The CDR code and the the weight
6 was different at the time he showed these to me and he said,
7 you know, pretty much that sign these and that we would go
8 ahead with it and, you know, like I at the time I'm lookin' at
9 it and I'm thinkin' that it's changed, there's somethin'
10 that's changed to, uh, 10 to 28 so I sign 'em. At the time I
11 was signin' these, he reads to me, he says, Well since you got
12 handcuffs on I'm gonna read to you some a the stuff in the PCR
13 or the the agreement I guess you could say, ---

14 Q. Um-hum.

15 A. --- so he reads to me and st -- the things that stick out
16 in my head are the parts where he said that this is a, that I
17 have to testify against somebody, I have to do what they tell
18 me to do and then he s -- went on to say that this is a
19 violation of my constitutional rights but don't worry about
20 it, go ahead and sign it.

21 Q. Um-hum.

22 A. He brought, I mean, that really sticks in my, in my head
23 more than anything.

24 Q. Okay. Uh, let me just -- we'll get to that but on the
25 sentencing sheets ---

1 A. Um-hum.

2 Q. --- is your testimony that the sentencing sheets you
3 signed actually said that you would plead to trafficking, two
4 counts of trafficking methamphetamine 10 to 28 grams?

5 A. Ten to 28 grams.

6 Q. Alright, and, uh, you have copies of those sentencing
7 sheets in front of you and I believe they're part of the the
8 packet as well, correct?

9 A. Yes, ma'am.

10 Q. Alright. And what are the sentencing sheets that you
11 have in front of you, what do they say? Do they say 10 to 28
12 grams?

13 A. They say -- well it's marked out and it says 28 to a
14 hundred ---

15 Q. Okay.

16 A. --- then it says 44-53-375(C)(1)(A) ---

17 Q. Right.

18 A. --- and then the CDR code which is scratched through
19 clearly and changed.

20 Q. Alright, and is the CDR code scratched through and
21 changed on on both ---

22 A. Um-hum.

23 Q. --- sentencing, on both the trafficking sentencing
24 sheets, is that correct?

25 A. Yes, ma'am.

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 Q. Okay. And, uh, just by looking at those sentencing
2 sheets, uh, the the 28 to a hundred is very bold compared to
3 the rest of the sheet, ---

4 A. Um-hum.

5 Q. --- is that, is that fair to say, ---

6 A. Yeah.

7 Q. --- okay, from your review of it? Alright, uh, and just
8 to be clear what did the sentencing sheets say that you were
9 pleading to as far as the traffickings are concerned when you
10 signed those sheets?

11 A. Said that I was pleading to 10 to 28 grams ---

12 Q. Alright.

13 A. --- and traffickin' methamphetamine.

14 Q. Alright. And is that what you thought you were pleading
15 to 10 to 28 grams?

16 A. Yes, I did ---

17 Q. Alright.

18 A. --- because that's why only reason I'd sign the plea
19 agreement was because I saw that it had changed.

20 Q. Okay. And you said that you and Mr. Harbin reviewed the
21 plea agreement ---

22 A. To, I mean, reviewin' it as far as me signin' it and then
23 about as far as me signin' it and givin' it back to him.

24 Q. Okay, but you said that he -- did he read it to you or
25 no?

1 A. Well he read what, you know, what he flipped through and
2 saw I guess what he deemed necessary to read to me.

3 Q. Okay. Do -- did he read to you the part about, uh,
4 waiving your right to PCR?

5 A. Yeah, but that's when he told me, that was the part that
6 he -- where he told me that that was a violation of my
7 constitutional right.

8 Q. Okay. What what did that mean to -- what did that mean to
9 you when he told you that was a violation if if you recall?

10 A. Uh, I mean, really just kind of made me curious. I
11 didn't, I didn't really understand what was -- what he was
12 sayin' was to the fact of violatin', you know, my
13 constitutional rights. I didn't ev -- he never explained
14 anything else to me, it's just a violation of your
15 constitutional rights but, you know, go ahead and sign it.

16 Q. Alright, and based on his advice that the section where
17 you waived your right to file a post-conviction relief did you
18 feel that that section had any teeth to it or validity to it?

19 A. Not really because he didn't make it very, you know, he
20 didn't make it now that it sticks out in my head, at the time
21 it didn't really make much, like you say didn't have much
22 teeth to it as you could say.

23 Q. Okay.

24 A. You know I just ---

25 Q. Did you ---

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 A. --- plea ---

2 Q. --- believe that portion where you waived your right to
3 file PCR, did you believe that that was, uh, enforceable?

4 A. No, not at the time.

5 Q. Alright. And you signed it?

6 A. Yes, I signed it because ---

7 Q. Alright. Alright, did you, the part of the agreement
8 where it said you're pleading to two counts of trafficking
9 methamphetamine 28 to a hundred grams, did that catch your
10 attention?

11 A. I ki -- yes, it did, it it caught my attention as to why
12 am I pleading to two of the same charges, why are we not, you
13 know, as I now understand the term now is quashing one of the
14 indictments instead of, you know, just tryin' to plead why
15 have pleadin' to three which usually, you know, I would think
16 that you pled to one indictment.

17 Q. I'm just talking about the traffickings ---

18 A. Oh, okay.

19 Q. --- 28 to to the the trafficking charges.

20 A. Okay.

21 Q. The part of the agreement where it talks, it says you're
22 pleading to two counts of trafficking 28 to a hundred, ---

23 A. Um-hum.

24 Q. --- did you realize that that that is different from what
25 your sentencing sheet originally said? .

1 A. The plea agreement you're sayin'?

2 Q. Yes.

3 A. I never read the plea agreement, I never -- well ---

4 Q. Oh, well that's what I'm asking you. When
5 Mr. Harbin reviewed that with you, did you're -- did you catch
6 that difference?

7 A. No.

8 Q. Okay. Alright, so when you signed those sentencing
9 sheets and pled, what, again, what did you think you were
10 pleading to as far as ---

11 A. I ---

12 Q. --- the traffickings were concerned?

13 A. --- thought I was pleading to 10 to 28.

14 Q. Okay. Alright, and you -- did you and I review the
15 transcript of the plea, of the, uh, guilty plea hearing?

16 A. Yeah, some of it. Yeah, we went over some parts of it.

17 Q. Alright. Was there some confusion during the guilty plea
18 hearing ---

19 A. Yes, ma'am.

20 Q. --- as to what you were pleading to?

21 A. Yes, ma'am.

22 Q. Alright, tell the Court about that.

23 A. Uh, to begin with the, uh, judge read from the sentencing
24 sheets that I was going to be pleading to, uh, distribution of
25 methamphetamine and two traffickings, uh, ---

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 Q. And do you, do you, do you have a copy of the
2 transcript?

3 A. No, ma'am.

4 Q. Alright. Hand you a copy of this. I don't -- I I'm not
5 gonna mark this, Judge, since I think everyone ---

6 THE COURT: Right.

7 Q. --- has it, uh, ---

8 (Whereupon, counsel handed the document to the
9 applicant.)

10 Q. Mr. Holloway just just for the record, just to keep the
11 record clear, what have I handed you a copy of?

12 A. Uh, hand you -- you handed me a copy of the transcript
13 from my ---

14 Q. Okay. Alright, and o -- turn to Page, uh, 8 of the
15 transcript Line 7 through 9.

16 A. Yes, ma'am.

17 Q. Alright. And read that to yourself and then I'll ask you
18 some questions about it, to yourself silently.

19 (Whereupon, the witness complied.)

20 A. Okay.

21 Q. What does that say?

22 A. Says that, uh, ---

23 Q. And actually, let me, let me look look at it myself
24 before I ask you questions.

25 MS. HORLBECK: Beg the Court's indulgence ---

1 THE COURT: Yes, ma'am.

2 MS. HORLBECK: --- just a minute, let me check my notes.

3 (Pause.)

4 BY MS. HORLBECK:

5 Q. Okay. What is -- what is -- what did he actually say on
6 on those lines on Page 8, 7 through 9, if you need to look at
7 it again, ---

8 A. I probly ---

9 Q. --- what did the, what did the, uh, Assistant Attorney
10 General say?

11 A. Assistant Attorney General and and I probly need to look
12 at again.

13 Q. Mr. Crout is what I'm talkin' about. What I'm lookin' at
14 is Page 8 Line 7 through 9.

15 A. Where he says, I believe ---

16 Q. Okay.

17 A. --- is, what is that, uh, the plea agreement is 28 to a
18 hundred grams, ---

19 Q. Um-hum.

20 A. --- that's 7 to 30 and I just filled out the actual
21 numbers for trafficking wrong, I'll adjust those ---

22 Q. Okay. Alright, and and just beg the Court's indul --
23 indulgence again. And then on Page 7, let me back ya up to
24 Page 7, ---

25 A. Um-hum.

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 Q. --- Lines 13 through 16, what does that say? Just read
2 it silently to yourself and then I'll ask you some questions.

3 (Whereupon, the witness complied.)

4 A. Yes, ma'am.

5 Q. Okay. Okay, after you reviewed that did the Court say,
6 "He's pleading down"?

7 A. Yes, ma'am.

8 Q. And then the Assistant Attorney General said, "to 10 to
9 28."

10 A. Yes, ma'am.

11 Q. And then the Court said, "10 to 28?" ---

12 A. Yes, ma'am.

13 Q. And the, and the Assistant Attorney General said, "Yes,
14 sir."

15 A. Yes, ma'am.

16 Q. Okay. And I believe at some point the -- to your
17 recollection did did your attorney say, No, that's incorrect,
18 we're pleading to two counts of trafficking 28 to a hundred,
19 do you recall that in the transcript?

20 A. No, ma'am.

21 Q. Okay. Okay, look at Page 9 the transcript Lines 3
22 through 13, just read it to yourself, Mr. Holloway.

23 (Whereupon, the witness complied.)

24 A. Okay.

25 Q. Okay, so was there a correction ---

1 A. Yes, ma'am.

2 Q. --- the 28 to a hundred?

3 A. Um-hum.

4 Q. Alright, by this time did you understand what was going
5 on?

6 A. That's when I looked to my lawyer and I'd said, You know
7 what's going on, and he looked back at me and he said, Uh,
8 it's okay, it's okay, so at that time there I was very
9 confused.

10 Q. Okay. What did you think that you were pleadin' to?

11 A. I thought I was pleadin' to 10 to 28 but then I didn't,
12 like I say, I did not know.

13 Q. Did you -- did your attorney stop the proceedings and
14 have a conference with you and explain ---

15 A. No, ma'am.

16 Q. --- the mistakes and the the ---

17 A. No, ma'am.

18 Q. --- issues and the changes?

19 A. No, ma'am, he did not object.

20 Q. Alright. And when you signed the sentencing sheets, what
21 do the sentencing sheet say you're playing -- pleading to?

22 A. Pleading to 10 to 28 traffickings, two different
23 traffickings and a distribution of methamphetamine.

24 Q. Alright, and when did you find out what you actually pled
25 to?

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 A. About nine months later.

2 Q. Alright, and how'd you find out?

3 A. Because they called me back into the control or the the,
4 uh, caseworker called me back in and told me that my max out
5 date had changed from 2016 to 2020.

6 Q. Okay. And if you'd known what you really pled to or what
7 you were really pleading to according to the plea agreement
8 and not the cha -- not the sentencing sheets before they were
9 changed, what would you have done differently if anything?

10 A. I would not have signed a plea, I would have taken it to
11 trial.

12 Q. Okay, alright. Why, knowing that your attorney was not
13 prepared and you didn't have your witnesses present and you've
14 testified you did not want to plead guilty, why did you plead
15 guilty that day?

16 A. Because when I read the sentencin' sheets or the plea
17 agreement that I thought, you know, the sentence sheets I
18 thought was a plea, part a the plea agreement was clear in
19 stating that it was a 10 to 28 gram conspiracy.

20 Q. Okay. And to your knowledge is that a, is that a, if you
21 know, does -- is that a difference in penal -- potential
22 penalty?

23 A. Yeah, at the time I did not know but now I do know that
24 it's carries 10 years because that's what I was askin', I was
25 askin' him to do was, ya know, 10 years, why can't we go for

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 10 years, he said, Well we'll ask for it among other things
2 but, you know, I did not know at the time that he could have,
3 uh, easily spoken with the Attorney General and made
4 everything a part a the plea but ---

5 Q. Alright.

6 A. --- like I said, I had no clue. At the time I did not
7 know I was, you know, it -- I I had not been explained and he
8 never went over anything with me, he never explained anything
9 to me, ---

10 Q. Alright?

11 A. --- I knew just as much about it leavin' as I did
12 beginnin' that day.

13 Q. Alright. Now you've testified that you were, uh,
14 incarcerated at Enoree or Tyger River, ---

15 A. Yes, ma'am.

16 Q. --- uh, before you were ever even charged with the state
17 grand jury ---

18 A. Yes, ma'am.

19 Q. --- charges, uh, do you recall when that sentence
20 started?

21 A. Yes, ma'am, it started, uh, September ni -- September
22 10th of 2008.

23 Q. Alright. And you've already testified you were charged
24 with the state grand jury charges the following month in 2008
25 so October two ---

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 A. That's 34 ---

2 Q. --- thousand ---

3 A. --- days, 34 days later.

4 Q. Okay, so October 2008 is when you received, when you were
5 actually arrested and ---

6 A. I was ---

7 Q. --- charged.

8 A. Yes, ma'am.

9 Q. Okay. Uh, and you obviously never had the opportunity to
10 make bond on your ---

11 A. No, ma'am, ---

12 Q. --- state grand jury ---

13 A. --- they ---

14 Q. --- charges?

15 A. --- they set a bond for me the same day and denied my
16 bond sayin' because I was already incarcerated that we would
17 get this matter, the magistrate said that we would get this
18 matter handled for all ---

19 Q. Alright. And did you ask Mr. Harbin to try to get the
20 State to agree to a adding in credit for time served since ---

21 A. Since ---

22 Q. --- October 2008 as part of your plea agreement or as
23 part of the sentence?

24 A. Yes, ma'am, that was the the the brief meeting that I had
25 with him in Pickens County that was the first and only thing

1 that I mentioned to him was, Listen, you know, I'm doin'
2 time ---

3 Q. Um-hum.

4 A. --- as far as then and the second time that I met him
5 was, yeah, the the same exact thing was is you know I'm doin'
6 time, I'm I'm I'm currently servin' time so ---

7 Q. Okay. Did ---

8 A. --- yes.

9 Q. --- and do you -- so you and Mr. Harbin discuss that.

10 A. Yeah, that's pretty much like one a my main issues was
11 that, you know, I'm already doin' prison time, he's like, Yes
12 I know, ---

13 Q. Alright.

14 A. --- I ---

15 Q. Did he tell you the State's response to that re --
16 request that you be give credit for that time served?

17 A. Uh, actually, I asked him about it that and during the
18 little time before I had when I was signin' the paperwork and
19 he said, Yeah, we're gonna get that for as far as part a your
20 deal, whatever.

21 Q. Alright. Did you think that was part of your deal?

22 A. Yes, ma'am, I did.

23 Q. Alright. Do you recall Mr. Harbin addressing the credit
24 for time served issue with Judge Welmaker?

25 A. Yes, ma'am, he did that day. Well actually I had to

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 bring it back up because I, you know, before I knew what was
2 goin' on that he already pretty much dropped the gavel and I
3 was like, Well hold on a second, I I brought it to the
4 attention of the Court, was like, Hold on a second, I've been
5 servin' time and ---

6 Q. Um-hum.

7 A. --- I'd like to, uh, what about that, the time served?

8 Q. Di -- and did did Mr. Harbin explain to the Court exactly
9 the date when you were served with your your strate ga --
10 state grand jury charges?

11 A. No, ma'am, he ---

12 Q. Okay.

13 A. --- said that I wanted, that I wanted the time credit for
14 the, for the sentence that I had been serving prior to which
15 was not the case at all. All I was asking for was the the
16 time from the date that the hold was placed on me until the
17 time that I had been sentenced.

18 Q. Alright, and did you receive credit for that time
19 served?

20 A. No, ma'am.

21 Q. Alright. And did you have the opportunity to testify
22 against any co-defendants during their trials?

23 A. I did afterwards after I found out that I was -- after
24 I'd been sentenced at, you know, afterwards. I was -- it was
25 never brought to my attention that I coulda helped myself or,

1 you know, testify against anyone else until the plea or
2 part -- as part a the plea agreement.

3 Q. Okay. Who came and told you about the opportunity to
4 testify against co-defendant?

5 A. Uh, nobody came and told me about it. As far as came and
6 told me?

7 Q. Right, I mean, did did Mr. Harbin speak to you about
8 that?

9 A. He just told me as part a the plea agreement ---

10 Q. Okay.

11 A. --- that I would have to testify, you know, if if I, if I
12 was needed to do pretty much whatever was asked of me.

13 Q. Alright. And did anyone ask you to testify during a
14 trial?

15 A. They came and picked me up from Tyger River 'bout seven
16 days afterwards and brought ---

17 Q. Who's they?

18 A. Uh, the county, Pickens County came ---

19 Q. Okay.

20 A. --- and brought me back and put me in fronta John Crout.

21 Q. Okay.

22 A. --- and told me that, you know, asked me questions about
23 Kim Taylor and what I knew about Kim Taylor and, uh, asked me,
24 uh, pretty much they didn't ask me, they told me pretty much
25 that you're gonna, you know, that you need to testify on on

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 our behalf pretty much for her because she's not takin' the
2 deal.

3 Q. Did you testify against Mr. Gracely?

4 A. Uh, yes, I did.

5 Q. Alright, but you did not testify against Ms. Taylor, did
6 you?

7 A. She took a plea agree -- she took a, she plead out.

8 Q. Alright. And Mr. Gra -- did you testify for the defense
9 or for the prosecution against Mr. Gracely?

10 A. For the prosecution.

11 Q. Alright, and do you recall what the result was in his,
12 Mr. Gracely's trial?

13 A. I believe yeah, he was found guilty in his absence.

14 Q. Alright. Alright, and did Mr. Harbin file a motion to
15 reconsider your sentence based on your cooperation and
16 testimony?

17 A. No, ma'am.

18 Q. Alright. Uh, was -- did you and Mr. Harbin discuss the
19 filing of an appeal in your case?

20 A. No, ma'am, he's not, that was not -- no, he pretty much
21 told me when the day that all this, once this was over with
22 and we went in the little area there, he told me pretty much
23 in best words I can say is I got screwed.

24 Q. Did did he discuss with you the fact that the plea
25 agreement you signed also waives your right to appeal? Did

1 you know that or it ---

2 A. Plea agreement appeal? No, he did not explain that,
3 no.

4 Q. Alright. Okay. And did you ask Mr. Harbin file an
5 appeal for you?

6 A. Yes, I called.

7 Q. Alright. When did you call?

8 A. Uh, seven days after, let's see it was about the 14th,
9 15th I guess of ---

10 Q. Okay. Where did you place the call?

11 A. I placed a call from Pickens County.

12 Q. Okay, to to where?

13 A. To his office.

14 Q. Okay, and did you speak to anybody?

15 A. I spoke to his secretary.

16 Q. What did did -- what, if anything, did you say to his
17 secretary?

18 A. I told her that I was back in the county, I thought that
19 maybe I was bein', you know, I'm just to speakin' to her I
20 felt like maybe I I, maybe Chase had brought me back or
21 somethin' to maybe try to help me out or somethin' and then
22 that's when I found out later that day but I told her that I
23 wanted to file an appeal because everybody around me ---

24 Q. Okay.

25 A. --- is gettin' non-violent times and, you know, just all

LANCE QUINTMAN HOLLOWAY - DIRECT EXAMINATION BY MS. HORLBECK

1 these these times that were, I didn't see how I was gettin'
2 more pretty much but I was askin' to speak to him and I had
3 called him a couple a times actually but ---

4 Q. Did you ever get to speak to Mr. Harbin?

5 A. No, he was outta town or on vacation or just not in the
6 office or somethin' like that.

7 Q. And after asking his secretary or telling his secretary
8 that you wanted to file an appeal, did you feel like that
9 issue would be taken care of for you ---

10 A. Yes, I did.

11 Q. --- and that the the appeal would be filed?

12 A. Yes, ma'am.

13 Q. Alright. Uh, alright, uh, Mr. Holloway, is is there
14 anything else that you think Mr. Harbin should have done that
15 he didn't do or is there anything else that he didn't do that
16 he shoulda done?

17 A. Well, yeah, there's there's plenty that I feel like he
18 should've done now that I know.

19 Q. Alright, just I ---

20 A. I I ---

21 Q. --- anything, just additional things, not things that
22 we've already talked about but anything new.

23 A. Anything new?

24 Q. Yes.

25 A. As far as ---

1 Q. That we, just anything we ---

2 A. Yeah, ---

3 Q. --- haven't already talked about.

4 A. --- yeah, just as far as the fact that, you know, that I
5 don't know if we covered this but he -- him ever bein' able to
6 come to me and tellin' me that I cou -- if there was any way I
7 could help myself or the State's case or to get a lesser or
8 anything to help myself really ---

9 Q. Okay.

10 A. --- and a thinkin' that he would've brought anything to
11 me, you know, underlinin' my name, bein' helpful in me -- to
12 me in any kinda way, tryin' to, you know, be a a lawyer, bein'
13 some, you know, helpin' me out in some kinda way, ---

14 Q. Okay.

15 A. --- provide me with information that woulda helped me
16 make a decision, you know, but knowingly and, you know, that
17 way I would know what what I was doing' you know.

18 Q. Okay. And you understand that, uh, the Court cannot
19 change your sentence today.

20 A. Yes, ma'am.

21 Q. Do you understand also that the Court can either grant
22 your petition or deny your petition?

23 A. Yes, ma'am.

24 Q. Do you understand that if the Court grants your petition
25 that you can be re-prosecuted all over again as if this had

LANCE QUINTMAN HOLLOWAY - CROSS-EXAMINATION BY MR. PETRANO

1 never happened, as if you'd never pled guilty, the whole thing
2 would start over again, it's like the whole slate is wiped
3 clean, ---

4 A. Yes, ma'am.

5 Q. --- you understand that?

6 A. Yes, ma'am, I do.

7 Q. Alright. Okay, uh, please answer any questions that the
8 Attorney General's Office may have for you.

9 THE COURT: Mr. Petrano.

10 MR. PETRANO: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MR. PETRANO:

12 Q. Mr. Holloway, uh, you still have that transcript in front
13 of you, correct?

14 A. No, ma'am, I mean, no, sir, I don't.

15 Q. Okay.

16 MR. PETRANO: May I approach the witness, Your Honor?

17 THE COURT: You may.

18 Q. Sir, I've got this one turned open to Page 10, if you
19 could just check that out, uh, and let me know whenever you're
20 ready.

21 (Whereupon, the witness complied.)

22 A. Yes, sir.

23 Q. Alright. And what I'm getting at here, sir, on Page 10
24 is, uh, you testified a few minutes ago 'bout some confusion
25 regarding the plea agreement, the sentencing sheets and what

1 the deal was or was not and you reference Pages 7, 8, 9 but
2 what I wanted to ask, sir, was on Page 10 the judge, uh, it
3 appears 'bout halfway down the page, I I don't have it in
4 fronta me, you've got my copy, but the judge says, Hey, you're
5 pleading to, you know, twenty-eight to a hundred, is that
6 right, and then you yourself say that that's correct ---

7 A. Yes, sir, ---

8 Q. --- and you ---

9 A. --- I did.

10 Q. Alright, do you wanna elaborate on that or is it just
11 what it is black and white?

12 A. What it is is I, when I, when, I was, when I read, when
13 when he said 10 to 28, the judge said 10 to 28, and then it
14 was a the confusion in the Court, then this is brought back
15 up, I looked to my lawyer and I said, I don't want the t --
16 the twenty-eight to a hundred, I want the 10 to 28 and he told
17 me it's okay; therefore, that's, I mean, what else I, what
18 other choice do I have, he's not tellin' me, Well, you know,
19 you can -- we can, we could, you know, do all this, you don't
20 have to take it, he ne -- he never said anything, uh, he never
21 objected, he never did anything so to my knowledge I I'm not,
22 I'm not knowledgeable in this as far as what what is goin' on.

23 Q. I completely understand your answer, sir, uh, if I could
24 just kind of go back and forth here with ya a little bit on
25 it. Did Mr. Harbin lead you to believe that you couldn't stop

LANCE QUINTMAN HOLLOWAY - CROSS-EXAMINATION BY MR. PETRANO

1 this process, the plea, once it started, is that what you're
2 tryin' to say 'cause I don't understand. Why didn't you just
3 back out and say, Whoa, I'm not pleadin' to no twenty-eight to
4 a hundred?

5 A. Well at the time but like I said I was expectin', I
6 thought that if anything he would tell me, you know, this is,
7 you know, this -- the paperwork was wrong, let's start over
8 again, let's object, let's get the paperwork right, let's do
9 somethin' that way everything is clear.

10 Q. Well the paperwork did get corrected, sir, the ---

11 A. Well ---

12 Q. --- judge corrects it and writes over it as you explained
13 a few minutes ago you originally saw it and signed it, it
14 said ---

15 A. --- well it's not ---

16 Q. --- 10 to 28, ---

17 A. --- correct, it's not ---

18 Q. --- sir.

19 A. --- correct and it's, and it's right now. If you you go
20 by the statute, it's not correct, it's a non-violent
21 statute.

22 Q. Okay, and what was the plea agreement that you thought
23 you were going to get as far as time goes? Ignore the
24 statutes, CDR codes, all the other stuff, ---

25 A. Okay.

1 Q. --- what what's the meat to it here?

2 A. Ten is what I was askin' for.

3 Q. Right, but what was your understanding that the State was
4 askin'?

5 A. They were askin' for 12.

6 Q. Okay, a recommended 12.

7 A. A recommended 12.

8 Q. Okay.

9 A. Excuse me.

10 Q. You indicated, uh, earlier in your testimony that you,
11 uh, never really saw the discovery or any type of witness
12 statements, uh, did I write that down correctly?

13 A. Yes, sir.

14 Q. Did you listen to any telephone calls or watch any
15 videotapes or anything like that?

16 A. No, sir.

17 Q. Alright. Yet you went ahead with this plea and just
18 allowed it to, the the process to continue despite your
19 reservations.

20 A. Well despite my reservations that like I was under the
21 im -- I'm under the impression that he had my, you know, he
22 had my best interests at hand. Uh, I was nervous, I was
23 really scared and he just kept pretty much harpin' on me that
24 the fact is that you need to take this char -- you need to,
25 you need to, these people will testify and I'm like, Listen,

LANCE QUINTMAN HOLLOWAY - CROSS-EXAMINATION BY MR. PETRANO

1 you know, I don't wanna take it, But this is the best deal
2 you'll get, there's, you know, they're -- I asked him and he's
3 like, They're not gonna, they're not gonna do anything, this
4 is all they're gonna do so pretty much, I mean, I'm already
5 just, I'm already in fear for, you now, the simple fact
6 there's how much time I could get but he's sayin', You know,
7 you've, you know, you've got a bad history, you've got a
8 rad -- bad rap. He never told me anything, anything, he never
9 tried to, you know, steer me away from pleadin' guilty, he
10 always, he didn't wanna go to trial. I don't feel like he had
11 my best interest at hand, he just wanted to go ahead and plea,
12 get me to plead guilty and get on outta the way.

13 Q. A -- and I just wanna make sure I'm I'm gettin' this
14 correct, I'm not tryin' to be difficult with you or anything
15 but you were in a bad spot here regarding the charges and at
16 least what you were told regarding the evidence, uh, that you
17 were facing some serious time if you went to trial and it is
18 what the best offer you were gonna get, am I summarizin' it
19 right so far?

20 A. Pretty much, ---

21 Q. Okay, ---

22 A. --- yes.

23 Q. --- and so you go ahead and take the plea then.

24 A. I take the plea because I see that the cha -- it's
25 changed, the paperwork has changed, I mean, the the the

1 weight's changed, it's not the same as it was prior, you know,
2 so I'm thinkin' what's goin' on, I mean, it's jump ---

3 Q. Okay.

4 A. --- on it and then I sign it and then he doesn't say,
5 Well, you know, you need to go ahead, you can take it and back
6 out, I go, I'm to to, uh, for look of a better word I'm punch
7 drunk.

8 Q. Well an -- and let me interrupt here and I don't dispute
9 what you're sayin' at all, I wasn't there but I can read the
10 transcript and it's clear as day that there was obvious
11 serious confusion as to what the sentencing sheet was and I --
12 that you appear to be absolutely correct when you say it it
13 said 10 to 28 when you signed it, clearly looks like it's
14 written over but, sir, all of this is addressed live in the
15 courtroom on you are specifically asked by the judge, Hey, are
16 you really pleading to twenty-eight to a hundred, you said
17 yes, and the judge even says, You know you could get 25 or 30,
18 depends on your prior, and because you if you explained you
19 got a couple hits so it's 30 for you and you're -- you -- what
20 I'm getting at, sir, is the judge explained to you the what
21 was happening, the judge explained to you what your potential
22 sentence was and you went ahead and pled, sir, uh, and you're
23 just saying you will go along with it, you were punch
24 drunk ---

25 A. Oh, I was, the reason like I said there was no, there was

LANCE QUINTMAN HOLLOWAY - CROSS-EXAMINATION BY MR. PETRANO

1 never any indication of my priors were ever brought up, it was
2 not no -- is a first offense, it was, it was pretty much ---

3 Q. I'm ---

4 A. --- not.

5 Q. --- sorry, sir, you you're disputing your priors now?

6 A. I'm not disputing my priors at all, I even I had to bring
7 'em up in the courtroom ---

8 Q. Okay.

9 A. --- because everybody acted like, you know, when they
10 asked him, you know, what was goin' on, I'm standin' here I
11 --like I am now and tense and and I felt like that was, I was,
12 you know, is what's goin' on and the more was goin' on in my
13 head, the more things that are happenin'. Like I'm sayin' I'm
14 punch drunk, you have no idea because it kept progressing to
15 get worse in my mind as I'm standin' there and this -- and the
16 judge is askin' me, askin' the Attorney General what are his
17 priors, we don't know of any, then, you know, somethin' else
18 goes on, then he asks my o -- my lawyer, he has no idea so now
19 I'm, you know, where where I stand now is I feel like I'm on
20 thin ice, what choice do I have? I feel like this is it, it's
21 over with, I'm fixin' to get 25 years when I explain to this
22 judge bein' honest that, sir, I'm incarcerated pre -- or at
23 the time and that's the big issue, I mean, well it's not a
24 big, that's just another part of, you know, o -- the ongoin'
25 process is I feel like I was, you know, I was not represented

1 to the fullest, I felt I got the deal that was there was taken
2 out from under me and I don't know what's goin' on.

3 Q. Uh, I'm gonna move on, sir, to the plea agreement itself.
4 Your Honor, may I approach?

5 THE COURT: You may.

6 Q. Sir, I have what I retrieved from the, uh, State Grand
7 Jury Clerk's Office what appears to be approximately 5-page
8 plea agreement, uh, are you able to manipulate that, sir, and
9 flip the pages with your hands?

10 A. Yes.

11 Q. If you could review that, sir, and tell me if that's your
12 signature on the end and if you recall this, uh, plea
13 agreement and I know you've mentioned before but just as a
14 formality.

15 A. As far as reading it, this is the first time I've read
16 it.

17 Q. I understand, sir, but you're familiar that you you've
18 seen this before, it was shown to you?

19 A. Like shown to me like this (indicating), like this
20 (indicating)?

21 Q. And just for the purposes of the record you're sitting
22 there ---

23 A. I'm ---

24 Q. --- kind of indicating that you're in chains and having
25 trouble manipulating it as a regular person ---

LANCE QUINTMAN HOLLOWAY - CROSS-EXAMINATION BY MR. PETRANO

1 A. Well the fact of the matter is that just like it's been
2 shown, just like I'm showin' it to you it was shown to me and
3 I believe that's but that's what I'm ---

4 Q. I understand you're -- I'm not tryin' to trick ya, I'm
5 just tryin' to get in evidence so I'm gonna ask have you seen
6 the agreement before, is that your signature, ---

7 A. I understand.

8 Q. --- and I'm gonna try to move it in and we'll move on.

9 A. Uh, this (indicating) the part that I saw, sir, that part
10 right there (indicating).

11 Q. Okay. And is that your signature down there?

12 A. That is my signature.

13 MR. PETRANO: Alright, Your Honor, I'd like to offer this
14 as State's 1.

15 THE COURT: Any objection?

16 MS. HORLBECK: No.

17 THE COURT: Without objection State's Exhibit No. No. 1
18 will be admitted into evidence.

19 (Plea agreement marked State's Exhibit No. 1 for
20 identification and admitted into evidence.)

21 THE APPLICANT: May I have a cup a water, sir?

22 THE COURT: Sir, would you give him a cup a water,
23 please.

24 (Whereupon, the clerk complied.)

25 THE APPLICANT: Thank you.

1 THE CLERK: You're welcome.

2 BY MR. PETRANO:

3 Q. Do you have a copy of your PCR application?

4 A. Yes, I do.

5 Q. Uh, can you tell me when you signed that.

6 A. When did I sign it?

7 Q. Yeah.

8 A. Now I got another problem, I'm hung in the wheel here.

9 THE COURT: Officer, would you help him or somebody help
10 him, please, anyone.

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

12 THE APPLICANT: Thank you, Judge. Okay, yes, I do have a
13 copy of my PCR.

14 BY MR. PETRANO:

15 Q. Okay, and I think on Page 6 or 7, sir, it's the, uh,
16 signatures, uh, I I just wanna make sure I'm readin' mine
17 right, if you could tell me, sir, when you recall signing this
18 and executing the, uh, notary.

19 A. Okay, that that part I do not have ---

20 (Cross-talk.)

21 Q. Okay, well I'm gonna go ahead and bring you my copy.
22 Your Honor, may I approach?

23 THE COURT: You may.

24 A. Seventh day of April 2011.

25 Q. Okay, and, sir, if you could, uh, if you're able to

LANCE QUINTMAN HOLLOWAY - CROSS-EXAMINATION BY MR. PETRANO

1 manipulate either that copy or the copy that you were
2 referencing, sir, can you tell me what the front page says
3 when it was clocked and stamped by the, uh, clerk.

4 A. Really I cannot read that. I can't read that ---

5 Q. Well ---

6 A. --- the cla -- the stamp here (indicating) at the top?

7 Q. Yeah, okay, ---

8 A. I I cannot read that.

9 Q. --- you signed it on the 7th, sir, ---

10 A. Yes.

11 Q. --- you dated, what, you mailed it?

12 A. Well see at at at, I don't know if you're on kinda
13 understand of Kershaw, the prison stays locked down a good bit
14 so when you're allowed to go to get out and do things like
15 this, which I'm, if I'm not mistaken, I was, you know, I
16 signed it, I sent it off as as as quickly as I could.

17 Q. Sure.

18 A. Uh, as far as clock stamp, I don't know, I thought it
19 was, uh, I thought it was timely because it was sent April
20 the 7th.

21 Q. Sir, I completely understand what you're saying and and I
22 really do respect ---

23 A. Right.

24 Q. --- your answer, uh, I'm just simply asking for the
25 mechanical dates. Uh, what I did wanna follow up with and

1 I'll move move on but one last question on this particular
2 subject, sir, is there any particular reason that you waited,
3 you know, 363 days, I mean, you had a long time, it's a year
4 to file this thing off.

5 A. Because I I'm only allowed to go to the law legal area,
6 uh, when I's fill out forms, when I fill out requests and if
7 the, if the yard's on lockdown for 28 to 30 days, sir, I'm not
8 allowed to go and they're, I mean, that's the biggest deal is
9 is you -- I filed grievances upon grievances, uh, citin' the
10 fact that, you know, they're they're not allowin' me to be
11 able to get to law library or anything of that nature. I
12 could, I s -- if if I knew it was gonna be an issue, I woulda
13 been glad to brought those with you because I have copies of
14 almost everything that I've done as far as filing grievances
15 and that fact but as far as the timeline, uh, I tried to use
16 as much time as I possibly could in between using legal ser --
17 my my law library to try and do come up with everything, all
18 of my grounds and to to see exactly what I felt like I could
19 state as my grounds.

20 Q. Okay, very well, sir, uh, thank you so much, I have no
21 further questions. I appreciate ---

22 THE COURT: Any redirect?

23 MS. HORLBECK: Just very briefly.

24 REDIRECT EXAMINATION BY MS. HORLBECK:

25 Q. Uh, Mr. Holloway, you still have a copy of your petition,

LANCE QUINTMAN HOLLOWAY - REDIRECT EXAMINATION BY MS. HORLBECK

1 the whole petition, even the the written part that you had ---

2 A. Yes.

3 Q. --- out?

4 A. Yes, ma'am, I got ---

5 Q. Okay.

6 A. --- it here, right here (indicating).

7 Q. Flip to the back of your written, the written portion of
8 your, the very last page is what I'm asking you to to flip to.

9 A. Um-hum.

10 Q. Alright. And what are you looking at on that last
11 page?

12 A. The last page is a stamp.

13 Q. Right, and does that -- the stamp is on what, is it on a
14 piece a paper or what?

15 A. Yes, ma'am, it's on a piece a paper.

16 Q. Okay, but is that a, ---

17 A. I'm sorry.

18 Q. --- is that an envelope on that or...

19 A. Yes, yes, yes it ---

20 Q. Okay.

21 A. --- is, not you, I can't really tell the lines, that's
22 very ---

23 Q. Yes, who's it addr -- where does it appear to be
24 addressed to?

25 A. Uh, Wickensimer, Paul Wickensimer, County Clerk a Court.

1 Q. Okay, and, uh, at the top right hand corner what is
2 that ---

3 A. That's ---

4 Q. --- your ---

5 A. --- the time stamp?

6 Q. Alright, is that a time stamp from from where ---

7 A. Uh, from ---

8 Q. --- do ya know?

9 A. --- you notice, uh, uh, I I guess from here in the
10 courthouse.

11 Q. Okay, uh, or for wher -- from wherever you mailed it
12 from, is that possible?

13 A. Yes.

14 Q. Can you make out a date?

15 A. Looks like it says April 7th 2011.

16 Q. Alright, and you ---

17 A. Oh, okay, yeah, I see.

18 Q. --- pled guilty on April the ni -- April the 9th 2010?

19 A. Yes, ma'am.

20 Q. Alright, then, uh, you would have mailed that, put that
21 in the mail within the 365 day time limit, correct?

22 A. Yes, ma'am.

23 Q. That's all I have. Thank you.

24 THE COURT: Any re-cross?

25 MR. PETRANO: No, sir, oh, but, Your Honor, if I could

HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. PETRANO

1 just retrieve my, uh, copy of the application that ---

2 THE COURT: Yes.

3 MR. PETRANO: Thank you.

4 THE WITNESS: Thank you.

5 MR. PETRANO: Thank you, sir.

6 THE COURT: Alright, Mr. Holloway, you may step down.

7 (Whereupon, the applicant left the stand.)

8 MS. HORLBECK: That's all we have, Judge.

9 THE COURT: Alright. Does the State have any witnesses?

10 MR. PETRANO: Yes, Your Honor, if I may I'll -- we call
11 Mr. Harbin.

12 THE COURT: Okay, come forward and be sworn, please.

13 (Whereupon, the witness came forward.)

14 HUNTER CHASE HARBIN, having been
15 first duly sworn, testified as follows:

16 THE CLERK: Thank you, you may be seated. Please state
17 your full name for the record.

18 THE WITNESS: Hunter Chase Harbin.

19 DIRECT EXAMINATION BY MR. PETRANO:

20 Q. Mr. Harbin, I'm gonna ask you a couple a preliminary
21 questions just for the purpose of the record to, uh, get your
22 background in and then I'm gonna jump to, uh, three or four
23 issues that I thought I might want to get into but at any
24 point in time, sir, please feel free to elaborate on anything
25 and, uh, tell us, tell the Court anything else you might think

HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. PETRANO

1 might be interest regarding these allegations, sir.

2 A. Yes, sir.

3 Q. Uh, if you could explain, uh, just your background, how
4 long you been practicing law, that kinda thing.

5 A. Uh, entered the bar in 2001, uh, prosecuted for
6 Greenville and Pickens Counties for a couple years and then
7 started a private practice where I do primarily criminal
8 defense.

9 Q. Okay. And do you recall and I think it was mentioned
10 earlier but do you recall, sir, were you appointed or
11 retained?

12 A. Appointed.

13 Q. Okay, and if you could tell us a little bit 'bout how you
14 got in involved in this particular case, I I I -- it -- in the
15 State Grand Jury case and all.

16 A. Uh, I I think I get a call from Jim Parks tellin' me that
17 I've drawn a short straw and got one of these appointments,
18 um, and from there, you know, file discovery, receive
19 discovery and and the these cases kind of a a little bit, uh,
20 hurry up and wait, ya know, they get ya in the court and then
21 you're kind of ignored for quite sometime and then okay, now
22 we're ready put it on the trial docket and your kinda back in
23 business but that's generally ---

24 Q. And if, ---

25 A. --- how it is.

HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. PETRANO

1 Q. --- and if you could, sir, just explain from your
2 perspective, uh, any awkwardness that, uh, amounts or arises
3 considering the disclosure issues regarding the State Grand
4 Jury matters, uh, how that overlaps or parallels discovery and
5 Brady as we know as Constitutional rights. Does does my
6 question make sense?

7 A. Well are are you askin', I I I know specifically as a
8 defense attorney I kind of object to the, uh, the idea that
9 Attorney Generals don't want us talking to other attorneys and
10 other, I mean, just as a defense attorney, I understand what
11 the, what the Order says, if that's what you're ---

12 Q. Yeah, yeah, and ---

13 A. --- you're talkin' about.

14 Q. --- did ya have any trouble and and are you able to work
15 around it and ---

16 A. Yeah, yeah, ---

17 Q. --- do that?

18 A. --- well, I mean, the, I -- the -- I think the case was
19 what it was and and I don't claim to recall details. I I do
20 recall, you know, my meeting with Mr. Holloway. The first one
21 was very brief, it was a packed courthouse in in Pickens, uh,
22 and then when when I met with him, uh, face-to-face sit down,
23 I I I recall that as well but the the details of exactly what
24 the evidence was against him now I I couldn't regurgitate to
25 you.

HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. PETRANO

1 Q. Okay. Well at, uh, at the time, sir, uh, were you
2 comfortable with what you had received as far as it appearing
3 to be, uh, all of what was, uh, necessary?

4 A. Yes.

5 Q. And did you review that material, uh, with your client?

6 A. Yeah, and and I would say that, uh, I found Mr. Holloway,
7 this was part of my, uh, uh, statement to the judge, I found
8 Mr. Holloway to be very cooperative, extremely nice, he's very
9 intelligent, not the kinda guy that you would think would have
10 fallen into this type of of trouble and in reviewing the
11 discovery, again, I don't recall the specifics but I recall
12 that I was encouraging him to plea because I did not think
13 this was a triable case at least insofar as if he, if he
14 wanted to win, I definitely told him that, he's telling the
15 absolute truth that I was encouraging him to consider
16 pleading. I don't remember any resistance at all from that
17 and and quite honestly I I was pleased with that because I I
18 thought that was a reasonable stance to take. We discussed
19 what the offer was, uh, and if I'm talking too much, you tell
20 me, but I I didn't necessarily like the offer. I I've I've
21 always kinda thought the AG's Off -- Office is a little bit
22 more strict than, actually much more strict in sentencing than
23 in normal county court and I told him that, I said, You kind
24 of just got the unlucky straw but they have the leverage
25 because if they wanted to prosecute you it would be a

HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. PETRANO

1 mandatory 25 to 30 as opposed to havin' the ability to plea
2 down and gettin' anything south of of 20 or 15 or I think the
3 offer was 12.

4 Q. And, uh, my rough math, sir, was approximately, uh, 75
5 years give or take and I say give or take because of the, uh,
6 nuances of his prior record, so ballpark 75 years if he was to
7 get the worst of the worst at the end of a trial, was that ---

8 A. Thir -- 30, 30 and 15 yes, sir.

9 Q. Yeah, okay. Uh, uh, I, I, one of the allegations here,
10 uh, and just you you were here present for his testimony here
11 today PCR, right?

12 A. Yes.

13 Q. Okay, and one of the allegations, sir, is regarding this
14 confusion as to what the plea offer was, uh, when it came down
15 to what was written down on the plea agreement, uh, versus the
16 sentencing sheet, uh, versus what was spoken in court, uh,
17 could you elaborate on that a little bit as far as your
18 recollection goes, uh, today probly having cued up your memory
19 a bit.

20 A. I I I remember it a a little bit. Now let let me back up
21 just to the the meeting where we discuss the plea agreement
22 and and talk about 12 years and talked about what his minimum
23 and and maximum sentences were. My idea was that I was hoping
24 to have the opportunity to convince Judge Welmaker that the
25 AG's Office was being unreasonable in their number, that 12

HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. PETRANO

1 was too high, and of course I made an effort to try to
2 convince him that 12 was a little high and we were gonna aim
3 for 8 to 10. I wasn't gonna ask for 10 in case we could get 8
4 so I asked for 8, uh, and that was kind of my, uh, approach to
5 Mr. Holloway. I said, you know, this this 12 years is not
6 mandatory that the judge take the 12 years so we can argue for
7 less, certainly I wanted to get less for him and I thought he
8 deserved less, I believe he he he thought that as well.

9 Um, uh, uh, the the sentencing sheet issue I I don't
10 recall exactly what it was but I do admit that I I had to, uh,
11 there's no way that I did not make a mistake in reviewing the
12 sentencing sheet, did not notice that it said 10 to 28
13 instead of 28 to a hundred; however, I was operating under the
14 assumption that we were going with 12 years and a a first
15 offense 10 to 28 doesn't have a 12-year sentence so I I -- it
16 was simply just me just not looking at that number, I I I just
17 didn't see it, I I've -- it was a mistake on my part so when
18 the, when when the issue was brought up and Mr. Crout actually
19 said 10 to 28, uh, and and I I I caught it before Mr. Crout
20 caught it but I didn't say anything because I don't know what
21 benefit that would have done to my client because had
22 Mr. Crout done the entire plea from 10 to 28 and sentenced him
23 to 10 years or 8 years or whatever was south of, uh, 12 years
24 then that would have been a a benefit enured to my client so I
25 was kind of in a tough position where I did kinda realize that

HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. PETRANO

1 somethin' was amiss but there was no no benefit to me pointing
2 it out at the time and then it it ma -- did get pointed out by
3 the prosecution and of course as an officer of the Court I did
4 say that was my understanding, that was the plea agreement and
5 we corrected it to what my understanding of the plea agreement
6 was.

7 Q. Okay, so and, uh, not tryin' to lead here but just to
8 recap, there was a scrivener's error or whatever we wanna call
9 it, uh, or just plain absent-minded of the prosecutor, I don't
10 know what it was but I'm just not tryin' to put words in his
11 mouth there, but we have this error but it's kind, uh, a
12 favorable error if it goes through so why mention anything,
13 okay, at all.

14 A. Yes, sir.

15 Q. Okay. What was the deal as you're walkin' in that
16 courtroom as you understood it, as you advised your client, as
17 you had discussed with Mr. Crout, what was the actual deal
18 that he was supposed to have?

19 A. State would recommend 12 years as long as he cooperated
20 which would mean testifying if asked, uh, and that the
21 sentencing range would be 7 years up to 30 years on on the
22 traffickings obviously and 0 to 15 on the distribution, uh,
23 and that they were, they were recommending 12 years so we had
24 the opportunity to try to argue down to as little as 7.

25 Q. And is, sir, that exactly what occurred?

1 A. That's exactly what occurred.

2 Q. Alright. I'm gonna jump now to, uh, one of the, uh, a
3 portion of the applicant's testimony this morning regarding
4 him calling your office and requesting an appeal be filed, do
5 you have any reply to that, do you ---

6 A. I I, obviously I I'm not the one that answers the phones
7 in my office, ---

8 Q. Sure.

9 A. --- I I do not have any recollection that I was ever
10 given a message that he called or that he had requested any
11 type of appeal, uh, it -- I -- it's probably noteworthy that I
12 don't know what basis that he would have for appeal if he had
13 asked me. I -- if if you asked me today, Could you have filed
14 an appeal other than simply clocking the appeal in, I don't
15 know what basis he would have for the appeal.

16 Q. Okay. And if, uh, just walk us through your protocols,
17 your policies, your procedures, whatnot, as they woulda been
18 at the time. What if you had received a call from him, you
19 did answer it, he said, Hey, I want an appeal 7 days at the
20 end a the 10 for the limit, what would you have done?

21 A. Filed the appeal.

22 Q. Okay. And finally, sir, uh, the plea agreement, uh, we
23 discussed the sentencing part of it but one of the clauses and
24 it's, uh, it may have been specifically negotiated, it may
25 just be standard plea agreement language, I'm not entirely

HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. PETRANO

1 sure, but one of them is to waive PCR, do you recall that, ---

2 A. I do.

3 Q. --- a -- and, uh, can you elaborate. Was that something
4 specific or was that just always in the ---

5 A. I ---

6 Q. --- AG plea agreements?

7 A. It it it is always in the AG agreements, it's in the
8 federal agreements. As a defense attorney, I don't like 'em
9 and and it's, I told him and and maybe this offered a little
10 confusion to him but I told him that it's difficult to waive a
11 PCR if the attorney that's explaining the waiver of the PCR
12 has not done his job so in and of itself it's a conflict, that
13 clause I I consider just to be kind of a conflict, uh, clause
14 and and I told him I didn't like it but I did tell him it was
15 a take it or leave it deal, uh, and and so signing it or not
16 signing it was whether he was going to trial or not so that, I
17 I think that part was clear although when he was telling you
18 that that I told him that I thought it was unconstitutional, I
19 may have used that word, I I don't think that you should, I
20 don't, I don't think you have the ability to waive the
21 potentiality of your attorney not having done his job when it
22 is the attorney's job to tell you exactly what it is that
23 you're waiving, you see what I'm saying, so I I don't know if
24 that confused him or not but but I I probly made that
25 comment.

1 Q. Okay, and just regarding the circular nature of the way
2 the waiver more of a figure eight but the awkwardness of the
3 waiver of what you don't know.

4 A. Correct.

5 Q. And my final final question, sir, uh, is the credit for
6 time served issue, uh, is -- that was one of the issues
7 presented this morning, do you recall any a that, sir?

8 A. Well I I definitely felt that because of the timing of
9 his guilty plea prior to his indictment I really thought that
10 it was a reasonable request to ask that the judge if not e --
11 even if he didn't give him day-for-day time served that he
12 just take that in consideration so; in other words, if he
13 didn't write it down that he gets credit for time served and
14 it's a year or a year and a half or two, then instead of
15 givin' 12 he gives him 10, just something because I thought it
16 was so, it's so much part and parcel of the same activity
17 because he essentially he got got double whammy kinda because
18 he got a sentence for the exact same crimes for which he was
19 indicted, essentially it was all the same activity, so that
20 was my thinkin', that's what we discussed, I thought that
21 it -- that he really was, it was, it was a deserving argument
22 and and that that's what we attempted to do, it was just
23 denied.

24 Q. Right, and not to put ya on the spot or anything like
25 this is a law school test or anything but, uh, if you could

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MS. HORLBECK

1 just explain, uh, and you may have just done so, sir, and I do
2 apologize, can ya get credit for time served when you're
3 serving a sentence for a different charge, different
4 conviction?

5 A. My position as a defense attorney is that you can get
6 credit for whatever a judge writes on the sentencing sheet.
7 Uh, my understanding from SCDC is they don't want to give you
8 credit for for time that you've attributed to another
9 charge.

10 Q. Thank you, sir, nothing further.

11 THE COURT: Witness cross.

12 CROSS-EXAMINATION BY MS. HORLBECK:

13 Q. Mr. Harbin, just briefly. Uh, do you recall the date
14 that Mr. Holloway was actually charged with the State Grand
15 Jury charges?

16 A. No, ma'am.

17 Q. Okay. Uh, would that have been -- do you have your -- is
18 your file here today? Would that information be in your
19 file?

20 A. Uh, well I I was appointed after so I I'm sure it would
21 be in my file. I I don't have my file, I've I've shared with
22 you and and with counsel that my file whether it was a CD or
23 or a paper file I don't remember is lost in the ether of my
24 office right ---

25 Q. Oh.

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MS. HORLBECK

1 A. --- now but I I was able to review the the transcript and
2 kind of refresh my memory as to what the events took ---

3 Q. Okay.

4 A. --- place.

5 Q. Do you know si -- it -- well, let me back up. It's
6 definitely true that Mr. Holloway was in SCDC serving another
7 sentence when the State Grand Jury charges arose, is that
8 correct?

9 A. I I -- it has to be correct yes, ma'am.

10 Q. Okay. Alright, do you think it's -- do you know whether
11 or not the State Grand Jury put a hold on Mr. Holloway?

12 A. I I do not.

13 Q. Okay. Alright. And just in your experience as a defense
14 attorney when you're trying to convince a judge to give, uh,
15 someone credit for time served especially when they're already
16 servin' time on another sentence, can it be helpful to give
17 the sentencing judge a specific date that you're shooting
18 for?

19 A. Yes.

20 Q. Okay. Do you think it woulda been helpful just in
21 hindsight just just to give the judge a date and say, Okay, he
22 was served with these State Grand Jury charges a mo -- about a
23 month in October of 2008?

24 A. Yeah, I I think what I, the record reflects that I did
25 not do was I I asked for more than what that was so I asked to

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MS. HORLBECK

1 be given credit for the time that he got from Frank's
2 representation and I did not note to the judge that it would
3 be a however many days credit from the time I I I really guess
4 you would argue from arraignment I suppose is what it would be
5 and and I I did not do that.

6 Q. Okay. Alright. Uh, and is it your understanding as a
7 defense attorney that he may be entitled to credit for time
8 served since arraignment or since the date of a hold or the
9 serving of a warrant?

10 A. I think there's an argument to be made. I I can't tell
11 you that I for a hundred percent that I know, uh, what the
12 answer is but I I think there's definitely an argument that
13 that I in hindsight I I would certainly enjoy having the
14 opportunity to make it.

15 Q. Alright, and, uh, just beg the Court's indulgence, let me
16 get that thought in my head. Uh, alright. Uh, and you you
17 indicated you don't have the file today, do you have any notes
18 with you or or anything?

19 A. No, ma'am.

20 Q. Alright. Uh, so your testimony is based on memory then,
21 correct?

22 A. Yes, ma'am.

23 Q. Okay. Did did you recall going over discover with
24 Mr. Holloway?

25 A. I I I recalled havin' and and and I understand, uh, I I

1 hope I'm not overstep, I understand the frustration
2 Mr. Holloway has because his comment when I, when -- I I don't
3 know that I used the word "you got screwed" but my I I was
4 disappointed that the judge did not kind of go in his favor
5 and give him a little less time so after court I would have
6 expressed that disappointment with whatever vocabulary,
7 hopefully not as crude as that, but still, uh, so I, my
8 dealings with him up until that point had been cordial, I I I
9 really thought he was a very pleasant client to get along
10 with, he was in a place that I I thought anyway in his life
11 that he understood exactly where he was, how he got there and
12 what he was facing, that that he knew that he had a penance to
13 pay and so when I, uh, when I met with him in person in, uh,
14 Tyger River was it I believe, uh, it was, I I recall a very
15 cordial conversation, one in which he understood exactly what
16 the evidence was against him which would include potential,
17 uh, testimony and and a a co-defendant basically throwing him
18 under the bus essentially is is what it was, uh, and that he
19 was accepting of that and did not wish to go to trial and I I
20 I didn't, once he, once once and and you may have similar
21 experiences, once a a client indicates they don't wanna go to
22 trial and your opinion is that a trial is not in his best
23 interest, I'm not going to really bring it back up and so I
24 think his recollection of me discussing plea, plea, plea is
25 partially accurate, it now obviously is kinda clouded by maybe

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MS. HORLBECK

1. some frustration, uh, with what he got but I I think that's
2 true, I was encouraged encouraging him to to take that deal
3 because I thought that was in his best interest.

4 Q. Okay. What was the, do you recall the the, uh, the
5 evidence that would've supported the actual weight, ---

6 A. I I don't.

7 Q. --- the weight of the drugs weight.

8 A. No, ma'am, I I I really don't recall the specific
9 evidence as ---

10 Q. Okay.

11 A. --- to weight.

12 Q. Alright. Uh, just a couple more questions about the
13 credit for time served that I thought of. Uh, based on the
14 fact that Judge Welmaker would not give him that credit, did
15 you file an appeal on that?

16 A. I did not.

17 Q. Okay. And, uh, certainly Mr. Holloway would have, didn't
18 have any opportunity to post pond on these State Grand Jury
19 charges because he was already serving a sentence, is that
20 correct?

21 A. Correct.

22 Q. Okay. And did you speak to the Assistant Attorney
23 General about including credit for time served in in the plea
24 agreement?

25 A. Insofar as they will speak to you about a recommendation

1 I did and ---

2 Q. Alright.

3 A. --- and I was fair -- mostly summarily shot down ---

4 Q. Okay.

5 A. --- which is not necessarily uncommon in a State
6 Grand ---

7 Q. Alright.

8 A. --- Jury case.

9 Q. Alright. Is it just from your review of the transcript
10 and your recollection of the, of the plea hearing is it fair
11 to say there was confusion during the hearing about what
12 exactly the plea agreement was and and what the, what offense
13 if the fe -- offenses listed on the sentencing sheets were
14 correct?

15 A. I'd -- I'll go so far as to say that there was definitely
16 a scrivener's error that was corrected and that would have in
17 and of itself caused confusion; however, I don't think that at
18 any point I ever suggested to Mr. Holloway or that he had the
19 impression that he had a 3 to 10-year sentencing range, ---

20 Q. Okay.

21 A. --- it was a 7 to 25 and that the the maybe the more
22 important number is 25 to 30 or or 25, I can't remember now,
23 the mandatory sentence that he could have gotten had he gone
24 to trial and lost.

25 Q. Okay. Alright, and, uh, you've already testified that

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MS. HORLBECK

1 you think you explained to Mr. Holloway that that it it's
2 difficult to waive your right to a PCR?

3 A. Yes, ma'am.

4 Q. Alright. And you've also testified you're not, you don't
5 think that it's possible to waive PCR, ---

6 A. I ---

7 Q. --- that ---

8 A. --- as if if I'm wearin' my defense attorney hat, yes,
9 ma'am, I will argue that no, ma'am, you can't waive a PCR.

10 Q. Alright. Did you speak to Mr. Holloway about, uh, taking
11 the opportunity to give information about other co-defendants,
12 testify against other co-defendants, was that a discussion you
13 recall having with him?

14 A. Well it certainly wasn't an in depth conversation because
15 it was really part of the plea agreement; in other words, he
16 wasn't given extra credit for that, that was, that was part a
17 the contract that he had to do that to get the 12 years and to
18 not get the mandatory 25 or or 30.

19 Q. Okay, and I guess what I'm asking you is did Mr. Holloway
20 have the opportunity to speak with the Assistant Attorney
21 General's Office and the the police officers involved in the
22 case about, uh, the case and to give information and and
23 perhaps turn in other people if that was appropriate?

24 A. I, the the Attorney General's Office never approached me
25 for information. My recollection of the case is that by the

1 time I was appointed they had folks lock, stock, and barrel
2 where they wanted it ---

3 Q. Okay.

4 A. --- and so and and I'm sure aware of this it's kinda who
5 gets to the trial first is who actually gets to give
6 statements and get credit for those statements ---

7 Q. Okay.

8 A. --- and he was kind of already under the bus for that.

9 Q. Alright. Did you, did you try to call the Attorney
10 General's Office and say, Hey, he's got information, he wants
11 to cooperate, he'd like to work or he'd li -- and that not
12 work, that's not appropriate 'cause he's ser -- serving
13 sentence but has information he'd like to give, was that a
14 discussion you were able to have with the Attorney General's
15 Office?

16 A. No, ma'am, because part of my understanding was that's
17 well that was their expectation anyway. Now I I will say that
18 as as a matter of course anytime that the like for in this, in
19 this case you have a plea, I'm gonna probably go say hello to
20 Mr. Crout or maybe if the arresting officer's he's there and I
21 will say and in in anticipation of trials for co-defendants,
22 Call me if you need me, if you're talking to my client, he
23 wishes to have me there, call me. Most of the time they
24 don't, I mean, they've already been sentenced and they know
25 that they're just talking as ---

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MS. HORLBECK

1 Q. Okay.

2 A. --- as a witness but just offer that very quick and and I
3 don't believe I e -- I don't recall ever getting a call
4 saying, Hey we need ya for trial prep.

5 Q. Okay. Alright, and did, during your meetings with
6 Mr. uh, Mr. Holloway, did you actually print out discovery and
7 go over it with him if you recall?

8 A. I don't rec -- well I didn't give him his own copy, I
9 don't recall that.

10 Q. I understand, ---

11 A. Uh, ---

12 Q. --- um, and I was just asking you not not if he gave her
13 a copy, just just if you reviewed the relevant portions of
14 discovery with him.

15 A. Yes, ma'am, al -- although I I I won't say that I don't
16 claim to have gone line by line for for every page of
17 discovery, I believe that, uh, and a -- and actually I don't
18 recall whether or not I sat there and offered him paper. I
19 I -- his recollection could very well be true as I don't
20 remember. I remember and obviously if I'm goin' to visit him
21 that's gonna be the case that's freshest in my mind so I'm
22 basically regurgitating the facts that I've read and if I did
23 not have a piece a paper in my hand that or or papers or files
24 that that may have been accurate. I I remember basically him
25 having a very cogent intel -- intelligent conversation about

1 exactly what the State had against him ---

2 Q. Okay.

3 A. --- and exactly why we weren't pressing forward with
4 trial.

5 Q. Okay, thank you very much, I appreciate it.

6 THE COURT: Any redirect?

7 MR. PETRANO: No, sir, thank you.

8 THE COURT: Well thank you, you may step down.

9 THE WITNESS: Thank you.

10 MR. PETRANO: And may may this witness be excused?

11 THE COURT: Any objection this witness being excused?

12 MS. HORLBECK: None.

13 THE COURT: Alright, thank you.

14 THE WITNESS: Thank you, Judge.

15 (Whereupon, the witness left the stand.)

16 THE COURT: Anything further from the State?

17 MR. PETRANO: Uh, nothing by the way of a witness or
18 evidence, I do have a brief argument if you wanna hear it but
19 I'll wait.

20 THE COURT: Well let me ask a question concerning the
21 statute a limitations.

22 MR. PETRANO: Yes.

23 THE COURT: I mean, it it appears that he was sentenced
24 on the 9th of April 2010, that he signed his PCR and actually
25 put it in the mail on the 7th, uh, would would you be -- would

MOTIONS AND MATTERS

1 would that in your mind be considered within the statute a
2 limitations?

3 MR. PETRANO: No, and I back that up with, uh, the
4 statute and the case law, Judge, I'm referring specifically to
5 17-27-45 (A), uh, The application must be filed, that's the
6 phrase used, uh, must be filed and then also there's a ---

7 THE COURT: But do we have any way of knowing that it
8 didn't get there the next day?

9 MR. PETRANO: Uh, yeah, I kind of and if I I may, uh, it
10 looks ---

11 THE COURT: I mean, I just couldn't read it on the,
12 uh, ---

13 MR. PETRANO: It it appears to be filed the 12th, uh, and
14 if I may, uh, just pokin' around the calendar, I ---

15 THE COURT: I see a 12 there ---

16 MR. PETRANO: Yeah.

17 THE COURT: --- very clearly.

18 MR. PETRANO: What it is is he has a year and a day
19 basically because you have Rule 6(a) of the Rules of Civil
20 Procedure where you're safe ---

21 THE COURT: You don't count the day of ---

22 (Cross-talk.)

23 MR. PETRANO: Exactly, so you basically have a year and a
24 day, that would give him 'til April 10th, that was I believe a
25 Sunday if I looked, if I was able to read the calendar

MOTIONS AND MATTERS

1 correctly, April 11, 2011 is when it would have been due, that
2 was a regular Monday, it was not a holiday. The only current
3 event that day when I punched it into the Google was, uh, the,
4 uh, Ja -- the the earthquake in Japan, the ---

5 THE COURT: Um-hum.

6 MR. PETRANO: --- Fukushima, uh, happened that day, so it
7 wasn't a holiday or some, for some reason a snow day or
8 somethin' that the clerk couldn't file it that day, so it was
9 due April 11, 2011, uh, it was not filed until the following
10 day so, uh, plain and simple it's it's it's it's late, it's
11 untimely.

12 THE COURT: Which clearly be a day late.

13 MR. PETRANO: The statute ---

14 THE COURT: It's, I know that ---

15 MR. PETRANO: It's absolutely one day late.

16 THE COURT: --- but but again it's it's, this isn't like
17 somebody else who's a lawyer in town where you can physically
18 walk it to the clerk's office. The only thing he has the
19 ability to do and granted he may have waited longer than he
20 should have but but he put it in the mailbox at least four
21 days prior to the, uh, expiration date, would have no
22 opportunity to speed up the mail or have any other way to say,
23 Man, we need to ride over there and and drop it to the
24 clerk.

25 MR. PETRANO: Your Honor, I I I cannot dispute and I'll

MOTIONS AND MATTERS

1 say more, I completely agree with what you're saying but the
2 PCR is a creature of statute and the statute says file it
3 within a year and the case law and I believe it's, uh, *Pelzer*,
4 uh, and I don't have that cite on me, oh wait, I'm sorry, I,
5 uh, I printed it, *Nathaniel K. Pelzer*, if I could approach, or
6 unless you just want the cite.

7 THE COURT: Just give the cite, my law clerk will look
8 up.

9 MR. PETRANO: 378 S.C.516.

10 THE COURT: But if you have an extra copy, I'll be glad
11 to ---

12 MR. PETRANO: Sure do and that kind of explains the, uh,
13 the year and the day and the, uh, not bein' a holiday and ---

14 THE COURT: Okay.

15 MR. PETRANO: --- and I think there's even some phrasing
16 in there that says, you know, that that this is kinda sad
17 sometimes but that's the way the statute ---

18 THE COURT: But he had ---

19 MR. PETRANO: --- reads.

20 THE COURT: --- three hundred and some days before that
21 to ---

22 MR. PETRANO: Ya ya have a year that and and I certainly
23 and and I'll say this with all candor, I certainly respect his
24 answer that he was trying to make sure that he, uh, followed
25 the procedure correctly and put in all his claims specifically

MOTIONS AND MATTERS

1 as the application instructs them to d -- to do and he's
2 limited on the time that he can go and all that and I, and I
3 absolutely do respect that, I really really do but I didn't
4 write the statute, Judge.

5 THE COURT: Uh, tell me what concerning the agreement,
6 the plea agreement, this waiving of the appeal and the waiving
7 of the post-conviction relief. Now I understand there's there
8 is case law saying that you can certainly do that.

9 MR. PETRANO: Yeah, and the case law that says you can do
10 that is kinda strange in the sense that and I alluded to it
11 being a circular argument then I tried to, uh, very poorly,
12 uh, geometrically explain it be more of a figure eight but
13 what you got here is the *Spoone* case they say at the end, yeah
14 he waived it but there was a hearing to see if he had waived
15 it and then an appeal a that so yeah, he waived it but it was
16 certainly a serious process to waive. Uh, what I'm getting
17 at, Judge, is, uh, and and Mr. Harbin explained this was how
18 do you waive what ya don't know in the sense that if your
19 attorney who's advising you to waive is incompetent that can't
20 be a valid waiver and that's what the *Spoone* hearing alludes
21 to.

22 THE COURT: Yeah, I mean, let's let's say, for example,
23 that Mr. Harbin had been disbarred right before that, nobody
24 would have known that necessarily.

25 MR. PETRANO: Right.

MOTIONS AND MATTERS

1 THE COURT: Usually what they do they send out but just
2 for for purposes of the argument nobody in the courtroom knew
3 that Mr. Harbin had been disbarred the day before and so he
4 would have waived his right to but clearly he could have
5 brought back up that the the the guy who was representing
6 wasn't even a lawyer on that day.

7 MR. PETRANO: Right, and so you basically have to have a
8 mini-PCR to see if you're waiving your PCR was correct and I'm
9 not trying to be silly or funny but that's what it is ---

10 THE COURT: That ---

11 MR. PETRANO: --- and, uh, what I'm getting at in that,
12 uh, tortured reply to to answer your question specifically,
13 Judge, is that there would have to be a finding that Mr.
14 Harbin was ineffective and that that advice to, uh, go ahead
15 and go through with this take it or leave it plea agreement
16 which was actually explained what what it was, uh, that that
17 advice was ineffective, uh, and I respectfully submit that
18 that has not been shown today, so technically speaking the
19 application is untimely at least in the State's position a --
20 as we put forth, uh, it was waived, uh, number two, and then
21 ultimately, number 3, as to the meat of the matter here, uh, I
22 can get into that if you'd like. Uh, ---

23 THE COURT: We'll now ---

24 MR. PETRANO: --- Judge, I ---

25 THE COURT: --- give Ms. Horlbeck an opportunity.

MOTIONS AND MATTERS

1 MR. PETRANO: Okay. Uh, and just basically that there
2 was a scrivener's error on the sentencing sheet that was, uh,
3 corrected in court live by a judge.

4 THE COURT: Alright, thank you. Ms. Horlbeck, would you
5 like to make a statement?

6 MS. HORLBECK: Judge, just briefly. Uh, and I certainly
7 agree, uh, I'm just gonna, I've got three things that I, that
8 I wanna address. Uh, the first would be the the filing beyond
9 the 1-year statute limitations and, Judge, uh, I just point
10 out to the Court this was not raised in the State's return,
11 least I don't believe it is, uh, usually they put it right in
12 that caption and if I'm wrong, ---

13 THE COURT: If they're ---

14 MS. HORLBECK: --- I'm wrong.

15 THE COURT: --- copy is as bad as mine, they wouldn't
16 even be able to note that.

17 MS. HORLBECK: I understand they've they brought it up
18 today so that that's fine, I just point that out as as just
19 part of argument but ju [sic] more importantly I think
20 Mr. Holloway substantially complied with the statute, Judge.
21 He's incarcerated, he certainly put it in the mail, uh, in a
22 timely manner, beyond that he has, he has no control over when
23 it's clocked in and he certainly has no control over when the
24 U.S. Postal Service moves things and, you know, Your Honor
25 knows what sort of financial disarray they're in and I I don't

MOTIONS AND MATTERS

1 have any independent knowledge of the Postal Service so they
2 may move things right along; on the other hand, things might
3 sit few days, we just have no way of knowing, Judge, but
4 Mr. uh, Holloway substantially complied with the statute and
5 if if he's late at all it was only, you know, a a day and I I
6 just am asking Your Hon -- I I don't think that counts, I just
7 don't think that's enough to say he's out of time. If it had
8 been a year then we probly wouldn't be standing here but I
9 think he substantially complied with that and I'd ask Your
10 Honor not to dismiss his his PCR on that basis.

11 Uh, the waiver of his right to file a post-conviction
12 re -- relief, Judge, I think Mr. Harbin was very clear when he
13 testified that he ad -- advised Mr. Holloway that he didn't
14 really think that you could waive PCR, so that was the advice
15 that that he'd given Mr. Holloway and I think Mr. Holloway was
16 left with with the feeling that the waive of a PCR is really
17 not valid, that it's unenforceable and ---

18 THE COURT: But but you recognize that Judge Welmaker in
19 his questioning of your client went through all those factors
20 concerning entering of the agreement.

21 MS. HORLBECK: No, sir, I -- no, I did not recall, I did
22 not recall but I, Judge, I don't know that, and I understand
23 what you're saying, I don't know that going through that, the
24 going through that by the the judge would give that anymore
25 teeth not when his own attorney has just said this this is

MOTIONS AND MATTERS

1 unenforceable so I I just, I I hear what Your Honor is saying,
2 I don't know that that would be enough to give that anymore
3 teeth so I would ask that Your, that Your Honor not dismiss on
4 that basis either.

5 Uh, regarding the the sentencing sheets, Judge, I don't
6 believe that the proper argument is that it was a scrivener's
7 error. I think the issue is is what was going on in in the
8 mind of Mr. Holloway. At that point there is certainly a lot
9 of confusion, there's there's, uh, admittedly counsel said he
10 thought, he sounds like he made an error on the, uh, in
11 looking at what the offenses were on the sentencing sheets
12 that Mr. Holloway was actually pleading to, so in the mind of
13 Mr. Holloway there was confusion as to what he was pleading to
14 and I think that's, I'm asking that that be what the Court
15 focuses on, uh, and that's that's the conclusion of our
16 argument, we would just rest on the record.

17 THE COURT: Alright, thank ya.

18 MS. HORLBECK: Thank you, Judge.

19 THE COURT: I'll take this matter under advisement, when
20 I make my ruling, I will, uh, convey it to you. Thank you.

21 MR. PETRANO: Thank you, Your Honor.
22
23
24
25

1 CERTIFICATE OF REPORTER
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 February 13, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 4 through 78, 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 May 3, 2014
14

15  _____

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF
 GENERAL SESSIONS FOR
 THE THIRTEENTH JUDICIAL CIRCUIT

FILED

STATE OF SOUTH CAROLINA)
)
 -VERSUS-)
)
 LANCE HOLLOWAY,)
)
 DEFENDANT.)
 _____)

CASE NO.: 2008-GS-47-11
 Counts 2, 3, and 20

APR 09 2010

JAMES R. PARKS
 CLERK, STATE GRAND JURY

PLEA AGREEMENT

AGREEMENT made this 9th day of April, 2010, between and among the State of South Carolina, as represented by Attorney General Henry McMaster, Susan O. Porter, Chief of Prosecution and Assistant Attorney General John K. Crout and the Defendant, and his attorney, H. Chase Harbin, Esquire.

1. The Defendant, Lance Holloway, agrees to plead guilty to the offense of Trafficking Methamphetamine 28-100 grams, first offense, a violation of S.C. Code Ann. §44-53-375(C)(2)(a), a lesser-included of that alleged in Superseding Indictment Number 2008-GS-47-11 Count 2, which carries a sentence range from seven (7) years to thirty (30) years, and a fine of Fifty Thousand and 00/100 (\$50,000.00) dollars. The State will recommend a sentence of twelve (12) years to run concurrent with his other charges. This is considered a violent and serious offense.

2. The Defendant, Lance Holloway, agrees to plead guilty to the offense of Trafficking Methamphetamine 28-100 grams, first offense, a violation of S.C. Code Ann. §44-53-375(C)(2)(a), as alleged in Superseding Indictment Number 2008-GS-47-11 Count 3, which carries a sentence range from seven (7) years to thirty (30) years and a fine of Fifty Thousand

and 00/100 (\$50,000.00) dollars. The State will recommend a sentence of twelve (12) years to run concurrent with his other charges. This is considered a violent and serious offense.

3. The Defendant, Lance Holloway, agrees to plead guilty to the offense of Distribution of Methamphetamine, first offense, a violation of S.C. Code Ann. §44-53-375(B)(1), as alleged in Superseding Indictment Number 2008-GS-47-11 Count 20, which carries a sentence range of up to fifteen (15) years and a fine of Fifteen Thousand and 00/100 (\$15,000.00) dollars. The State will recommend a sentence of twelve (12) years to run concurrent with his other charges.

4. The Defendant, Lance Holloway, agrees to fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of the importation, possession, and distribution of controlled substances and related unlawful activities. This cooperation is to include, but is not limited to, truthful and complete debriefings of the Defendant's knowledge concerning unlawful drug activities and related unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be truthful or to cooperate at any stage can cause the obligations of the State of South Carolina under this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the State under this Agreement become null and void due to the lack of truthfulness or cooperation on the part of the Defendant, the Defendant understands that: (1) the

Defendant will not be permitted to withdraw his plea of guilty to the offense described above; (2) any and all additional charges known to the State may be filed in the appropriate county; (3) the State may argue for a maximum sentence for the offenses to which the Defendant has pled guilty; (4) the State may use any and all information and testimony provided by the Defendant in the prosecution of the Defendant for all charges; and, (5) the State may advise the Department of Corrections of the Defendant's status as an uncooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial level.

5. The Defendant, Lance Holloway, understands and agrees that any and all assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign, which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are the

proceeds of unlawful drug activities or are directly or indirectly related to the unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, in portions to be determined by the South Carolina Attorney General, all conveyances, including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of controlled substances. By signing this Agreement, the Defendant consents to civil forfeiture of all assets currently in the possession of the government and further consents to civil forfeiture of all drug related assets seized by law enforcement agents in connection with this investigation.

6. The Defendant, Lance Holloway, further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should she be requested to do so regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related or not. This Plea Agreement is expressly contingent upon successful completion, to the satisfaction of the State, of the polygraph examination(s).

7. The Attorneys for the State reserve the right to summarize all evidence, which would have been presented at trial to establish a factual basis for the plea.

8. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

9. The Defendant, Lance Holloway, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in

South Carolina. The Defendant, Lance Holloway, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, Lance Holloway, understands that he has a right to file a post conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post conviction relief action.

10. The Defendant, Lance Holloway, understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws, and complying with the terms and conditions of this Agreement, both before and after sentencing, and any bond executed in this case. This Agreement in no way limits or affects the Defendant's potential exposure to further prosecution by any Solicitor's Office in the State of South Carolina or the United States Attorney for conduct which is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

11. The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void.

4/9/10
DATE

4/9/10
DATE

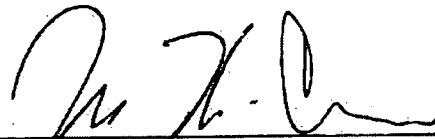
Lance D. Holloway
Lance Holloway
Defendant

H. Chase Harbin
H. Chase Harbin, Esquire
Attorney for Defendant

Henry McMaster
Attorney General of South Carolina

Susan O. Porter
Chief of Prosecution

4-9-10
DATE

By: 

John K. Crout
Assistant Attorney General
State Grand Jury

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Holloway, Lance Q., SCDC# 245099,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-23-2441

ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUN 17 AM 9 39

PROCEDURAL HISTORY

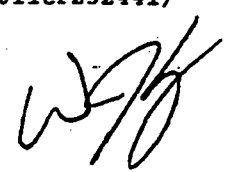
This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 12, 2011. The Respondent made its Return on September 20, 2011. An evidentiary hearing into the matter was convened on February 13, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and was represented by Caroline M Horlbeck, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, H. Chase Harbin, Esquire also testified. This Court had before it the records of the Greenville County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated within the South Carolina Department of Corrections. He pled guilty on April 9, 2010 before the Hon. G. Edward Welmaker. The Applicant was originally indicted by the South Carolina State grand jury 2008GS4711 (the June

Holloway, Lance Q., Order of Dismissal (2011CP232441)

Page 1 of 9



2009 term). The original State grand jury indictment is a multi-count indictment against multiple defendants. The counts applicable to the Applicant are counts 2, 3, and 20. The Applicant was originally indicted for two counts (counts 2 and 3) of trafficking methamphetamines, i.e. CDR code 0370 (South Carolina code section 44 - 53 - 0375(C)(2)(c)). The Applicant was also originally indicted (count 20) for manufacturing or distribution of methamphetamine, i.e. CDR code 3014 (South Carolina code section 44 - 53 - 0375(B)(1)). Pursuant to a negotiated plea agreement, the Applicant pled guilty as indicted for count 20 and to lesser charges for counts 2 and 3. The negotiated plea was for a recommendation by the State of 12 years. At the PCR hearing, the State introduced a copy of a written plea agreement. The written plea agreement is dated the same day of the guilty plea, i.e. April 9, 2010; the plea agreement is signed by the Applicant himself, his attorney, and the prosecutor from the Atty. Gen.'s office.

At the outset of the PCR hearing before this court, the Applicant's PCR counsel explained that there was a potential conflict considering the fact that she represented one of the codefendants in the original case. This court found that there was no conflict.

The State argued that the PCR application was untimely and that a full PCR hearing was precluded by the fact that the written plea agreement contained a clause which waived PCR. This court took the untimeliness and the waiver of PCR arguments under advisement.

At the evidentiary hearing, Applicant proceeded for the most part on the allegations stated in the application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified that he met with defense counsel one or more times and that he, the Applicant, wanted to go to trial and was not interested in the 12 year plea offer relayed to him by his attorney. The Applicant claimed that he had yet to see all of his discovery. The Applicant explained that he wanted one or more witnesses to testify on his behalf. The Applicant explained that when he signed the sentencing sheets before the plea the sheets said 10 to 28 g at the time he saw them and signed them. The Applicant explained that they were changed after he signed them. Applicant explained that he thought he was pleading to what was on the sentencing sheets, i.e. 10 to 28 g. The Applicant explained that defense counsel did review the plea agreement with him and did specifically review the section that waived PCR. The Applicant explained that defense counsel told him that waiving PCR was probably a violation of his rights but that he signed the plea agreement anyway, based on the advice of counsel-because he did not think it was enforceable. The Applicant explained, consistent with the plea transcript, that there was some confusion during the plea proceedings regarding the correct CDR code of the negotiated lesser included offenses. The Applicant explained that after about 9 months it came to his attention that his max out date changed. The Applicant testified that if he had known he was pleading to 28 to 100 g he would not have pled. At the time of the plea he did not know what 10

to 28 g carried, but he does now. Applicant also explained that he wanted credit for time served because he thought he was supposed to get that credit even though it was for another offense. The Applicant also explained how he met with the prosecutor and testified against one or more codefendants, as provided in the plea agreement. The Applicant explained that he did not discuss an appeal with his attorney but that 7 days after the plea he called his attorney's office and asked to file an appeal but he never got a chance to speak with his attorney. However, the Applicant explained that from his perspective it seemed that the appeal was taking care of by that simple phone call.

Plea counsel testified that he recalled his representation of the Applicant. Plea counsel explained that he reviewed the discovery with the Applicant, they discussed the minimum and maximum potential penalties, and that they were going to shoot for 8 years. Plea counsel acknowledged that there was some confusion during the plea proceedings on the part of the prosecutor; plea counsel explained that the sentencing sheets when originally presented contained a 10 to 28 g charge versus the negotiated 28 to 100 g. Plea counsel explained that the potential error was in favor of the Applicant. Plea counsel explained that he had no knowledge whatsoever of any type of appeal request and that if he had received a timely appeal request certainly would have honored it and filed the appropriate notice. Plea counsel explained that the credit for time served before the plea was more of a gesture because the Applicant was in custody for another charge. Plea counsel testified that he certainly did review the plea agreement with the Applicant and that they specifically discussed the section that waived PCR. Plea counsel explained that he advised the Applicant that a waiver of PCR is somewhat circular. Finally, plea counsel testified that it was the Applicant told him that he wanted to plead guilty; plea counsel

explained that he thought it was in the Applicant's best interest to do so and that once his client told him he wanted to plea then that was the course he followed. Council noted that he did not recall giving the Applicant a copy of the discovery or whether they went through a line by line by line-but they certainly reviewed the information.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the Applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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. As discussed throughout, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

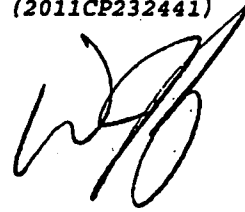
The State argues that this application is untimely. The state relies on a strict interpretation of South Carolina code section 17 – 27 – 45 (a). The State explained that the Applicant pled guilty on April 9, 2010 and that the PCR statute allows for one year, then adding one additional day per rule 6(a) of South Carolina Rules of Civil Procedure means that this PCR application had to be filed by April 10, 2011. Because April 10, 2011 was a Sunday, the PCR application had to be filed by April 11, 2011. The PCR application was not filed until April 12, 2011. The State argued consistent with and provided a copy of Pelzer v. State of South Carolina, 378 SC 516

(2008). Similarly, the State argued that the waiver of PCR was valid pursuant to Spoone v. State, 379 S.C. 138 (2008). This court is specifically not ruling on the timeliness or waiver issues. Because this court directed the state to draft a proposed order including the above discussion of the waiver and timeliness issues, there is no need for the State to file any type of rule 59(e), SCRPC motion.¹

At first blush, the Applicant's claim regarding an amended sentencing sheet appears significant. However, a review of the plea transcript deflates this claim. This court acknowledges, as did the plea court, that there was some momentary confusion as to the negotiated lesser-included sentence regarding counts 2 and 3. The learned plea court addressed the issue and specifically asked the defendant whether he was sure he wanted to plea to 2 counts of 28 to 100 g, see page 10 of the guilty plea transcript. This court notes that the defendant told the plea court on one or more occasions that he was satisfied with the services of his attorney, for example see page 13 of the guilty plea transcript. This Court specifically finds plea counsel credible in that he and the Applicant reviewed the discovery materials and were fully aware of the specific nature of the intended negotiated plea details. Mindful of the Applicant's testimony that he called his attorney's office after the plea, this Court does not find sufficient evidence that the Applicant ever requested that plea counsel file an appeal – plea counsel explained that he would have complied had such a request been made.² Finally, the plea court specifically rejected the Applicant's request for credit for time served while he was incarcerated for another charge (although of course there is nothing to suggest that the plea court had the authority to do anything different considering South Carolina code 24 – 13 – 40).

¹ This court is of course aware of Marlar v. State, 375 S.C. 407 (2007).

² But see, Rule 203(d)(1)(B)(iv), SCACR.



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. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

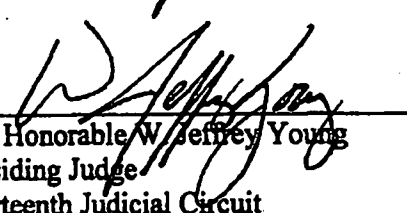
This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

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), SCRCR, 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. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief 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 9 day of Jan, 2013. 2014


The Honorable W. Jeffrey Young
Presiding Judge
Thirteenth Judicial Circuit

Sumter, South Carolina.

FILED

STATE GRAND JURY OF SOUTH CAROLINA

JUN 10 2009

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA)

CASE NO.: 2008-GS-47-11)

VS.)

**SUPERSEDING
INDICTMENT FOR
UNLAWFUL DRUGS**

ROBERT YOUNG,)
 KIM STOVER,)
 FRANK POSEY,)
 TREVOR KAY,)
 BRITTANY DUNCAN,)
 JOHNNY JONES,)
 BRYAN STEGALL,)
 STACY ANDERSON,)
 RAINER KOCH,)
 ERNEST CRAFT,)
 PATRICK BRIDGES,)
 APRIL COX,)
 DESIREE HOPKINS,)
 JOEL HALL,)
 SHANNON SMITH,)
 CHRIS LATHAM,)
 EDGAR SHIPMAN,)
 MELINDA CUDDY,)
 CANDACE DUNCAN,)
 JOSEPH DIFRESCO,)
 ANTHONY GRACELY,)
 JOHN HAM,)
 SALVADOR CHAVEZ,)
 KIMBERLY TAYLOR,)
 LANCE HOLLOWAY,)
 THOMAS STANCIL,)
 ROBIN GONZALES,)
 CARLA SWEET,)
 TIMOTHY LEE HEIL,)

DEFENDANTS.)

Trafficking Methamphetamine
 (Conspiracy)

S.C. Code Ann. § 44-53-375(C)

Trafficking Mehtamphetamine
 10 - 28 grams
 S.C. Code Ann. § 44-53-375(C)(1)(a)

Trafficking Methamphetamine
 28 - 100 grams
 S.C. Code Ann. § 44-53-375(C)(2)(a)

Distribution of Methamphetamine
 S.C. Code Ann. § 44-53-375(B)(1)

Simple Possession of Marijuana
 S.C. Code Ann. § 44-53-370(d)(3)

Trafficking Cocaine
 10 - 28 grams
 S.C. Code Ann. § 44-53-370(e)(2)

Possession of Methamphetamine
 S.C. Code Ann. § 44-53-375(A)

Possession With Intent to Distribute
 Methamphetamine
 S.C. Code Ann. § 44-53-375(B)

Possession of a Firearm During the
 Commission of a Violent Crime
 S.C. Code Ann. § 16-23-490

Trafficking Methamphetamine >100
grams

S.C. Code Ann. § 44-53-375 (C)(3)

Possession of a Stolen Pistol

S.C. Code Ann. § 16-23-30

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on June 10, 2009 the State Grand Jurors present upon their oath:

COUNT I
TRAFFICKING METHAMPHETAMINE
(CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)(5)

That ROBERT YOUNG, KIM STOVER, FRANK POSEY, TREVOR KAY, BRITTANY DUNCAN, JOHNNY JONES, BRYAN STEGALL AND TIMOTHY LEE HEIL, and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville County and Pickens County of South Carolina, during the period of time extending from on or about June 1, 2007 until the present, conspire to sell, manufacture, deliver, purchase, or bring into this State, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT II
TRAFFICKING METHAMPHETAMINE
(CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)(5)

That STACY ANDERSON, TREVOR KAY, RAINER KOCH, ERNEST CRAFT, PATRICK BRIDGES, APRIL COX, DESIREE HOPKINS, JOEL HALL, SHANNON SMITH, CHRIS LATHAM, FRANK POSEY, EDGAR SHIPMAN, MELINDA CUDDY, CANDACE DUNCAN, JOSEPH DIFRESCO, LANCE HOLLOWAY AND ANTHONY GRACELY and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville County, Spartanburg County and Pickens County of South Carolina, during the period of time extending from on or about June 1, 2007 until the present, conspire to sell, manufacture, deliver, purchase, or bring into this State, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

**COUNT III
TRAFFICKING METHAMPHETAMINE
(CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)(5)**

That JOHN HAM, SALVADOR CHAVEZ, KIMBERLY TAYLOR, PATRICK BRIDGES, LANCE HOLLOWAY, JOEL HALL AND THOMAS STANCIL, and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville County, Spartanburg County and Pickens County of South Carolina, during the period of time extending from on or about November 1, 2007 until the present, conspire to sell, manufacture, deliver, purchase, or bring into this State, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as

amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT IV
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)(a)

That ROBERT YOUNG did in Greenville County, on or about February 20, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, more than ten (10) grams but less twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT V
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)(a)

That ROBERT YOUNG did in Greenville County, on or about February 25, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VI
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)(a)

That ROBERT YOUNG did in Greenville County, on or about February 27, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VII
TRAFFICKING METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(C)(5)

That ROBERT YOUNG did in Greenville County, on or about February 27, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VIII
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)

That JOHNNY JONES did in Greenville County, on or about February 22, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, more than ten (10) grams but less twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT IX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That STACY ANDERSON did in Pickens County, on or about February 20, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT X
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)(a)

That STACY ANDERSON did in Greenville County, on or about May 7, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XI
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)(a)

That DESIREE HOPKINS did in Greenville County, on or about March 8, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or

"crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XII
POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRITTANY DUNCAN did in Greenville County, on or about June 3, 2008, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet or conspire to manufacture, distribute, dispense, deliver, or purchase or possess with intent to manufacture, distribute, dispense or deliver a quantity of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That JOHN HAM did in Greenville County, on or about July 22, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime.

having significance in more than one county of this State.

COUNT XIV
TRAFFICKING METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(C)(5)

That JOHN HAM did in Greenville County, on or about July 23, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XV
SIMPLE POSSESSION OF MARIJUANA
S.C. Code Ann. § 44-53-370(d)(3)

That JOHN HAM did in Greenville County, on or about July 23, 2008, knowingly possess (actually or constructively), a quantity of marijuana, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XVI
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)(a)

That JOHN HAM did in Greenville County, on or about July 23, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams

or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XVII
TRAFFICKING COCAINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-370(e)(2)(a)(1)

That JOHN HAM did in Greenville County, on or about July 23, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, more than ten (10) grams but less twenty-eight (28) grams of cocaine, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XVIII
TRAFFICKING METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(C)(5)

That SALVADOR CHAVEZ did in Greenville County, on or about July 23, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XIX
TRAFFICKING METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(C)(5)

That SALVADOR CHAVEZ did in Greenville County, on or about July 23, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That LANCE HOLLOWAY did in Spartanburg County, on or about August 1, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That ERNEST CRAFT did in Greenville County, on or about June 5, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such

conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That KIM TAYLOR did in Pickens County, on or about May 19, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That KIM TAYLOR did in Pickens County, on or about June 2, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXIV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MELINDA CUDDY did in Pickens County, on or about June 2, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That JOEL HALL did in Greenville County, on or about April 1, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXVI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That JOEL HALL did in Greenville County, on or about April 22, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXVII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That JOEL HALL did in Greenville County, on or about April 30, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXVIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That SHANNON SMITH did in Greenville County, on or about May 20, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled

substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXIX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That SHANNON SMITH did in Greenville County, on or about May 20, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That PAT BRIDGES did in Greenville County, on or about August 13, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime

having significance in more than one county of this State.

COUNT XXXI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That PAT BRIDGES did in Greenville County, on or about August 19, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXXII
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)(a)

That PAT BRIDGES did in Greenville County, on or about August 21, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XXXIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CANDACE DUNCAN did in Greenville County, on or about September 10, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXXIV
POSSESSION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(A)

That CANDACE DUNCAN did in Greenville County, on or about September 16, 2008, knowingly possess (actually or constructively), a quantity of methamphetamine a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XXXV
DISTRIBUTION OF METHAMPHETAMINE BY CONSPIRACY
S.C. Code Ann. § 44-53-375(B)

That CHRIS LATHAM did in Pickens County, on or about June 2, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such

conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXXVI
DISTRIBUTION OF METHAMPHETAMINE BY CONSPIRACY
S.C. Code Ann. § 44-53-375(B)

That CHRIS LATHAM did in Greenville County, on or about August 13, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXXVII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That EDGAR SHIPMAN did in Greenville County, on or about August 19, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXXVIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That EDGAR SHIPMAN did in Greenville County, on or about August 26, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXXIX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That EDGAR SHIPMAN did in Greenville County, on or about August 29, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XL
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That EDGAR SHIPMAN did in Greenville County, on or about September 11, 2008,

knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XLI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That ROBIN GONZALES did in Greenville County, on or about May 9, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XLII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CARLA SWEET did in Greenville County, on or about May 14, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime

having significance in more than one county of this State.

COUNT XLIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That THOMAS STANCIL did in Pickens County, on or about August 22, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XLIV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRYAN STEGALL did in Greenville County, on or about March 19, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XLV
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)(a)

That PAT BRIDGES did in Greenville County, on or about September 16, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XLVI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That TREVOR KAY did in Pickens County, on or about August 29, 2008, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XLVII
POSSESSION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-370(A)

That ROBERT YOUNG did in Laurens County, on or about August 8, 2008, knowingly possess a quantity of methamphetamine, a controlled substance under the provisions of § 44-53-

110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XLVIII
TRAFFICKING METHAMPHETAMINE > 100 GRAMS
S.C. Code Ann. § 44-53-375 (C)(3)

That ROBERT YOUNG did in Laurens County, on or about August 8, 2008, knowingly possess (actually or constructively), deliver, sell, or bring into this State, one hundred (100) grams or more, but less than two hundred (200) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XLIX
POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
S.C. Code Ann. § 16-23-490

That ROBERT YOUNG did in Laurens County, South Carolina on or about August 8, 2008 possess or visibly display three firearms, described as a Smith and Weston 9MM Model #59 Serial #A37609A; a Davis Industries 32 Caliber Derringer Model #32 Serial #128687 and a Taurus 45 Caliber Model #PT745C Serial #NYC71550, during the commission of a violent crime, to wit, Trafficking Methamphetamine, such conduct not having been authorized by law.

COUNT L
POSSESSION OF A STOLEN PISTOL
S.C. Code Ann. § 16-23-30

That ROBERT YOUNG did in Laurens County, South Carolina on or about August 8, 2008 receive, or possess, sell, conceal, or dispose of a stolen pistol described as a Taurus 45 Caliber Model #PT745C Serial #NYC71550.

COUNT LI
POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
S.C. Code Ann. § 16-23-490

That TIMOTHY LEE HEIL did in Laurens County, South Carolina on or about August 8, 2008 possess or visibly display two firearms, described as a Valor 22LR Caliber Revolver Serial #35145 and a Smith and Weston 9MM Model #SW9E Serial #PBF1495 during the commission of a violent crime, to wit, Trafficking Methamphetamine, such conduct not having been authorized by law.

COUNT LII
POSSESSION OF A STOLEN PISTOL
S.C. Code Ann. § 16-23-30

That TIMOTHY LEE HEIL did in Laurens County, South Carolina on or about August 8, 2008 receive, or possess, sell, conceal, or dispose of a stolen pistol described as a ^{SMITH & WESTON} Weston 9MM Model #SW9E Serial #PBF1495.

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

A TRUE Bill

SJ Glenn
FOREMAN

Henry McMaster
HENRY McMASTER (jkc)
ATTORNEY GENERAL