

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

ORIGINAL

RECEIVED

CCT - 7 2010

S.C. SUPREME COURT

BENJI DALE BOWEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. PACHAK
Appellate Defender

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

ATTORNEY FOR PETITIONER

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT 1

APPLICATION FOR POST-CONVICTION RELIEF 30

RETURN 38

POST-CONVICTION RELIEF HEARING TRANSCRIPT 45

ORDER OF DISMISSAL 82

CLERK OF COURT RECORDS 89

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 BENJI D. BOWEN,)
)
 DEFENDANT.)
 _____)

2007-GS-23-0051, 0072, 0076,
0086, 0088 & 0089

EXCERPT OF
TRANSCRIPT OF RECORD

AUGUST 11, 2008
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE D. GARRISON HILL

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JOYCE MONTS, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

SCOTT ROBINSON, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
CERTIFICATE OF REPORTER	29

COURT REPORTER'S NOTE: THE GUILTY PLEAS OF THE FOLLOWING DEFENDANTS WERE TAKEN ALONG WITH THIS PLEA; TONIA WALKER, KRISTY CARTEE AND LOIS MARTIN.

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
-----------	--------------------	-----------	-----------------

(NO EXHIBITS WERE PRESENTED DURING THIS HEARING)

1 **MADAME CLERK:** YOUR HONOR, THIS IS INDICTMENT 2006-GS-
2 23-2836, TONIA J. WALKER, INDICTED FOR POSSESSION OF CRACK
3 COCAINE WITH INTENT TO DISTRIBUTE, PLEADING TO POSSESSION OF
4 COCAINE BASE, FIRST. IT IS A TRUE BILL.

5 INDICTMENT 2007-GS-23-0051, BENJI DALE BOWEN, INDICTED
6 FOR POSSESSION OF ECSTASY, PLEADING TO POSSESSION OF
7 ECSTASY, SECOND. IT IS A TRUE BILL.

8 INDICTMENT 2007-GS-23-0072, INDICTED FOR POSSESSION OF
9 METHAMPHETAMINE WITH INTENT TO DISTRIBUTE, PLEADING TO
10 POSSESSION WITH INTENT TO DISTRIBUTE METH, THIRD. IT IS A
11 TRUE BILL.

12 INDICTMENT 2007-GS-23-0088, INDICTED FOR UNLAWFUL
13 CARRYING OF A PISTOL, PLEADING TO THE SAME. IT IS A TRUE
14 BILL.

15 INDICTMENT 2007-GS-23-0089, INDICTED FOR POSSESSION OF
16 METHAMPHETAMINE WITH INTENT TO DISTRIBUTE, PLEADING TO
17 POSSESSION WITH INTENT TO DISTRIBUTE METH, THIRD. IT IS A
18 TRUE BILL.

19 INDICTMENT 2007-GS-23-0076, BENJI DALE BOWEN, INDICTED
20 FOR POSSESSION OF METHAMPHETAMINE, PLEADING TO POSSESSION OF
21 METHAMPHETAMINE, THIRD. IT IS A TRUE BILL.

22 INDICTMENT 2007-GS-23-0086, BENJI DALE BOWEN, INDICTED
23 FOR POSSESSION OF A CONTROLLED SUBSTANCE, PLEADING TO
24 POSSESSION OF OXYCODONE, SECOND. CORRECTION, OXYCODONE,
25 THIRD OFFENSE. IT IS A TRUE BILL.

1 INDICTMENT 2008-GS-23-0628, KRISTY RUNION CARTEE,
 2 INDICTED FOR UNLAWFUL CONDUCT TOWARDS A CHILD, PLEADING TO
 3 THE SAME. IT IS A TRUE BILL.

4 INDICTMENT 2008-GS-23-0638, KRISTY CARTEE, INDICTED FOR
 5 UNLAWFUL CARRYING OF A PISTOL, PLEADING TO THE SAME. IT IS
 6 A TRUE BILL.

7 INDICTMENT 2008-GS-23-2671, LOIS FAYE MARTIN, INDICTED
 8 FOR SHOPLIFTING, THIRD OR ABOVE, PLEADING TO THE SAME. IT
 9 IS A WAIVER.

10 PLEASE RAISE YOUR RIGHT HAND.

11 (WHEREUPON ALL THE DEFENDANTS WERE DULY SWORN)

12 **THE COURT:** ALL RIGHT. DO YOU EACH UNDERSTAND YOU HAVE
 13 THE RIGHT TO ENTER YOUR PLEA BY YOURSELF AND NOT WITH A
 14 GROUP OF PEOPLE, AND UNDERSTANDING THAT RIGHT DO YOU STILL
 15 WISH TO ENTER YOUR PLEA WITH THIS GROUP, MS. WALKER?

16 **MS. WALKER:** YES, SIR.

17 **THE COURT:** MR. BOWEN?

18 **MR. BOWEN:** YES, YOUR HONOR.

19 **THE COURT:** MS. CARTEE?

20 **MS. CARTEE:** YES, SIR.

21 **THE COURT:** AND, MS. MARTIN?

22 **MS. MARTIN:** YES, SIR.

23 **THE COURT:** ALL RIGHT. HAVE YOU HAD ANY ALCOHOL, DRUGS
 24 OR MEDICATION IN THE PAST FORTY-EIGHT HOURS TO THE EXTENT
 25 THAT IT AFFECTS YOUR ABILITY TO UNDERSTAND WHAT'S HAPPENING

1 HERE IN COURT, MS. WALKER?

2 MS. WALKER: NO, SIR.

3 THE COURT: MR. BOWEN?

4 MR. BOWEN: NO, YOUR HONOR.

5 THE COURT: MS. CARTEE?

6 MS. CARTEE: I'VE HAD PRESCRIPTION MEDICATION, BUT IT
7 DON'T AFFECT MY ABILITY.

8 THE COURT: YOU DON'T HAVE ANY PROBLEM WITH MAKING
9 RATIONAL DECISIONS OR THINKING CLEARLY?

10 MS. CARTEE: NO, SIR.

11 THE COURT: AND HOW ABOUT YOU, MS. MARTIN?

12 MS. MARTIN: I HAVEN'T HAD ANYTHING.

13 THE COURT: ALL RIGHT. IF YOU WOULD, JUST TELL ME HOW
14 FAR YOU WENT IN SCHOOL AND WHAT KIND OF WORK YOU DO OR HAVE
15 DONE IN THE PAST, MS. WALKER.

16 MS. WALKER: EIGHTH GRADE. I WORK FOR THE CATTLE
17 AUCTION FOR MARTIN AND MARTIN. AND IN THE PAST I DID HOME
18 HEALTH CARE.

19 THE COURT: THANK YOU. MR. BOWEN?

20 MR. BOWEN: I WENT TO THE NINTH GRADE. AND I'M A PIPE-
21 FITTER BY TRADE, YOUR HONOR.

22 THE COURT: MS. CARTEE?

23 MS. CARTEE: WENT TO COLLEGE FOR MY EMT AND EMT
24 INTERMEDIATE. I WAS -- I GOT HURT BEING AN EMT.

25 THE COURT: MS. MARTIN?

1 MS. MARTIN: I WENT TO THE TENTH GRADE. AND I WAS A
2 HOUSEKEEPING SUPERVISOR.

3 THE COURT: HAVE YOU HAD ENOUGH TIME TO TALK TO YOUR
4 LAWYER ABOUT YOUR CASE AND ARE YOU FULLY SATISFIED WITH YOUR
5 LAWYER'S SERVICES, MS. WALKER?

6 MS. WALKER: YES, SIR.

7 THE COURT: MR. BOWEN?

8 MR. BOWEN: YES, YOUR HONOR.

9 THE COURT: MS. CARTEE?

10 MS. CARTEE: YES, SIR.

11 THE COURT: MS. MARTIN?

12 MS. MARTIN: YES, SIR.

13 THE COURT: DO YOU UNDERSTAND THE MAXIMUM SENTENCE YOU
14 FACE FOR EACH CHARGE YOU'RE PLEADING GUILTY TO AND THE
15 ELEMENTS OF THE CRIME THE STATE WOULD HAVE TO PROVE IN ORDER
16 TO CONVICT YOU AT A TRIAL ON EACH CRIME YOU'RE PLEADING
17 GUILTY TO, MS. WALKER?

18 MS. WALKER: YES, SIR.

19 THE COURT: MR. BOWEN?

20 MR. BOWEN: YES, YOUR HONOR.

21 THE COURT: MS. CARTEE?

22 MS. CARTEE: YES, SIR.

23 THE COURT: AND, MS. MARTIN?

24 MS. MARTIN: YES, SIR.

25 THE COURT: ARE YOU PLEADING GUILTY BECAUSE YOU ARE

1 GUILTY, MS. WALKER?

2 MS. WALKER: YES, SIR.

3 THE COURT: MR. BOWEN?

4 MR. BOWEN: YES, YOUR HONOR.

5 THE COURT: MS. CARTEE?

6 MS. CARTEE: YES, SIR.

7 THE COURT: MS. MARTIN?

8 MS. MARTIN: YES, SIR.

9 THE COURT: HAS ANYONE THREATENED YOU OR PUT ANY
10 PRESSURE ON YOU TO GET YOU TO COME TO COURT TODAY AND ENTER
11 YOUR PLEA, MS. WALKER?

12 MS. WALKER: NO, SIR.

13 THE COURT: MR. BOWEN?

14 MR. BOWEN: NO, YOUR HONOR.

15 THE COURT: MS. CARTEE?

16 MS. CARTEE: NO, SIR.

17 THE COURT: MR. MARTIN -- MS. MARTIN?

18 MS. MARTIN: NO, SIR.

19 THE COURT: ARE YOU ENTERING THE PLEA OF YOUR OWN FREE
20 CHOICE AND WILL AND HAVE YOU HAD ENOUGH TIME TO THINK ABOUT
21 WHAT YOU'RE DOING, MR. WALKER -- MS. WALKER?

22 MS. WALKER: YES, SIR.

23 THE COURT: MR. BOWEN?

24 MR. BOWEN: YES, YOUR HONOR.

25 THE COURT: MS. CARTEE?

1 MS. CARTEE: YES, SIR.

2 THE COURT: MS. MARTIN?

3 MS. MARTIN: YES, SIR.

4 THE COURT: DO YOU UNDERSTAND THAT YOU HAVE THE RIGHT
5 TO A JURY TRIAL, AND AT A JURY TRIAL YOU'D BE PRESUMED
6 INNOCENT, AND YOU WOULDN'T HAVE TO PROVE YOU WERE NOT
7 GUILTY, YOU WOULDN'T HAVE TO PROVE ANYTHING BECAUSE THE
8 BURDEN OF PROOF IS ON THE STATE, AND YOU COULD ONLY BE
9 CONVICTED IF ALL TWELVE JURORS AGREED THE STATE HAD PROVEN
10 EACH AND EVERY ELEMENT OF THE CRIME BEYOND A REASONABLE
11 DOUBT? DO YOU UNDERSTAND THAT, MS. WALKER?

12 MS. WALKER: YES, SIR.

13 THE COURT: MR. BOWEN?

14 MR. BOWEN: GUILTY AS CHARGED, YOUR HONOR.

15 THE COURT: I UNDERSTAND THAT. I'M ASKING YOU IF YOU

16 ---

17 MR. BOWEN: YES, SIR.

18 THE COURT: --- AGREE WITH ---

19 MR. BOWEN: YES, SIR, I UNDERSTAND.

20 THE COURT: --- WHAT I SAID. OKAY. MS. CARTEE?

21 MS. CARTEE: YES, SIR.

22 THE COURT: AND, MS. MARTIN?

23 MS. MARTIN: YES, SIR.

24 THE COURT: AT YOUR TRIAL YOU COULD SEE AND HEAR THE
25 WITNESSES. YOU COULD BRING WITNESSES IN USING THE SUBPOENA

1 POWER OF THE COURT. YOU COULD TESTIFY IF YOU WANTED TO OR
2 YOU COULD CHOOSE TO NOT TESTIFY. AND YOU COULD PRESENT ANY
3 DEFENSES YOU MIGHT HAVE. AND YOU COULD HAVE YOUR LAWYER
4 ASSIST YOU IN DOING ALL THOSE THINGS. DO YOU UNDERSTAND
5 THOSE THINGS AND THOSE RIGHTS YOU WOULD HAVE AT A JURY
6 TRIAL, MS. WALKER?

7 MS. WALKER: YES, SIR.

8 THE COURT: MR. BOWEN?

9 MR. BOWEN: YES, YOUR HONOR.

10 THE COURT: MS. CARTEE?

11 MS. CARTEE: YES, SIR.

12 THE COURT: MS. MARTIN?

13 MS. MARTIN: YES, SIR.

14 THE COURT: I DON'T KNOW IF YOU HAVE A DEFENSE OR NOT,
15 BUT DO YOU UNDERSTAND BY PLEADING GUILTY YOU MUST GIVE UP
16 YOUR RIGHT TO PRESENT ONE AND ALSO THE RIGHT TO CHALLENGE OR
17 CONTEST ANY OF THE EVIDENCE IN YOUR CASE INCLUDING ANY
18 STATEMENTS YOU MAY HAVE GIVEN TO POLICE, SEARCHES THAT WERE
19 MADE, TESTING THAT WAS DONE OR SHOULD HAVE BEEN DONE? DO
20 YOU UNDERSTAND THAT, MS. WALKER?

21 MS. WALKER: YES, SIR.

22 THE COURT: MR. BOWEN?

23 MR. BOWEN: YES, YOUR HONOR.

24 THE COURT: MS. CARTEE?

25 MS. CARTEE: YES, SIR.

1 THE COURT: MS. MARTIN?

2 MS. MARTIN: YES, SIR.

3 THE COURT: AS I MENTIONED TO YOU, AT YOUR TRIAL YOU
4 COULD TESTIFY OR YOU COULD CHOOSE NOT TO TESTIFY. IF YOU
5 CHOSE NOT TO TESTIFY AND REMAINED SILENT THE COURT WOULD
6 TELL THE JURY THAT YOU HAVE THE ABSOLUTE RIGHT TO THAT UNDER
7 THE LAW AND THEY COULD NOT HOLD THAT AGAINST YOU OR TAKE IT
8 INTO ACCOUNT IN DETERMINING THE VERDICT. DO YOU UNDERSTAND
9 THAT, MS. WALKER?

10 MS. WALKER: YES, SIR.

11 THE COURT: MR. BOWEN?

12 MR. BOWEN: YES, SIR.

13 THE COURT: MS. CARTEE?

14 MS. CARTEE: YES, SIR.

15 THE COURT: AND, MS. MARTIN?

16 MS. MARTIN: YES, SIR.

17 THE COURT: UNDERSTANDING THOSE RIGHTS YOU WOULD HAVE
18 AT A JURY TRIAL AND UNDERSTANDING FURTHER YOU MUST GIVE THEM
19 UP IN ORDER TO PLEAD GUILTY DO YOU STILL WISH TO PLEAD
20 GUILTY OR WOULD YOU LIKE TO HAVE YOUR CASE SET FOR A JURY
21 TRIAL? WHICH WOULD YOU LIKE TO DO, MS. WALKER?

22 MS. WALKER: PLEAD GUILTY.

23 THE COURT: HOW ABOUT YOU, MR. BOWEN?

24 MR. BOWEN: PLEAD GUILTY, YOUR HONOR.

25 THE COURT: MS. CARTEE?

1 MS. CARTEE: PLEAD GUILTY.

2 THE COURT: AND, MS. MARTIN?

3 MS. MARTIN: PLEAD GUILTY.

4 THE COURT: ALL RIGHT. HAVE YOU UNDERSTOOD ALL MY
5 QUESTIONS, MS. WALKER?

6 MS. WALKER: YES, SIR.

7 THE COURT: MR. BOWEN?

8 MR. BOWEN: YES, SIR.

9 THE COURT: MS. CARTEE?

10 MS. CARTEE: YES, SIR.

11 THE COURT: AND, MS. MARTIN?

12 MS. MARTIN: YES, SIR.

13 THE COURT: ALL RIGHT. THANK YOU FOR YOUR ATTENTION.
14 LISTEN CAREFULLY BECAUSE THE SOLICITOR'S GOING TO SET FORTH
15 THE FACTS OF YOUR CASE. AND YOU HAVE TEN DAYS TO APPEAL ANY
16 SENTENCE I MAY IMPOSE. YOUR APPEAL MUST BE IN WRITING.

17 MS. TESSITORE: MAY IT PLEASE THE COURT, YOUR HONOR?
18 ON JANUARY 18TH OF 2006 A DEPUTY WITH THE GREENVILLE COUNTY
19 SHERIFF'S OFFICE WAS PATROLLING ON WORTH STREET IN
20 GREENVILLE COUNTY WHEN HE OBSERVED THIS DEFENDANT AND
21 ANOTHER SUBJECT WALKING DOWN THE MIDDLE OF THE STREET AT
22 10:45.

23 THE OFFICER STOPPED TO INTERVIEW THE SUBJECTS AS TO WHY
24 THEY WERE USING THE MIDDLE OF THE ROAD INSTEAD OF THE
25 SHOULDER. THE OTHER SUBJECT GAVE FALSE INFORMATION

1 CONCERNING HIS NAME AND DATE OF BIRTH. AND THIS DEFENDANT
2 WAS SHAKING AND WOULDN'T STAND STILL, WHICH CAUSED THE
3 OFFICER TO BE CONCERNED ABOUT THE SITUATION.

4 THE OFFICER THAT ARRIVED AS BACKUP RECEIVED CONSENT TO
5 SEARCH FROM THIS DEFENDANT. AND DURING A PAT-DOWN OBSERVED
6 A CHAPSTICK CONTAINER STICKING OUT OF HER WAISTBAND. THE
7 DEFENDANT WOULD NOT ANSWER WHEN ASKED WHAT WAS IN THE
8 CONTAINER. AND THE OFFICER REMOVED THE CONTAINER AND COULD
9 HEAR WHAT SOUNDED LIKE LITTLE ROCKS RATTLING INSIDE.

10 THE OFFICER FOUND ONE POINT SEVEN FIVE (1.75) GRAMS OF
11 CRACK COCAINE INSIDE THE CONTAINER AND PLACED THIS DEFENDANT
12 UNDER ARREST WITHOUT INCIDENT. THE OTHER SUBJECT WAS
13 ARRESTED FOR A PENDING PROBATION VIOLATION WARRANT.

14 THIS DEFENDANT HAS NO PRIOR RECORD, YOUR HONOR. AND
15 THE RECOMMENDATION IS A PROBATIONARY SENTENCE.

16 **THE COURT:** ALL RIGHT. MS. WALKER, IS THAT WHAT
17 HAPPENED, MA'AM?

18 **MS. WALKER:** YES, SIR.

19 **THE COURT:** AND YOU HEARD THE RECOMMENDATION. IS THAT
20 THE ENTIRE AGREEMENT YOU HAVE WITH THE STATE?

21 **MS. WALKER:** YES, SIR.

22 **THE COURT:** ALL RIGHT. I FIND THERE'S A FACTUAL BASIS
23 FOR THE PLEA, IT'S BEEN ENTERED INTO FREELY AND VOLUNTARILY
24 AND WITH THE ASSISTANCE OF SKILLED COUNSEL. MR. SULLIVAN?

25 **MR. SULLIVAN:** YOUR HONOR, SINCE THIS HAPPENED MS.

1 WALKER REALIZES SHE WAS FLIRTING WITH A LIFESTYLE SHE DIDN'T
2 NEED TO GET INTO. SHE MOVED AWAY FROM THAT AREA, CUT HER
3 TIES TO ALL THOSE TYPE FRIENDS.

4 SHE'S NOT BEEN IN ANY TROUBLE SINCE THAT TIME, HAS NO
5 RECORD PRIOR TO THIS. SO I THINK SHE'S A GOOD CANDIDATE FOR
6 A PROBATIONARY SENTENCE. SHE HAS A GOOD JOB AND SUPPORTS
7 HER CHILDREN.

8 THE COURT: ANYTHING YOU'D LIKE TO TELL ME, MA'AM?

9 MS. WALKER: JUST I'VE LEARNED MY LESSON FROM BEING
10 AROUND THEM.

11 THE COURT: ALL RIGHT. AND ...

12 MS. TESSITORE: SHE SPENT TWENTY-SIX DAYS IN JAIL, YOUR
13 HONOR.

14 THE COURT: ALL RIGHT. YOU'VE INDICATED ON THIS SHEET
15 BY YOUR INITIALS THAT YOU WISH TO GIVE UP ANY RIGHT YOU
16 MIGHT HAVE TO HAVE THIS CHARGE PRESENTED TO THE GRAND JURY,
17 IS THAT RIGHT?

18 MS. WALKER: YES, SIR.

19 THE COURT: ALL RIGHT. I FIND THAT THE AGREEMENT IS
20 REASONABLE. AND THE SENTENCE IS NINE MONTHS SUSPENDED UPON
21 TIME SERVED, PROBATION FOR SIX MONTHS WITH RANDOM DRUG AND
22 ALCOHOL TESTING. ALL RIGHT. THANK YOU VERY MUCH. GOOD
23 LUCK TO YOU.

24 MR. SULLIVAN: THANK YOU, JUDGE.

25 MS. MONTS: MAY IT PLEASE THE COURT, YOUR HONOR?

1 THE COURT: YES, MA'AM.

2 MS. MONTS: REGARDING BENJI DALE BOWEN, YOUR HONOR, THE
3 FIRST CASE I'M GOING TO GO INTO WAS ON THE TRIAL DOCKET FOR
4 TODAY. THAT'S WHY DEPUTY JONES IS STANDING TO MY RIGHT.
5 YOUR HONOR, THIS FIRST INCIDENT OCCURRED ON OR ABOUT AUGUST
6 28TH OF 2006. THE LOCATION WAS 2008 ANDERSON ROAD WITHIN
7 GREENVILLE COUNTY.

8 THE DEFENDANT WAS IN THE DRIVER'S SEAT OF A CAR THAT
9 WAS RUNNING, BUT THE DEFENDANT HAD NO DRIVER'S LICENSE. THE
10 OFFICER OBSERVED IN PLAIN VIEW A PILL WITH A BUTTERFLY
11 ETCHED ON IT, WHICH HE BELIEVED TO BE ECSTASY.

12 THE DEFENDANT WAS PATTED DOWN AND HAD ONE POINT TWO
13 THREE (1.23) GRAMS OF METHAMPHETAMINE IN HIS POCKET AS WELL
14 AS A SMALL CONTAINER THAT CONTAINED TWO ECSTASY PILLS, TWO
15 ALPRAZOLAM PILLS AND ANOTHER BAG CONTAINING POINT SIX NINE
16 (.69) GRAMS OF METHAMPHETAMINE FOR A TOTAL OF ONE POINT NINE
17 TWO (1.92) GRAMS OF METHAMPHETAMINE. AND THAT'S WHAT THE
18 STATE WOULD HAVE SHOWN AT TRIAL, YOUR HONOR. THE DEFENDANT
19 DID TWO DAYS IN JAIL AND MADE BOND.

20 THE NEXT INCIDENT OCCURRED ON SEPTEMBER 27TH OF 2006 AT
21 MOTEL 6 ON BRUCE ROAD IN GREENVILLE COUNTY. OFFICERS
22 SMELLED MARIJUANA IN THE ROOM WHICH THE DEFENDANT WAS IN.
23 ANOTHER PERSON WHO RENTED THE ROOM CONSENTED TO THE SEARCH.
24 THE OFFICER FOUND MARIJUANA, SCALES AND A LOADED .25 CALIBER
25 HANDGUN.

1 IN A SEPARATE ROOM WHICH THE DEFENDANT HAD RENTED, THE
2 OFFICERS FOUND THE DEFENDANT'S GIRLFRIEND AND HER SIX YEAR
3 OLD DAUGHTER. IN THAT ROOM OFFICERS FOUND MARIJUANA AND
4 SCALES. OUTSIDE A K-9 ALERTED ON THE CAR THAT THE DEFENDANT
5 WAS DRIVING. OFFICERS FOUND IN DEFENDANT'S -- THE CAR THAT
6 THE DEFENDANT WAS DRIVING THEY FOUND MARIJUANA, A .25 -- .25
7 CALIBER ROUNDS, POINT FIVE FIVE (.55) GRAMS OF
8 METHAMPHETAMINE AND ONE POINT TWO THREE (1.23) GRAMS OF
9 ECSTASY AND METHAMPHETAMINE COMBINED AND OTHER ILLEGAL
10 PILLS. DEFENDANT MADE BOND ON THAT CHARGE IN THREE DAYS.

11 NEXT INCIDENT OCCURRED ON OCTOBER 12TH OF 2006 AT WEST
12 BLUE RIDGE DRIVE AND WHITE HORSE ROAD IN GREENVILLE COUNTY.
13 OFFICERS STOPPED THE VEHICLE AT 12:05 AM FOR NO TAG LIGHTS.
14 THE DEFENDANT HAD AN OUTSTANDING ARREST WARRANT.

15 AND IN THE CUP THAT HE HAD BEEN HOLDING AND APPARENTLY
16 HAD BEEN DRINKING OUT OF OFFICERS FOUND SEVERAL BAGGIES OF
17 DRUGS, WHICH INCLUDED TWO POINT ONE ZERO (2.10) GRAMS OF
18 METHAMPHETAMINE, TEN OXYCODONE, ONE HYDROCODONE, THREE
19 ALPRAZOLAM AND MARIJUANA. OFFICERS ALSO FOUND A LOADED .25
20 CALIBER HANDGUN UNDER DEFENDANT'S SEAT. DEFENDANT MADE BOND
21 ON THAT CHARGE IN ONE DAY. HE DID HAVE A THOUSAND, SIXTY
22 DOLLARS ON HIM.

23 YOUR HONOR, DEFENDANT HAS BEEN IN JAIL ON A BENCH
24 WARRANT NOW FOR THREE HUNDRED AND SEVENTY-SEVEN DAYS. AND
25 THIS IS THE THIRD TIME THIS CASE HAS BEEN ON THE TRIAL

1 DOCKET. HE DOES HAVE A PRIOR RECORD, WHICH INCLUDES AT
2 LEAST TWO PRIOR DRUG CONVICTIONS.

3 THE COURT: WHAT IS HIS PRIOR RECORD?

4 MS. MONTS: YOUR HONOR, 1995, MALICIOUS INJURY TO
5 PERSONAL PROPERTY AND A CRIMINAL DOMESTIC VIOLENCE, 1996,
6 FRAUDULENT CHECK, 1997, MALICIOUS INJURY TO PERSONAL
7 PROPERTY, 1999, TWO FRAUDULENT CHECKS AND A DRIVING UNDER
8 THE INFLUENCE, 2002, CRIMINAL DOMESTIC VIOLENCE AND
9 POSSESSION OF MARIJUANA, 2004, POSSESSION OF CONTROLLED
10 SUBSTANCE AND A POSSESSION OF MARIJUANA, 2007, OBTAINING
11 DRUGS BY FRAUD AND DRIVING UNDER SUSPENSION.

12 THE COURT: ALL RIGHT. AND IS THERE ANY PLEA
13 AGREEMENT?

14 MS. MONTS: NO, YOUR HONOR.

15 THE COURT: ALL RIGHT. OKAY. MR. BOWEN, IS THAT WHAT
16 HAPPENED IN THESE CASES, SIR?

17 MR. BOWEN: YES, YOUR HONOR, IT IS.

18 THE COURT: AND YOU DON'T HAVE ANY PROMISE OR DEAL WITH
19 THE STATE, DO YOU?

20 MR. BOWEN: NO, YOUR HONOR. I WAS OFFERED A PLEA
21 AGREEMENT FOR EIGHT YEARS. AND I TURNED IT DOWN UNDER THE
22 PRETENSES THAT I MIGHT HAVE BEEN AN ELIGIBLE CANDIDATE FOR
23 DRUG COURT OR POSSIBLY GETTING SOME OF THE CHARGES DROPPED
24 AND GETTING HOUSE ARREST AND PROBATION.

25 AND THEN WHEN I COME BACK UP HERE ON THE 21ST OF MAY,

1 THAT'S WHEN I WAS INFORMED THAT BY NOT TAKING THE PLEA THAT
2 I FELL UNDER THE GUIDELINES OF A MANDATORY SENTENCE, WHICH
3 WAS FIFTEEN TO THIRTY YEARS. IF I'D KNOWN THAT, YOUR HONOR,
4 THAT I WAS EVEN ELIGIBLE TO FALL UNDER SENTENCING GUIDELINES
5 LIKE THAT, I WOULD HAVE NATURALLY TAKEN THE PLEA OF EIGHT
6 YEARS TO BEGIN WITH 'CAUSE I'VE NEVER PROTESTED MY INNOCENCE
7 THE WHOLE TIME I'VE BEEN -- SINCE I'VE GOT ARRESTED. I SAID
8 I WAS GUILTY THE WHOLE TIME, YOUR HONOR.

9 BY ME NOT TAKING THE PLEA, THAT WAS THE SAME AS SAYING
10 I DON'T WANT EIGHT YEARS. IF I WOULD HAVE KNOWN ABOUT THE
11 FIFTEEN TO THIRTY, BY ME NOT TAKING THE PLEA, THAT WAS
12 BASICALLY LIKE ME SAYING I DON'T WANT EIGHT YEARS, I WANT
13 FIFTEEN TO THIRTY. WHEN I DIDN'T TAKE THE PLEA, I DIDN'T
14 KNOW NOTHING ABOUT THE FIFTEEN TO THIRTY, YOUR HONOR. BUT I
15 AM GUILTY AS CHARGED.

16 MS. MONTS IS THE ONE THAT OFFERED ME THE PLEA. I HAVE
17 THE PAPER RIGHT HERE EXPLAINING -- SHE WROTE TO MY LAWYER
18 EXPLAINING THAT I DID NOT TAKE THE PLEA AND BY ME NOT TAKING
19 THE PLEA MY CHARGES WENT FROM THE PLEA AGREEMENT, WHICH
20 WOULD HAVE BEEN LIKE SECOND DEGREE, METH, SECOND OFFENSE, TO
21 WHERE SHE PUT IT AT THIRD TO, I GUESS, WHAT IT ACTUALLY WAS.

22 **THE COURT:** I DON'T KNOW ANYTHING ABOUT ALL THAT. THE
23 FIRST I'VE HEARD ABOUT YOUR CASE IS WHAT MS. MONTS TOLD ME
24 TODAY. SO I ...

25 **MR. BOWEN:** I HAVE THIS LETTER RIGHT HERE IF YOU'D LIKE

1 TO LOOK AT IT.

2 MS. MONTS: YOUR HONOR, AS FAR AS A RECOMMENDATION, I
3 DID TELL MR. ROBINSON THIS MORNING SINCE HE WAS PLEADING ON
4 THE CHARGE THAT WAS ON THE TRIAL DOCKET, WHICH IS A PWID
5 METH, THIRD, WHICH DOES REQUIRE A FIFTEEN TO THIRTY YEAR
6 SENTENCE THAT I WOULD RECOMMEND THAT EVERYTHING ELSE RUN
7 CONCURRENT WITH THAT.

8 MR. BOWEN: LIKE I SAY, ONCE AGAIN, YOUR HONOR, I SAID
9 IF I WOULD HAVE KNOWN TO BEGIN WITH ABOUT THE EIGHT I WOULD
10 HAVE BEEN, YOU KNOW, NATURALLY I WOULD HAVE TOOK THE EIGHT
11 OPPOSED TO KNOWING NOW THAT I'VE GOT A MANDATORY MINIMUM OF
12 FIFTEEN. NOBODY HAD MENTIONED THAT TO ME UNTIL I COME TO
13 COURT IN FRONT OF McCULLUM.

14 THE COURT: SIR?

15 MR. BOWEN: NOBODY HAD MENTIONED THE MANDATORY MINIMUM
16 SENTENCING OF FIFTEEN UNTIL I COME ON MAY THE 21ST IN FRONT
17 OF JUDGE McCULLUM. AND THAT'S WHEN HE GAVE ME A
18 CONTINUANCE, WHICH IS STATED IN THAT LETTER RIGHT THERE THAT
19 MR. ROBINSON JUST LAID ON THE COUNTER.

20 MR. ROBINSON: JUDGE MACAULAY, YOUR HONOR.

21 MR. BOWEN: MACAULAY.

22 THE COURT: I DON'T KNOW ANYTHING ABOUT ANY OF THIS.
23 IT'S ALL NEW TO ME. WELL, WHAT HAPPENED WITH JUDGE
24 MACAULAY? NOBODY BOTHERED TO MENTION IT WAS BEFORE HIM
25 BEFORE.

1 **MS. MONTS:** YOUR HONOR, THAT WAS FOR TRIAL. IT WAS
2 REACHED FOR TRIAL. MR. ROBINSON MOVED FOR A CONTINUANCE
3 BECAUSE HE WANTED TO SPEAK WITH HIS ATTORNEY. JUDGE
4 MACAULAY DID NOT GRANT THE CONTINUANCE BUT SWITCHED US FROM
5 FIRST TO SECOND ON THE TRIAL DOCKET. WE THEN DID NOT GET
6 REACHED. IT WAS PLACED ON THE TRIAL DOCKET ANOTHER TERM
7 AFTER THAT, AND IT WAS AGAIN NOT REACHED. AND THIS IS THE
8 THIRD TIME THAT THIS CASE HAS BEEN ON THE TRIAL DOCKET, YOUR
9 HONOR. THIS CASE HAS NEVER BEEN UP FOR A GUILTY PLEA.

10 **THE COURT:** ALL RIGHT. MAY I SEE THE LETTER HE'S
11 REFERRING TO? THANK YOU.

12 (PAUSE)

13 **THE COURT:** SO WHEN DID YOU OFFER HIM THE EIGHT YEARS?
14 DO YOU REMEMBER?

15 **MS. MONTS:** YOUR HONOR, THAT EXPIRED -- AND I'M NOT
16 SURE EXACTLY WHAT THAT LETTER SAYS. I NEED TO READ THAT.
17 BUT IT EXPIRED BACK WHEN TIM SULLIVAN WAS HIS ATTORNEY, YOUR
18 HONOR. WE BROUGHT HIM OVER ON JAIL SIGN-UP APPROXIMATELY
19 SIX TO EIGHT TIMES. AND MR. SULLIVAN WENT OVER HIS RIGHTS
20 AND TOLD HIM WHAT HE WAS LOOKING AT, AND HE WOULD NOT PLEAD.

21 THEY WERE ABOUT TO PUT IT ON THE TRIAL DOCKET, AND MR.
22 SCOTT ROBINSON BECAME THE ATTORNEY ON THE CASE. AND THIS IS
23 THE THIRD TIME IT'S BEEN ON THE TRIAL DOCKET SINCE SCOTT HAS
24 BEEN THE ATTORNEY.

25 **MR. BOWEN:** YOUR HONOR, IT WAS STILL ON THE -- THE

1 PLEA WAS STILL ON THE TABLE WHEN I RETAINED SCOTT. I
2 RETAINED HIM -- MY MOTHER -- SHE'S RIGHT HERE IN COURT. MY
3 MOTHER RETAINED HIM IN DECEMBER. AND I COME UP HERE JANUARY
4 AND FEBRUARY ALSO, AND THE PLEA WAS STILL ON THE TABLE.

5 LIKE I SAID, IF I'D JUST BEEN TOLD THAT IF I DIDN'T
6 TAKE THE PLEA -- I NEVER DID MENTION A JURY TRIAL OR
7 ANYTHING, I SAID THE WHOLE TIME I WAS GUILTY. IF I'D JUST
8 BEEN TOLD, LOOK, I CAN'T GET NO BETTER THAN EIGHT YEARS --
9 IF YOU DON'T TAKE THE EIGHT, YOU'RE GOING TO GET FIFTEEN,
10 NATURALLY I WOULD HAVE TAKEN THE EIGHT, YOUR HONOR.

11 **THE COURT:** SO WHEN DID YOU FIRST LEARN THAT YOU COULD
12 HAVE GOTTEN MORE THAN EIGHT YEARS?

13 **MR. BOWEN:** ON MAY THE 21ST WHEN I COME UP HERE IN
14 FRONT OF JUDGE MACAULAY.

15 **MS. MONTS:** AND, YOUR HONOR, MR. SULLIVAN ---

16 (WHEREUPON MR. SULLIVAN WAS SPEAKING WITH MS. MONTS)

17 **MS. MONTS:** OKAY. MR. SULLIVAN WAS THE PREVIOUS
18 ATTORNEY. AND MY UNDERSTANDING WAS THAT MR. SULLIVAN DID
19 EXPLAIN ALL OF HIS RIGHTS TO HIM AND WHAT THE POSSIBLE
20 SENTENCES WERE. AND THE MANY, MANY MONTHS THAT MR. SULLIVAN
21 REPRESENTED HIM, I BELIEVE WE DID BRING HIM UP FROM THE JAIL
22 FOR JAIL SIGN-UP FIVE TO SIX TIMES.

23 **MR. BOWEN:** YES, YOUR HONOR. ME AND MR. SULLIVAN DID
24 TALK ABOUT THAT, BUT I DIDN'T -- IT WASN'T TO MY
25 UNDERSTANDING THAT MY PREVIOUS RECORD, WAS SIMPLE POSSESSION

1 OF MARIJUANA, COULD BE USED AS A DRUG CHARGE. I THOUGHT IT
2 WOULD HAVE TO BE -- TO GET INTO THE THIRD OFFENSE, I THOUGHT
3 IT WOULD HAVE TO BE LIKE THREE METH CONVICTIONS WAS MY
4 UNDERSTANDING WHY I WOULD HAVE GOT INTO A SENTENCING LIKE
5 THAT.

6 MS. MONTS: AND, YOUR HONOR, FOR THE RECORD, I'M NOT
7 USING ANY POSSESSION OF MARIJUANAS FOR THE ENHANCEMENT.

8 (WHEREUPON MR. ROBINSON WAS SPEAKING WITH MS. MONTS)

9 (PAUSE)

10 THE COURT: SO, MR. ROBINSON, YOUR CLIENT STATES THAT
11 HE DID NOT KNOW THAT HE WAS SUBJECT TO A MANDATORY MINIMUM
12 SENTENCE OF FIFTEEN YEARS ON THIS POSSESSION WITH INTENT TO
13 DISTRIBUTE METHAMPHETAMINE, THIRD OFFENSE, BEFORE THE OFFER
14 WAS WITHDRAWN FROM THE STATE. HE'S PREPARED TO ENTER A
15 GUILTY PLEA AFTER MAKING THAT STATEMENT. IS THERE ANYTHING
16 YOU'D LIKE TO SAY, SIR?

17 MR. ROBINSON: I DON'T THINK THAT -- AS FAR AS HIM
18 TALKING TO ME, I GOT THE CASE AFTER MR. SULLIVAN HAD THE
19 CASE, AND THE OFFER HAD ALREADY EXPIRED. THAT'S WHAT MY
20 UNDERSTANDING WAS, THERE WAS NO OFFER ON THE TABLE FOR HIM.

21 MS. MONTS: YOUR HONOR, I'D HAVE TO CHECK THE COMPUTER
22 TO SEE WHEN THE OFFER EXPIRED. IT WAS AROUND -- IT WAS
23 AROUND THAT TIME.

24 THE COURT: WHEN WERE YOU RETAINED?

25 MR. ROBINSON: DECEMBER -- ONE SECOND, YOUR HONOR.

1 DECEMBER 17TH.

2 THE COURT: SO YOU NEVER WENT OVER WITH HIM THE
3 POSSIBILITY OF WHAT HIS MAXIMUM SENTENCE EXPOSURE WAS?

4 MR. ROBINSON: I WOULD HAVE DONE THAT. I WOULD HAVE
5 DONE THAT, YOUR HONOR, AS FAR AS ANY SORT OF -- IF HE WAS IN
6 A THIRD OFFENSE I WOULD HAVE EXPLAINED TO HIM IT WAS A
7 FIFTEEN TO THIRTY YEARS, MANDATORY FIFTEEN TO THIRTY.

8 THE COURT: SO YOU DID EXPLAIN THAT TO HIM?

9 MR. ROBINSON: YES.

10 (WHEREUPON MR. ROBINSON WAS SPEAKING WITH HIS CLIENT)

11 MR. BOWEN: WE HAD THIS SAME DISCUSSION IN FRONT OF
12 JUDGE MACAULAY.

13 THE COURT: SO IT WOULD APPEAR TO ME THAT THE MOTION
14 THAT MR. BOWEN'S MAKING IS ESSENTIALLY A MOTION TO ENFORCE
15 THE PLEA AGREEMENT THAT HAS BEEN WITHDRAWN. IS THAT WHAT
16 WE'RE DOING HERE?

17 MR. BOWEN: I'M BEGGING FOR THAT, YOUR HONOR.

18 MS. MONTS: YOUR HONOR, I THOUGHT IT WAS A GUILTY PLEA.
19 SO THIS IS -- IT WAS SUPPOSED TO BE A GUILTY PLEA OFF THE
20 TRIAL DOCKET.

21 MR. ROBINSON: WE WOULD -- MR. BOWEN DEFINITELY WOULD
22 LOVE TO HAVE THAT PLEA OFFER BACK. HE WOULD LIKE TO HAVE
23 THAT PLEA OFFER. HE DIDN'T, YOU KNOW, HE JUST -- HE WOULD
24 LIKE TO HAVE THAT PLEA OFFER BACK IF THAT WOULD BE POSSIBLE,
25 YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. BOWEN: YOUR HONOR?

3 THE COURT: YES, SIR.

4 MR. BOWEN: EVEN IF I COULD GET MAYBE EVEN -- I
5 UNDERSTAND I'M UNDER A FIFTEEN, MINIMUM FIFTEEN. EVEN IF
6 THERE'S ANYWAY POSSIBLE I COULD MAYBE GET FIFTEEN SUSPENDED
7 TO THE EIGHT PLEA AND THEN TAKE THE REST IN PROBATION OR
8 ANYTHING, YOUR HONOR.

9 THE COURT: WELL, I'M NOT THE ONE TO NEGOTIATE WITH,
10 OKAY?

11 MR. BOWEN: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. YOU UNDERSTAND THAT THIS
13 OFFENSE OF POSSESSION WITH INTENT TO DISTRIBUTE
14 METHAMPHETAMINE, THIRD OFFENSE, IS A SERIOUS OFFENSE? AND
15 YOU'RE PLEADING GUILTY TO TWO OF THOSE. DO YOU UNDERSTAND
16 THE CONSEQUENCE OF PLEADING TO AN OFFENSE THAT'S CLASSIFIED
17 AS SERIOUS? YOU UNDERSTAND THAT'S A STRIKE UNDER THE TWO
18 STRIKE AND THREE STRIKES LAW? DO YOU UNDERSTAND THAT?

19 MR. BOWEN: THREE STRIKES, BEING LIFE IN PRISON, YOUR
20 HONOR?

21 THE COURT: THAT'S RIGHT.

22 MR. BOWEN: YES, YOUR HONOR.

23 THE COURT: AND YOU UNDERSTAND THAT BY ENTERING A PLEA
24 AS TO POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE,
25 THIRD OFFENSE, THAT WOULD BE TWO STRIKES? YOU UNDERSTAND

1 THAT?

2 MR. BOWEN: YES, YOUR HONOR.

3 THE COURT: SO IF YOU WERE EVER TO BE CONVICTED IN THE
4 FUTURE OF ANOTHER SERIOUS OR MOST SERIOUS OFFENSE YOU WOULD
5 BE SUBJECT TO A LIFE SENTENCE WITHOUT ANY POSSIBILITY OR
6 HOPE OF PAROLE IF YOU ENTER THIS PLEA TODAY TO THESE
7 CHARGES. YOU UNDERSTAND THAT?

8 MR. BOWEN: YES, YOUR HONOR, I UNDERSTAND.

9 THE COURT: DO YOU STILL WANT TO ENTER YOUR PLEA?

10 MR. BOWEN: YES, YOUR HONOR.

11 THE COURT: DO YOU HAVE ANY QUESTIONS OF ME ABOUT THE
12 TWO STRIKES OR THREE STRIKES LAW?

13 MR. BOWEN: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. OKAY. YES, SIR, MR. ROBINSON.

15 MR. ROBINSON: MAY IT PLEASE THE COURT? YOUR HONOR,
16 BENJI IS -- HE'S A PERSON -- IF YOU LOOK AT WHERE THIS
17 HAPPENED AND WHEN IT HAPPENED, IT ALL HAPPENED DURING A TWO
18 AND A HALF, THREE MONTH PERIOD OF TIME WHEN HE WAS IN THE
19 DEPTHS OF DEPRESSION AND EVERYTHING SEEMED TO BE GOING
20 WRONG.

21 HE GOT INTO DRUGS. AND ALL THIS HAS TO DO WITH THE
22 SAME THING, METHAMPHETAMINE, THE SCALES, THESE OTHER
23 PRESCRIPTION DRUGS AND SO FORTH. BUT HE'S BEEN ALWAYS
24 COOPERATIVE IN THE CASE. HE'S ALWAYS BEEN VERY FORTHRIGHT.
25 HE'S ADMITTED THAT HE MADE A MISTAKE. HE'S ADMITTED HE DID

1 THE WRONG THING.

2 BUT ALL HE'S EVER ASKED FOR IS FOR SOMEONE TO TAKE THE
3 TIME TO LOOK AT HIM AS AN INDIVIDUAL AND SAY, OKAY, I NEED
4 SOMETHING -- SOME HELP. THAT'S WHAT HE NEEDED, SOME HELP,
5 'CAUSE HE WANTS TO GET BACK TO HIS LIFE, WANTS TO GET BACK
6 TO HIS FAMILY AND SO FORTH. AND WE'D ASK THE COURT FOR
7 MERCY IN THIS CASE, YOUR HONOR.

8 **THE COURT:** ANYTHING YOU'D LIKE TO TELL ME, MR. BOWEN?

9 **MR. BOWEN:** NO, YOUR HONOR. JUST I'M THROWING MYSELF
10 AT THE MERCY OF THE COURT, YOUR HONOR. I'M SORRY. I'VE
11 COME UP HERE SO MANY TIMES AND TOOK UP SO MUCH OF THE
12 COURT'S TIME. I APOLOGIZE TO YOU, TO MS. MONTS, TO MR.
13 SULLIVAN THAT WAS REPRESENTING ME PREVIOUSLY, MR. ROBINSON,
14 MY MOTHER'S HERE. I APOLOGIZE TO MY FAMILY FOR ANY
15 HEARTACHE I'VE PUT THEM THROUGH. I JUST ASK YOUR LENIENCY.

16 **THE COURT:** ALL RIGHT, SIR. WHEN DID HE GO INTO
17 CUSTODY?

18 **MS. MONTS:** YOUR HONOR, I HAVE THREE HUNDRED AND
19 SEVENTY-SEVEN DAYS.

20 **THE COURT:** DEPUTY JONES, ANYTHING YOU WANT TO TELL ME,
21 SIR?

22 **DEPUTY JONES:** NOTHING OTHER THAN WHAT SHE'S ADDED.

23 (PAUSE)

24 **MS. MONTS:** YOUR HONOR, I AM DISMISSING FOUR OTHER
25 CHARGES THAT OCCURRED AT THE SAME TIME AS THESE INCIDENTS.

1 **THE COURT:** OKAY, MA'AM.

2 (PAUSE)

3 **THE COURT:** ALL RIGHT. WELL, I FIND THERE'S A FACTUAL
4 BASIS FOR THE PLEA, IT'S BEEN ENTERED INTO FREELY AND
5 VOLUNTARILY, AND A STATEMENT MADE THAT HE WAS NOT AWARE OF
6 HIS POTENTIAL EXPOSURE TO A GREATER SENTENCE THAN WAS
7 OFFERED IN THE PLEA AND THAT IT WAS SUBSEQUENTLY WITHDRAWN
8 IS AN ISSUE THAT'S NOT BEFORE ME. MY ONLY ROLE AT THIS
9 STAGE IS TO DETERMINE WHETHER HE'S FREELY, AND VOLUNTARILY,
10 AND INTELLIGENTLY, AND KNOWINGLY ENTERING THIS PLEA.

11 AND I FIND THAT HE KNOWS THE CONSEQUENCES OF HIS PLEA,
12 AND HE'S BEEN ASSISTED BY COUNSEL. HE APPEARS ALERT AND
13 COMPETENT AND ABLE TO MAKE HIS DECISION WITHOUT ANY KIND OF
14 PRESSURE OR COERCION AND HAS ALREADY TESTIFIED UNDER OATH
15 THAT HE WAS UNDER NONE. AND WHAT HAPPENED BEFORE TODAY AS
16 FAR AS A NEGOTIATION IS SOMETHING BETWEEN A SOLICITOR'S
17 OFFICE, WHICH IS PART OF THE EXECUTIVE BRANCH, AND HIS
18 LAWYER, AND NOT PART OF THE JUDICIAL BRANCH.

19 AND, ACCORDINGLY, BASED ON THE CIRCUMSTANCES I FIND
20 THAT HIS STATEMENT DIDN'T RELATE TO AN ENFORCEABLE AGREEMENT
21 AT THIS STAGE BECAUSE IT'S BEEN WITHDRAWN, OF COURSE. AND
22 THERE'S NOTHING THAT THE COURT CAN DO AT THIS STAGE OF THE
23 JUSTICE SYSTEM TO CHANGE THAT. AND HE'S ENTERED A PLEA,
24 WHICH HE HAS A RIGHT TO DO ONCE ONE IS OFFERED TO HIM. AND
25 HERE THE PLEA WAS JUST STRAIGHT UP ON THE CHARGES THAT ARE

1 NOT BEING DISMISSED. SO I'M ACCEPTING IT BASED ON THAT.

2 AND I FIND THAT ON THE POSSESSION WITH INTENT TO
3 DISTRIBUTE METHAMPHETAMINE, THIRD OFFENSE, THAT YOU BE
4 COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
5 SEVENTEEN YEARS. THAT'S CASE 72.

6 ON CASE 89, IT'S SEVENTEEN YEARS, CONCURRENT. CASE 76,
7 POSSESSION OF METHAMPHETAMINE, SEVEN YEARS, CONCURRENT.
8 POSSESSION OF OXYCODONE IS ONE YEAR, CONCURRENT. POSSESSION
9 OF ECSTASY IS ONE YEAR, CONCURRENT. CASE 88 IS ONE YEAR,
10 CONCURRENT, FOR POSSESSION OF -- UNLAWFUL CARRYING OF A
11 PISTOL. THANK YOU VERY MUCH. GOOD LUCK TO YOU.

12 (HEARING ENDED AT 3:32 PM)

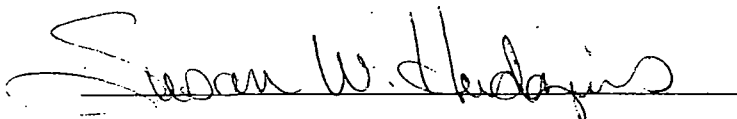
13 (END OF REQUESTED EXCERPT OF TRANSCRIPT OF RECORD)

1
CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 11TH DAY
9 OF AUGUST 2008.

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

12 JULY 31, 2009

13
14 A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

15 CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
)
County of Greenville)

IN THE COURT OF COMMON PLEAS

2009-CP-23- 6066

Benji Bowen, # 308133)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2009 APR 21 P 10
CLERK OF COURT
RECEIVED

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention S.C. Dept. of Corrections, 386 Redemption Way,
F-3-A-163, McCormick, South Carolina, 29899
2. Name and location of Court which imposed sentence Greenville County Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-23-0072-Poss. w/ Intent To Dis. Meth. 3rd Off.

- (b) 2007-GS-23-0076-Poss. Meth/Crank 3rd Off
- (c) 2007-GS-23-0086-Poss. Oxycodone, Sch. 2 Nar. 3rd Off.

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

- (a) August 11, 2008-17 years
- (b) August 11, 2008-7 years concurrent w/ 17 years
- (c) August 11, 2008-1 year concurrent w/ 17 years

6. Check whether a finding of guilty was made:

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

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

No

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

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

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

- (a) I was sentenced under a 15-30yr plea

- (b) my lawyer told me not to appeal
- (c) _____

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

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

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

- (a) plea made under duress and false information
- (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? NA
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA
- (d) any other petitions, motions or applications in this or any other Court? NA

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

iv. NA

(c) the disposition thereof:

i. NA

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

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

i. NA

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?

NA

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

(a) which grounds have been presented:

i. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

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

Time r [unclear] original plea agreement (3 years)

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Benji Bowen, #308133, 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.

Benji Bowen

SWORN to and subscribed before me this 13 day of July, 2009.

Jennifer Frank (L.S.)
Notary Public

My Commission Expires: 07/31/2010

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

I, Benji Bowen, #308133, 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.

Benji Bowen
Applicant

SWORN or affirmed to and subscribed before me this 13 day of July, 2009.

Jennifer C. Franklin
Notary Public

My Commission Expires: 01.31.2010

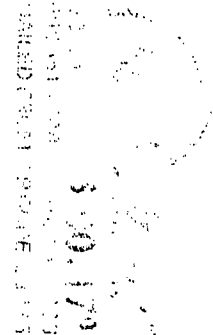
B. Bowen 308133 F3163
McCormick Corp. Inst.
386 Redemption way
McCormick SC 29899

17



USA 42

Honorable Paul B. Wickensimer
Clerk of Court
Greenville County
305 E. North Street
Greenville, SC, 29601



2980132121 0002



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Benji Dale Bowen,)
 S.C.D.C. No. 308133,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2009-CP-23-6066

RETURN

In response to the post-conviction relief application filed July 21, 2009, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the January 2007 term of General Sessions for possession of ecstasy (2007-GS-23-0051), two (2) counts of possession with intent to distribute (PWID) methamphetamine (2007-GS-23-0072, -0089), possession of methamphetamine (2007-GS-23-0076), possession of a controlled substance (2007-GS-23-0086), and unlawful carrying of a pistol (2007-GS-23-0088). Scott D. Robinson, Esquire represented the Applicant.

On August 11, 2008, the Applicant pled guilty.¹ The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of one (1) year for possession of ecstasy, second offense, seventeen (17) years for each count of PWID methamphetamine, third offense, seven (7) years for possession of methamphetamine, third offense, one (1) year for possession of a

¹ The State not prossed four pending indictments: 2007-GS-23-0068, -0075, -0077, -0087.

controlled substance, third offense, and one (1) year for unlawful carrying of a pistol. The Applicant did not appeal.

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

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

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

IV.

The 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,

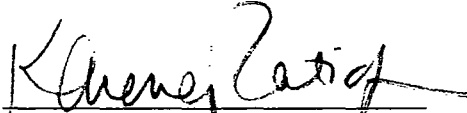
HENRY DARGAN McMASTER
Attorney General

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

November 18, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 BENJI DALE BOWEN, 308133)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

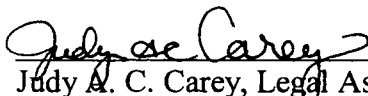
2009-CP-23-6066

AFFIDAVIT OF SERVICE BY MAIL

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:

Benji Dale Bowen, 308133
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

DATED this 18th day of November, 2009.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	Case No(s) : 09-CP-23-6066
)	
Benji Bowen,)	
)	
Applicant,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent.)	
)	

May 24, 2010
 Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

RODNEY W. RICHEY, Esquire
 Attorney for the Applicant

KAREN C. RATIGAN, Esquire
 Attorney for the State

Teresa B. Johnson
 Certified Verbatim Reporter
 P.O. Box 2812
 Greenville, S.C. 29602

Records are
 taken and
 produced via



I N D E XDIRECT CROSS REDIRECT RECROSS

Benji Bowen

by Mr. Richey

4

by Mrs. Ratigan

11

by Mr. Richey

14

Debra Bowen

by Mr. Richey

15

Scott Robinson

by Mr. Richey

20

by Mrs. Ratigan

29

by Mr. Richey

33

Certificate of Reporter

37

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
APPLICANT EXHIBITS			
D-1	Correspondence	29	29

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

1 **Q** Mr. Bowen, where are you presently
2 incarcerated?

3 **A** McCormack Correctional Institution.

4 **Q** And what are the charges you are incarcerated
5 for at this time?

6 **A** I have a couple of drug charges. My main
7 conviction was, uh, Possession with Intent to
8 Distribute Methamphetamines.

9 **Q** Was that third offense?

10 **A** Yes, sir.

11 **Q** Who represented you on those charges?

12 **A** Mr. Robinson.

13 **Q** Did you plead guilty on August the 11th,
14 2008?

15 **A** Yes, sir.

16 **Q** And Mr. Robinson represented you at that
17 guilty plea?

18 **A** Yes, sir.

19 **Q** Okay. You have filed an application for
20 postconviction in this case alleging that Mr. Robinson
21 did not effectively represent you, is that correct?

22 **A** Yes, sir.

23 **Q** And one of your basis is that at the time --
24 let's go back. Originally, you were represented by
25 Tim Sullivan of the Public Defender's office, correct?

1 **A** Yes, sir.

2 **Q** Through Mr. Sullivan's representation, you
3 were offered a plea offer, is that correct?

4 **A** That's right. Yes, sir.

5 **Q** That was a plea offer for what?

6 **A** To eight years.

7 **Q** Okay. That plea offer was for less -- it was
8 not third offense, it was less than third offense,
9 correct?

10 **A** Yes, sir.

11 **Q** Under the third offense, do you understand
12 what the sentence range could have been -- would be?

13 **A** Yes, sir, I do now. Yes, sir.

14 **Q** What was that?

15 **A** That was 15 to 30 years.

16 **Q** Okay. So the plea offer you had from Mr.
17 Sullivan was seven years less than the minimum
18 sentence, correct?

19 **A** Yes, sir. To my understanding, it would also
20 be nonviolent instead of violent, which I am now.

21 **Q** Okay. So the minimum would have been 12 and
22 half and it was 85 percent. Under Mr. Sullivan's
23 offer, you could have -- understand 12 and a half
24 service time. Under the plea agreement, you were
25 looking at maybe half of that, correct?

1 **A** Yes, sir.

2 **Q** Okay. That offer was not accepted by you
3 while Mr. Solomon represented you; is that correct?

4 **A** Yes, sir.

5 **Q** After getting that offer, did you then
6 subsequently retain Mr. Robinson -- hire Scott
7 Robinson?

8 **A** Yes, sir.

9 **Q** Okay. And when you hired Mr. Robinson, first
10 of all, did you ever intend to have a trial on this
11 case?

12 **A** No, sir.

13 **Q** Did you tell Mr. Sullivan you were guilty?

14 **A** Yes, sir. I stated the whole time that I was
15 guilty of possession of drugs.

16 **Q** And you told Mr. Robinson that?

17 **A** Yes, sir.

18 **Q** Okay. So, when you hired Mr. Robinson, did
19 you take that offer?

20 **A** No, sir.

21 **Q** Why not?

22 **A** Because when I hired Mr. Robinson, the
23 pretense of hiring him was he said he was going get me
24 -- we were going to try for house arrest and
25 probation, but drug court would be our worst case

1 scenario.

2 **Q** Okay. So he told you don't take the eight
3 years, I can get you a better sentence?

4 **A** Yes, sir. He said he could get me out with
5 basically no prison time.

6 **Q** Okay. And when -- at what point did you
7 realize that he could not do that?

8 **A** On May the 21st when I come up here to the
9 courthouse in front of Judge McCauley.

10 **Q** Okay. And did you realize that your case at
11 that point was on the trial roster?

12 **A** I think they had mentioned that to me, yes.

13 **Q** Okay. Was that the first time that you were
14 aware of the minimum sentence for a third offense?

15 **A** Yes, sir.

16 **Q** Did Mr. Robinson sit down and discuss with
17 you, hey, man, you're facing 15 to 30, 85 percent,
18 they offered you eight, you might consider taking
19 that?

20 **A** No, we never did go through that until after,
21 until after that date had come up when we come up here
22 in front of McCauley.

23 **Q** So you are saying at the time that you went
24 up in front of Judge McCauley on the trial docket, you
25 were then advised of the mandatory minimum?

1 **A** Yes, sir.

2 **Q** Okay. Now, had you known that the mandatory
3 minimum was 15 at 85 percent, would you have accepted
4 the offer?

5 **A** Yes, sir. Of the eight years, yes, sir.

6 **Q** Okay. At what point -- tell me, Mr. Robinson
7 was obtained around December of '07, is that correct?

8 **A** Yes, sir, I believe the 17th if I'm not
9 mistaken.

10 **Q** Okay. And at what time, tell me the
11 timeframe that y'all came to the realization that you
12 would not, that you should have taken this offer? At
13 what point? You pled on April -- I mean, you pled on
14 the 11th, August the 11th, 2008, right?

15 **A** Yes, sir.

16 **Q** Mr. Robinson was retained December 17th, '07,
17 right?

18 **A** Yes, sir.

19 **Q** So you had eight months between the time that
20 he was representing you, correct?

21 **A** Yes, sir.

22 **Q** At what point did you decide that this offer
23 should've been accepted by you?

24 **A** On May the 21st.

25 **Q** Okay. And on May the 21st, was the offer

1 expired then?

2 **A** Yes, sir.

3 **Q** Were you told the date that it was going to
4 expire by Mr. Robinson?

5 **A** No, I never was told.

6 **Q** Do you feel that Mr. Robinson did not
7 effectively represent you?

8 **A** Yes, sir. I feel like if he would have
9 effectively represented me that, uh -- he would have
10 basically told me before the plea was withdrew, he --
11 we not going to be able to do what I need you to do.
12 You might want to go ahead and take this plea. If you
13 don't take this plea, you're going to be sentenced to
14 a mandatory 15 and a maximum of 30.

15 **Q** Okay. And I believe in this transcript, you
16 actually tell the judge that you did not know that
17 there are was a minimum sentence; is that correct?

18 **A** Yes, sir.

19 **Q** I think on page 21, the judge asked you when
20 did you first learn that you could have gotten more
21 than eight years, you said on May the 21st on page 21
22 when I come up here in front of Judge McCauley; is
23 that correct?

24 **A** That's correct.

25 **Q** On this transcript, did you tell the truth?

1 **A** Yes, ma'am.

2 **Q** And the reason you hired him is because he
3 told you he'd get you something like house arrest or
4 drug court or some such thing?

5 **A** Yes, ma'am.

6 **Q** Did he ever promise you you will not go to
7 jail or did he say we're going to try for this lesser
8 type of punishment?

9 **A** To my understanding, that is what we were
10 going for. There was nothing written in stone. By me
11 retaining him, that's what I was told he was going
12 for. When he come to the jailhouse and seen me, it
13 must have been about March. Because April -- I
14 believe drug court was starting up in April. I was
15 getting antsy. I was calling him. I had my mother
16 calling him and all. He come up there and told me
17 that we weren't going to make it in drug court in
18 April, to be patient and -- to set up there and be
19 patient, basically, I guess, quit calling or whatever
20 and whatnot is the way I took it. If we missed it in
21 April, we will be ready in August.

22 **Q** All right. I believe you said it was around
23 -- it was that May 21st day where you basically
24 realized you wanted to get that eight-year offer back.
25 Would that be fair to say?

1 **A** Yes, ma'am.

2 **Q** And did you ask Mr. Robinson at that time to
3 see if he could talk to the State and maybe get that
4 offer back?

5 **A** Yes, ma'am.

6 **Q** What did he say?

7 **A** He said he would talk to Mrs. Motts about it.
8 Later on, he come back and said that she changed her
9 mind and that she was not going to put the plate on
10 the table.

11 **Q** You had -- again, you had already turned that
12 down back when Mr. Sullivan was your lawyer, right?

13 **A** Yes, ma'am.

14 **Q** All right. So your testimony today is that
15 Mr. Robinson should have been able to get that eight-
16 year offer back from the State?

17 **A** Yes, and I wouldn't actually say that I
18 turned it down. I was really in the process of
19 prolonging it. It wasn't that I actually turned it
20 down with Mr. Sullivan. More or less, I was
21 prolonging it and hoping to get a better deal than the
22 eight years. Then, when Mr. Robinson come and told me
23 basically what I wanted to hear, that's when I
24 retained him.

25 **Q** Didn't you tell Judge Hill that day that you

1 were satisfied with how Mr. Robinson had handled your
2 case?

3 **A** I told him that I would go on forward with
4 plea that day.

5 **Q** What I'm asking you is didn't you tell the
6 judge you were satisfied with Mr. Robinson that day?

7 **A** I don't remember that exact question of being
8 satisfied or not with Mr. Robinson, but I did tell
9 them that I understood the plea at that time. I was
10 told that if I did not take the plea then that I would
11 be put on the trial docket and it's a very good chance
12 that I would receive 30 years.

13 **Q** So you pled that day in large part just to
14 get it over with? Would that be fair to say?

15 **A** In large part, yes.

16 **MRS. RATIGAN:** That is all that I have, Your
17 Honor.

18 **THE COURT:** Any recross -- any redirect?

19 **MR. RICHEY:** Just one question.

20 **REDIRECT EXAMINATION**

21 **BY MR. RICHEY:**

22 **Q** At the time you hired Mr. Robinson was the
23 eight-year deal in place?

24 **A** Yes sir.

25 **Q** Okay. No other questions.

1 **THE COURT:** Okay. All right. Thank you, sir.
2 I appreciate you being here. You may step down.

3 **MR. RICHEY:** We call Debra Bowen.

4 **DEBRA BOWEN**

5 is first duly sworn and then testifies as follow:

6 **THE CLERK:** Thank you. You may be seated.

7 State your full name for the record please. Spell
8 your first and last name.

9 **THE WITNESS:** Debra Ann Bowen. D-E-B-R-A,
10 B-O-W-E-N.

11 **THE CLERK:** Thank you.

12 **DIRECT EXAMINATION**

13 **BY MR. RICHEY:**

14 **Q** Mrs. Bowen, do you know Benji Bowen?

15 **A** Yes, he's my son.

16 **Q** Okay. And do you recall in August of 2008
17 your son pleading guilty?

18 **A** Yes, I do.

19 **Q** To some drug charges?

20 **A** Yes.

21 **Q** Uh, go back to December of 2007. In December
22 of 2007, did you have an opportunity to go out and
23 hire a lawyer to represent him?

24 **A** Yes, I did.

25 **Q** Were you the one who actually went to

1 lawyer's office and paid the money?

2 **A** I did after my husband spoke with Mr.
3 Robinson and Benji told us of several conversations he
4 had with Mr. Robinson. My husband spoke with him over
5 the phone a time or two. I was initially the person
6 who went to his office and met with him in person.

7 **Q** Okay. When you met with Mr. Robinson in
8 person, did y'all have any conversations about your
9 son's case?

10 **A** Yes, we did.

11 **Q** At that time, did you know anything about a
12 plea offer to your son from the State?

13 **A** I did. Mr. Sullivan had discussed that. I
14 had spoke with Mr. Sullivan on occasion. Mr.
15 Sullivan, Benji's dad and I all encouraged him to take
16 that deal.

17 **Q** That's to eight years?

18 **A** Yes, sir.

19 **Q** Okay. When you went to Mr. Robinson's office,
20 did you have any idea whether the eight-year deal was
21 still good at that point?

22 **A** It was.

23 **Q** Okay. How do you know it was?

24 **A** I had spoke with Mr. Sullivan a week or two
25 prior.

1 **Q** Okay. When you talked to Mr. Robinson and
2 you retained him, what was your expectations based on
3 the conversation you had with Mr. Robinson?

4 **A** Mr. Robinson, when I initially met with him
5 in his office, uh, he said something to the effect,
6 uh, eight years, I don't see this kid doing eight
7 years. Benji seems like a nice guy. I don't see him
8 doing eight years for no more than what he has done.
9 I was stunned. I looked Mr. Robinson dead in the eye.
10 I said, excuse me, we are talking about Benji Bowen.
11 He said yes ma'am, I know who we're talking about. He
12 said -- I said Benji has numerous drug charges against
13 him. He has -- I'm not here to uphold him. He has
14 done wrong and he has numerous drug charges. You're
15 telling me that you think he can get no jail time for
16 all these drug charges in such a short period of time.
17 He said, oh, sure, I feel confident that we did get
18 him out with house arrest or probation at most, I
19 think is the way he put it.

20 **Q** Okay. During -- as the case was coming to
21 court, you would come to court with your son; is that
22 correct?

23 **A** Yes, sir.

24 **Q** Were there occasions that you came to court
25 after Mr. Robinson was retained that you had an

1 opportunity to talk with Mr. Robinson about your son's
2 case?

3 **A** In mid-February, I was told that ---

4 **Q** February of what year?

5 **A** Of '08. There was a court date coming up. I
6 tried for several days to get ahold of Mr. Robinson
7 and ask him if it was going to be a plea deal or if it
8 was going to be hearing, did I need to be there, would
9 there be any point in me driving from Belton to
10 Greenville to be at the hearing, would I be able to
11 appear? He said no, this is just a plea hearing. He
12 said they still offered eight years but -- and
13 literally laughed and said we're not taking no eight
14 years.

15 **Q** Okay. If you had known that Mr. Robinson
16 could not give you less than eight years at that
17 point, would y'all have retained him?

18 **A** Absolutely not.

19 **Q** Were you here in May when your son went to
20 court, of '08?

21 **A** In May, yes. Yes, sir.

22 **Q** Did you have an opportunity to talk to Mr.
23 Robinson prior to that hearing?

24 **A** Not prior to, no, sir. But when we found out
25 during that hearing that the minimum would be 15,

1 maximum 30, uh, it was rather a fiasco in the
2 courtroom I guess you could say. Benji was very
3 confused, uh, and just basically was frantic not
4 knowing what to do because he wasn't expecting this.
5 Judge, of course, quickly got everything under
6 control. Benji went one way. Mr. Robinson took me into
7 to the conference room. We had a rather heated
8 confrontation. Of course, prior to this, Joyce Motts
9 would not talk to me, of course, about the case. After
10 Mr. Robinson and I had a rather heated conversation in
11 the conference room, he threw his hands up in the air.
12 He told Joyce Motts you deal with her.

13 **Q** What was the discussion about?

14 **A** I confronted Mr. Robinson about the fact that
15 he did not prepare us for this, that he literally
16 laughed in February at the idea of Benji taking the
17 eight-year deal and that he had strongly advised Benji
18 not to take the eight-year deal.

19 **Q** Okay. So, the heated discussion was you were
20 upset because you come to the realization that he was
21 going to get more time; is that right?

22 **A** Yes, sir.

23 **Q** Okay. Answer any questions Mrs. Ratigan may
24 have for you?

25 **MRS. RATIGAN:** I don't have any questions for

1 this witness, Your Honor.

2 **THE COURT:** Thank you, ma'am. I appreciate
3 you being here.

4 **MR. RICHEY:** We would call Scott Robinson at
5 this time.

6 **SCOTT ROBINSON**

7 is first duly sworn and then testifies as follow:

8 **THE CLERK:** Thank you. You may be seated.
9 State your full name for the record please.

10 **THE WITNESS:** It's Scott Robinson.

11 **THE CLERK:** Thank you.

12 **DIRECT EXAMINATION**

13 **BY MR. RICHEY:**

14 **Q** Mr. Robinson, do you recall representing
15 Benji Bowen?

16 **A** I do.

17 **Q** And did you represent him for Possession of
18 Meth and other drug charges?

19 **A** Yes.

20 **Q** Did he eventually plead guilty?

21 **A** Yes.

22 **Q** Okay. You heard the testimony today. You
23 were hired or you will agree that you were hired
24 December of '07?

25 **A** Yes.

1 **Q** At the time of your hiring, do you know
2 whether Mr. Bowens had any kind of plea offer on the
3 table?

4 **A** I have no independent recollection of that.

5 **Q** Do you recall anything about an eight-year
6 plea offer?

7 **A** Let me go back to that question. I think I
8 was aware that he had been, at one point, offered
9 eight years when he had Tim Sullivan as his attorney.

10 **Q** Okay.

11 **A** But my understanding, when they came, the
12 offer was off the table. That was my understanding
13 that the offer was already gone. They had -- he had
14 been to court several times and he refused the offer
15 of eight years.

16 **Q** Now, when you were retained in '07, was your
17 position now, since there was no offer, that you were
18 going to have to try the case, there was going to be a
19 trial? I mean, was he basically retaining you to do a
20 trial or a plea or what?

21 **A** Yes, but I agree with the fact that Benji
22 needed some help. He did. He needed help in the
23 sense that he was a user. He had been a lifetime user
24 pretty much that needed help. If I could, I would
25 have wanted -- I thought a different resolution would

1 have been to get him in a drug program, some rehab
2 during the time before the time this ever came up and
3 to use that in the case. Although the offer was
4 already gone at that point, I was going to try to use
5 that to our advantage possibly to maybe persuade Mrs.
6 Motts to bring the offer back on the table at some
7 point.

8 I didn't think that he deserved to go to jail
9 for a long period of time. I didn't. I never felt --
10 I still don't believe that he deserves to be in jail
11 for a long period of time. But I thought that he
12 would benefit by getting into rehab and doing
13 something that would possibly appease or to do
14 something with Joyce Motts.

15 **Q** When you got hired in December of '07 to
16 August of '08, was there any offers made to you by the
17 State?

18 **A** No, no offers.

19 **Q** Okay. At the time that you were retained to
20 represent Mr. Bowen, did you discuss with him that it
21 was basically 15 years or a trial?

22 **A** I have no independent recollection. I do
23 know that I talked to him about getting him into rehab
24 and doing something of that nature with him.

25 **Q** So at the time that he was hired, you

1 basically had the blank slate. You were just starting
2 another case. You basically got it and said, okay,
3 let me see what the landscape is and go from there?

4 **A** Here is what I had. I had an eight-year
5 offer that had expired. We were left with that.
6 There is a general misunderstanding amongst inmates
7 regarding what counts as a predicate for a third
8 offense or second offense.

9 **Q** Right.

10 **A** And what Benji was charged with, he thought
11 -- and I think this is why -- this is my own opinion,
12 but I think that he thought -- and I had gone over
13 this with my conversations with him. He thought that
14 the previous stuff that he had on his record did not
15 count as predicates for this. He actually should've
16 been charged with possession second. That's what I
17 think he thought at that point it was. So there was
18 kind of a question, I think, in his mind, as far as
19 why would I plead guilty to it. That's why I think he
20 turned down the offers that he had before with Mr.
21 Sullivan because I think he thought -- I think it
22 wasn't explained to him that his prior records are
23 different little incidences he had. I think that a
24 lot of the inmates or a lot of the people that are
25 charged think they have to be charged with the exact

1 same offense for it to be a second or third offense.

2 I think that's what he thought.

3 Q What I'm trying to clarify here is he was
4 facing 15 to 30, correct?

5 A Uh-huh.

6 Q When you got the case, he was facing 15 to
7 30, correct?

8 A Yes. Uh-huh.

9 Q Did you talk to him about getting 15 years
10 because he had no offer? Did you talk to him about,
11 hey, you are facing 15 to 85 percent?

12 A I would have at some point talked to him
13 about that. But I have no independent recollection of
14 that.

15 Q Now, the discussion -- do you recall having
16 the conversation with the mother at the courthouse?

17 A I know I talked to her. She was always
18 there. She was great. She was very easy to work
19 with, I thought.

20 Q The heated discussion that she testified to,
21 do you recall having that discussion with her?

22 A The only thing heated in that discussion -- I
23 don't characterize it as being heated. I think this
24 happens to a lot of defense attorneys. They, uh,
25 it's, uh, -- the Solicitor, the assistant Solicitor in

1 this case is not the easiest person to deal with in
2 terms of negotiations and things of that nature. That
3 could have been possibly -- because she was actually
4 around us and so forth. That's the only heated part
5 at all.

6 **Q** Did you ever tell him that he would be
7 eligible for drug court or probation or anything at
8 that point?

9 **A** I actually -- when I took this case with no
10 offer, I thought that I would do the best I could to
11 get him into a rehab facility, some sort of rehab to
12 help him because he needed help. He didn't need to be
13 put in jail and set off someplace. He needed rehab.
14 He needed some help. What I wanted to do is, my
15 position was that I was going to do some things like
16 rehab, things of that nature, a lot of good things and
17 then go and see if I could get this offer back on the
18 table. That's what my intention was.

19 **Q** At some point, if that didn't work, he would
20 still be facing the ---

21 **A** Oh, yeah. He still was facing that.
22 Correct.

23 **Q** You discussed that with him?

24 **A** I believe I did.

25 **Q** There's no reason for him to have an

1 expectation of eight-year plea at the time you
2 represented him?

3 **A** It was already off the table at the time I
4 represented him. I would have loved to have the
5 eight-year offer. He would've probably -- you know,
6 hindsight is always 20/20 on different cases and so
7 forth. He probably may have wanted to take it back
8 when Tim Sullivan represented him. I don't know why
9 he did not take it. Going back to what I said before,
10 I really believe that people think that they have to
11 be charged with certain predicates before they can get
12 third offense. That is what I think they believe.

13 **Q** You have a letter in your file from Joyce
14 Motts saying that the deal was off?

15 **A** I do. This is a letter I showed you this
16 morning actually dated May 22nd, 2008.

17 **Q** Okay. This letter says that the offer was
18 off on May 21st when you contacted the solicitor to
19 reopen the offer as of May 21st, 2008, correct?

20 **A** Uh-huh. Yes.

21 **Q** So this was on the day of that plea in front
22 of McCauley, correct?

23 **A** He was actually -- we did the plea actually
24 in front of Judge Hill months later, in August, I
25 believe. The letter -- they pulled this thing up on

1 the trial docket. He did not want to go to trial, did
2 not go to trial. It was not going to be an option. I
3 think what she explained in the letter, I think she
4 explained that the offer was not going to be reopened
5 as I wanted her to do.

6 Q On this particular offer, this statement, May
7 21st, '08 to reopen the offer, when you took this case
8 -- let me ask this question. This case got put on the
9 trial docket, right?

10 A I think the policy they have in the
11 Solicitor's Office here is once the person turns down
12 the offer, and I think he turned down the offer four
13 different times, then it is put on the trial docket.
14 That is my understanding. Once it is put on the trial
15 docket, there's no more negotiations.

16 Q In terms of the offer, the offer expired in
17 December. So back in December '07, he was looking at
18 a trial because the offer was off the table, correct?

19 A I can only tell by what that says and what my
20 understanding of when the offer that they made was
21 gone.

22 Q When you were retired -- when you were
23 retained in December of '07, there was no eight-year
24 offer because it had expired?

25 A Correct. That's my understanding. Correct.

1 **Q** At that point, Mr. Bowens has to have a trial
2 to get less than the minimum, correct?

3 **A** Correct.

4 **Q** So at the time that you were retained, you
5 explained to him that you can't get drug court, you
6 can't do all this stuff because all that's over,
7 you're going to have to take at least the mandatory
8 minimum?

9 **A** I really take the position, when I look at a
10 case, I look at a case to try a case. I don't look at
11 a case just to plea the case. When a client comes in
12 that does not want to plead to something, especially
13 with the problems that he had with drugs in this case,
14 I'm going to go back and try my best to either get the
15 offer back on the table or do something to help the
16 client. I just am. That's just how it is.

17 **Q** Your testimony would be you think it was in
18 his best interest to take the eight-year offer,
19 correct?

20 **A** I'm sorry.

21 **Q** That would have been in his best interest the
22 take the eight-year offer?

23 **A** That's kind of hindsight though, because at
24 the time I think I took the case, I didn't have the
25 offer on the table.

1 **Q** Right. But it would have been to his benefit
2 to take it, in hindsight, correct?

3 **A** In hindsight, uh, if he felt it was in his
4 best interest to take that offer when he had Tim
5 Sullivan as his attorney before I became involved,
6 yes, I would think so. No defense attorney likes to
7 see a client go to jail for a long period of time.
8 That is not something that defense attorneys like to
9 see. I think it goes back to again to this
10 misunderstanding people have of what the predicates
11 are for the second and third offense and the like.

12 **MR. RICHEY:** We offer this letter as
13 Applicant's 1.

14 **MRS. RATIGAN:** No objection, Your Honor.

15 **THE COURT:** Admitted.

16 **(WHEREUPON,** Plaintiff Exhibit Number 1 is marked
17 for identification and admitted into the record.)

18 **MR. RICHEY:** Answer any questions Mrs.
19 Ratigan has for you.

20 **CROSS-EXAMINATION**

21 **BY MRS. RATIGAN:**

22 **Q** The testimony today has been you were hired
23 by Mr. Bowen's mother. Is that correct?

24 **A** I believe so.

25 **Q** During your conversations with either her or

1 your client, did you promise them that Mr. Bowen would
2 receive a sentence of drug court?

3 **A** I can't do that only because -- here is what
4 I would normally say, is that I think, in my opinion,
5 based on his background, this is the way his life has
6 been. He's got a problem with drugs. There's no
7 question about that. No question he's got a problem
8 with drugs. I would have liked to have been able to
9 get him some rehab but the drug court is up to the
10 Solicitor because the Solicitor is the only one that
11 can refer someone to drug court.

12 As a defense attorney, I'm not really someone
13 who advocates drug court to anyone. But in his case,
14 in Benji's case, I would have liked him to be able to
15 get rehab and to get into that. I did not believe he
16 was -- I didn't believe he was a big dealer. I think
17 he was a user who's had problems with drugs his whole
18 life. Uh, I think his mother recognized that. I
19 think we all recognized that.

20 **Q** But again, would you have promised anyone in
21 the family?

22 **A** I can't promise someone drug court.

23 **Q** Would you have promised either him or his
24 mother a sentence of house arrest?

25 **A** I can't promise that. I have no independent

1 recollection of that. But I would -- this is how I
2 look at it. I will do everything I can to get him to
3 best resolution of the case. That is how I operate.
4 With the offer off the table, what we had to do was
5 since we had no offer on the table, he wasn't chomping
6 at the bit to do a plea for 15 years. The best
7 alternative, between the time in December,
8 approximately eight months elapsed. At the time they
9 pulled the case up for trial in May, he was not in any
10 position to want to go and plead guilty to 15 years,
11 of course. So if I could have gotten him in some sort
12 of rehab or something of that nature to get him out of
13 jail, I would have done that.

14 **Q** All right. Now, do you recall discussing
15 with Mr. Bowen the mandatory minimum and maximum in
16 this case?

17 **A** I don't know when I discussed it with him but
18 I did discuss it with him at some point. Again, I
19 never thought that he deserved that much time ever. I
20 never thought that.

21 **Q** Did you explain to him that he was facing
22 this mandatory minimum because of his prior
23 convictions for drug offenses?

24 **A** Yes, and that was where the misunderstanding,
25 I think, came into play. I think this came into play

1 back when Mr. Sullivan represented him. It is this
2 idea that some charges, the charges that he had in his
3 past did not count as predicates for things. I don't
4 know if Mr. Sullivan discussed that with him, but when
5 I spoke with Benji, he did not know that. He thought,
6 in his mind, I think from my conversations that they
7 weren't predicates for a third offense, second or
8 third offense.

9 **Q** Would you have explained to him the mandatory
10 minimum prior to that May hearing before Judge
11 McCauley?

12 **A** I would at some point. I don't know when I
13 did that though. I have no independent recollection
14 of when I discussed it with him, if I did.

15 **Q** In your general practice as a defense
16 attorney, is that something you would have discussed
17 in your first few meetings with the client, what they
18 were possibly facing?

19 **A** I don't have if I -- I have no independent --
20 I don't know if I would or not to be honest with you.
21 I don't know. I mean, if I thought that he was going
22 to go to court on a 15-year -- 15 to 30, I would have
23 discussed it with him. But again, I always wanted him
24 -- I always thought that at some point we could have
25 got the solicitor to reopen the offer. I tried that a

1 good bit, going into this whole thing about his drug
2 addiction and that kind of stuff, but it didn't work.
3 That was unfortunate. I don't believe that he
4 deserves to be in jail for as long as he's sentenced
5 to.

6 Q So even after the case was placed on the
7 trial docket, you still went to the State to try and
8 get a plea offer?

9 A Oh, yeah. Yes.

10 Q He eventually ended up pleading straight-up
11 to the charges?

12 A He did, unfortunately. Correct.

13 Q Now, in the transcript, Mrs. Motts states
14 that she is not pressing some charges, was that
15 something you knew going into the plea that if he pled
16 guilty they would dismiss a few charges?

17 A I don't know if I knew about it, but they do
18 that pretty much in every situation. It really didn't
19 matter because the poor guy was getting 15 years on a
20 charge where he's an addict which makes -- to me, I
21 think people like Benji deserves rehab and treatment
22 as opposed to incarceration.

23 MRS. RATIGAN: That's all I have, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. RICHEY:

1 **Q** Did you, uh, have any correspondence with him
2 about this issue that you wrote him to tell him what
3 he was facing or anything to that extent?

4 **A** I would have had those conversations with
5 him, I think.

6 **Q** Okay.

7 **A** He was just across -- I'm just about a
8 street up from him so I could just go over and see
9 him.

10 **Q** Did you have any correspondence from the
11 Solicitor's Office in your file? Do you have any ---

12 **A** I don't have any correspondence. It would be
13 all -- with her, it would be all telephone
14 conversations.

15 **Q** Do you have any type of fee agreement with
16 him?

17 **A** Do I?

18 **Q** Yes.

19 **A** I'm sure I do. Yes, I do.

20 **Q** Okay. What date was that date?

21 **A** Like I said, December 17th, 2007.

22 **Q** Do you have any correspondence to him at all?

23 **A** Honestly, I would only -- since there were no
24 offers given up at that point, I would see him
25 personally and talk to him.

1 **Q** Do you have any correspondence with the
2 Solicitor at all about his case?

3 **A** Again, as I just told you, I would call her
4 because I've known her for a good bit of time. I just
5 felt comfortable calling her.

6 **Q** There would be at least one because this
7 letter referenced a correspondence from you May 21st?

8 **A** Yeah, I would have sent her an e-mail, not a
9 letter. I sent it by email.

10 **MR. RICHEY:** That is all, Your Honor.

11 **THE COURT:** Anything?

12 **MRS. RATIGAN:** No, Your Honor.

13 **THE COURT:** All right. Thank you, sir.

14 **THE WITNESS:** Thank you, Your Honor.

15 **THE COURT:** You can step down.

16 Okay. Anything further from the applicant?

17 **MR. RICHEY:** No, sir, Your Honor.

18 **MRS. RATIGAN:** The State would rest. We have
19 no witnesses to call, Your Honor.

20 **THE COURT:** Okay. Good enough. All right.
21 I'll take it under advisement. I'll consider it.
22 Having taking it under advisement, I'm just
23 reviewing this. So we can go ahead and bring the
24 next one in.

25 **MRS. RATIGAN:** Okay. Thank you Your Honor.

1
2
3
4
5
6

THE COURT: Good luck to you, Mr. Bowen.

(WHEREUPON, the hearing concludes at approximately
11:20 a.m.)

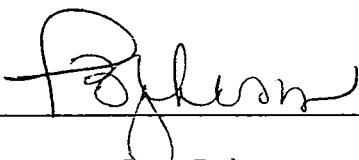
(END OF PROCEEDING)

CERTIFICATE

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of Common Pleas
8 for Greenville, South Carolina, on this 7th day of
9 August, 2010.

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

12
13
14
15
16
17
18
19
20
21
22
23
24



Teresa B. Johnson
Official Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Benji Dale Bowen,)
 S.C.D.C. No. 308133,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2009-CP-23-6066

ORDER OF DISMISSAL

FILED CLERK OF COURT
 GREENVILLE COUNTY S.C.
 PAUL B. MICHELS
 2010 JUL -9 P 2:48

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 21, 2009. The Respondent made its return on November 18, 2009. An evidentiary hearing into the matter was convened on May 24, 2010, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were the Applicant's mother, Debra Bowen, and the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the January 2007 term of the Greenville County Grand Jury for possession of

R39

ecstasy (2007-GS-23-0051), two (2) counts of possession with intent to distribute (PWID) methamphetamine (2007-GS-23-0072, -0089), possession of methamphetamine (2007-GS-23-0076), possession of a controlled substance (2007-GS-23-0086) and unlawful carrying of a pistol (2007-GS-23-0088). He was represented by Scott D. Robinson, Esquire.

On August 11, 2008, the Applicant pled guilty.¹ The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of one (1) year for possession of ecstasy, second offense, seventeen (17) years for each count of PWID methamphetamine, third offense, seven (7) years for possession of methamphetamine, third offense, one (1) year for possession of a controlled substance, third offense, and one (1) year for unlawful carrying of a pistol. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ The State not prossed four pending indictments: 2007-GS-23-0068, -0075, -0077, -0087.

RB 7

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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 Applicant stated his first plea attorney conveyed an eight (8) year plea offer from the

State. The Applicant stated he rejected this plea offer and hired plea counsel to attempt to get a better recommendation. The Applicant stated plea counsel was hired because he said the Applicant would receive a sentence of house arrest or drug court. The Applicant testified that he was informed on May 21, 2008, that his charges carried a mandatory minimum sentence of fifteen (15) years imprisonment. The Applicant testified that once he learned this, he told plea counsel he wanted to accept the eight (8) year plea offer. The Applicant testified plea counsel should have told him – before that plea offer expired – that he would not be eligible for a sentence of either drug court or house arrest.

The Applicant's mother stated the first plea attorney had discussed the eight (8) year plea offer with the Applicant and that this offer was still available when she hired plea counsel. The Applicant's mother stated plea counsel said he was confident the Applicant could receive a sentence of house arrest or probation.

Plea counsel testified that when the Applicant's mother hired him, the eight (8) year plea offer had expired. Plea counsel testified the Applicant was facing a sentence between fifteen (15) and thirty (30) years imprisonment when he got the case. Plea counsel testified he discussed the possible minimum and maximum sentences with the Applicant and that he was facing these sentences because of his prior drug convictions. Plea counsel testified he never told either the Applicant or his mother that the Applicant would be sentenced to drug court or house arrest. Rather, plea counsel stated he spoke to the Applicant about getting him into a drug rehabilitation program. Plea counsel stated that after the May 21, 2008, hearing, he attempted to have the State re-open the eight (8) year plea offer, but was unsuccessful. Plea counsel stated the Applicant pled guilty without a sentence recommendation and had no real expectation of receiving an eight (8) year sentence because that deal had expired.

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

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, pp.7-8; p.17). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel and had not been coerced in any way. (Plea transcript, pp.7-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. The Applicant admitted he turned down the eight (8) year plea offer conveyed by his first plea attorney and then hired plea counsel. The rejection of the plea offer was mentioned at the plea hearing and corroborated by the Applicant. (Plea transcript, pp.17-18). Plea counsel testified the eight (8) year offer had expired before he was retained. This was also mentioned at the plea hearing. (Plea transcript, p.22). The State noted this case was pleading guilty off the trial docket and that there was no sentence recommendation. (Plea transcript, p.17; pp.19-20). This Court finds the Applicant was aware of the charges and possible punishments he was facing in pleading guilty that day. When taking into consideration both the Applicant's prior criminal record and the variety of drugs found on his person, this Court does not find credible the allegation that plea counsel unequivocally promised the Applicant he would receive a sentence such as probation, drug court or house arrest.²

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

² Plea transcript, pp.15-17.

5
R.B. 9

Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel’s representation. Furthermore, the Applicant’s guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this application for PCR must be denied and dismissed with prejudice.

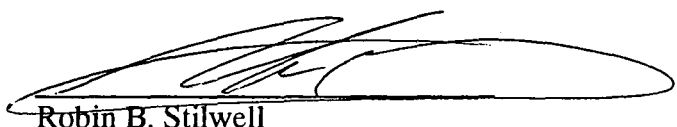
This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of July, 2010.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

DR Widmer

Person/s

Greenville County Sheriff's Office

9/27/06

ARREST WARRANT NUMBER

H916503

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

JLK

The State of South Carolina

County of Greenville

01151



COURT OF GENERAL SESSIONS

JANUARY TERM 2007

PLEAD GUILTY

THE STATE

vs.

BENJI DALE BOWEN

Shirley Robinson

01/30
0179

Indictment for

POSSESSION OF
METHYLENEDIOXYMETHAMPHETAMINE
(ECSTASY)

VIOLATION § 44-53-370

33

RE SUSPENDS

receive driver's license?

NO



Defendant

WITNESSES

Jeremy Jones *Perron/S*

Greenville County Sheriffs Office

8/28/2006

ARREST WARRANT NUMBER

1471251

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

JLK

The State of South Carolina

County of Greenville *U*

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

THE STATE

vs.

BENJI DALE BOWEN

FILED COUNTY

3200
3198
Indictment for

POSSESSION OF METHAMPHETAMINE WITH
INTENT TO DISTRIBUTE

VIOLATION § 44-53-0375

25

DEBROGEE

Did Clerk receive info by this date

YES _____ NO

If no, explain _____

Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF METHAMPHETAMINE WITH INTENT TO
DISTRIBUTE

At a Court of General Sessions, convened on JANUARY 3, 2007 the Grand Jurors of Greenville
County present upon their oath:

That BENJI DALE BOWEN did in Greenville County, on or about the 28th day of August, 2006, possess with
intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Methamphetamine
(Crank), a controlled substance, such possession not having been authorized by law. This is in violation of §44-
53-375 of the South Carolina Code of Laws (1976) as amended.

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

Jayce Moutz
SOLICITOR

WITNESSES

DR Widmer

Perron/S

Greenville County Sheriffs Office

9/27/2006

ARREST WARRANT NUMBER

H916500

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

JLK

The State of South Carolina

County of Greenville ✓

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

PLEAD GUILTY

THE STATE

vs.

BENJI DALE BOWEN

Indictment for

3016
3009

POSSESSION OF METHAMPHETAMINE

VIOLATION § 44-53-0375

DL SUSPENSE

Did Clerk receive [unclear] [unclear]?

YES _____ NO _____

If no, explain _____

Defendant: _____

29

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF METHAMPHETAMINE

At a Court of General Sessions, convened on JANUARY 3, 2007 the Grand Jurors of Greenville

County present upon their oath:

That BENJI DALE BOWEN did in Greenville County, on or about the 27th day of September, 2006, willfully and unlawfully have in his possession a quantity of Methamphetamine (Crank), a schedule II controlled substance. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Jose Monto
SOLICITOR

WITNESSES

CJ Todd

Perron / S

Greenville County Sheriffs Office

10/12/2006

ARREST WARRANT NUMBER

1801293

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

PLEAD GUILTY

THE STATE

VS.

BENJI DALE BOWEN

Indictment for

0176 ✓ *0178*

POSSESSION OF A CONTROLLED
SUBSTANCE

VIOLATION § 44-53-0370

17

THE STATE OF SOUTH CAROLINA
Clerk of Court
YES _____
If no, explain _____

Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A CONTROLLED SUBSTANCE

At a Court of General Sessions, convened on JANUARY 3, 2007 the Grand Jurors of Greenville
County present upon their oath:

That BENJI DALE BOWEN did in Greenville County, on or about the 12th day of October, 2006, willfully and unlawfully
have in his possession and under his control a quantity of a schedule II controlled substance, Oxycodone. This is in violation
of § 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

Joyce Monts
SOLICITOR

WITNESSES

CJ Todd

Perron/S

Greenville County Sheriffs Office

10/12/2006

ARREST WARRANT NUMBER

1801296

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

JLK

The State of South Carolina

County of Greenville ✓

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

THE STATE

vs.

BENJI DALE BOWEN

PLEAD GUILTY

Indictment for

✓
0044

UNLAWFUL CARRYING OF A PISTOL

VIOLATION § 16-23-0020

19

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
UNLAWFUL CARRYING OF A PISTOL

At a Court of General Sessions, convened on JANUARY 3, 2007 the Grand Jurors of Greenville

County present upon their oath:

That BENJI DALE BOWEN did in Greenville County, on or about the 12th day of October, 2006, willfully and unlawfully carry about his person a pistol. This is in violation of §16-23-20 of the South Carolina Code of Laws (1976) as amended.

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

Joey Monts
SOLICITOR

WITNESSES

CJ Todd Perron/S

Greenville County Sheriffs Office

10/12/2006

ARREST WARRANT NUMBER

1801292

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

JLK

The State of South Carolina

County of Greenville ✓

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

PLEAD GUILTY

THE STATE

vs.

BENJI DALE BOWEN

DL SUGGESTION

Did Clerk receive...

YES _____ NO ✓

If no, explain _____

Defendant

3200
3198

Indictment for

POSSESSION OF METHAMPHETAMINE WITH
INTENT TO DISTRIBUTE

VIOLATION § 44-53-0375

20

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF METHAMPHETAMINE WITH INTENT TO
DISTRIBUTE

At a Court of General Sessions, convened on JANUARY 3, 2007 the Grand Jurors of Greenville

County present upon their oath:

That BENJI DALE BOWEN did in Greenville County, on or about the 12th day of October, 2006, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Methamphetamine (Crank), a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Jayce Minto
SOLICITOR