

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Sumter County

S.C. Supreme Court

R. Knox McMahon, Circuit Court Judge

KWAUN KA'SHAWN PEAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002651

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

DANIEL GOURLEY
Assitant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina)
)
County of Sumter)
)

Kwaun Ka'Shawn Peay)
Plaintiff) Guilty Plea
) 2011-GS-43-00431

vs.

The State of South Carolina,)
Defendants)

January 25, 2012

Before the Honorable W. Jeffrey Young, Judge.

Mr. Jason Corbett,
Assistant Solicitor the State

Ms. Lauren Stevens,
Attorney for Defendant

Margaret T. Sullivan,
Court Reporter

1 MR. CORBETT: Please the Court, Your
2 Honor, at this time, the State would call the Case
3 of State of South Carolina versus Kwaun Ka Shawn
4 Peay Indictment 2011-GS-43-431. Mr. Peay is
5 before a true billed indictment alleging
6 trafficking in cocaine base, trafficking in
7 cocaine, manufacturing cocaine base, possession of
8 marijuana, resisting arrest, and failure to stop
9 for a blue light or siren.

10 Mr. Peay is present in the courtroom with
11 his attorney Lauren Stevens. Your Honor, if I
12 may, I will hand up the original indictment, and a
13 listing of the state's potential witnesses.

14 THE COURT: Thank you. Ladies and
15 gentlemen, we are about to begin the trial of
16 Kwaun Ka Shawn Peay. And he is charged with
17 several counts of this indictment. Let me read
18 through each one. Count 1, is trafficking in
19 cocaine base more than 28 grams less than 100
20 grams. The indictment reads that Kwaun Ka Shawn
21 Peay did in Sumter County on or about November
22 18th, 2010, knowingly sell, deliver, purchase or
23 bring into this State, or did aid, abet, attempt
24 to conspire to sell, deliver, purchase or bring
25 into this State or was actual constructive

1 possession or attempted to become in actual or
2 constructive possession of cocaine base in an
3 amount of more than 28 grams, but less than
4 100 grams. The same being a controlled substance
5 all within the meaning of Section 44-53-110 of the
6 South Carolina Code of Laws.

7 Count 2, reads on the charge of
8 trafficking cocaine 200 grams or more but less
9 than 400 grams; that Kwaun Ka Shawn Peay did in
10 Sumter County on or November 18th 2010, knowingly,
11 sell, deliver, purchase or bring into this State
12 or aid, abet, attempt to conspire to sell,
13 deliver, purchase or bring into this State or was
14 in actual or constructive possession or attempted
15 to become in actual or constructive possession a
16 quantity of cocaine in the amount of 200 grams or
17 more but less than 400 grams. The same being a
18 controlled substance within the meaning of Section
19 44-53-370 of the South Carolina code.

20 In Count 3, he is charged with
21 constructive manufacturing cocaine base. It reads
22 Kwaun Ka Shawn Peay did in Sumter County on or
23 about November 18th 2010, manufacture, possess
24 with intent to distribute, dispense or deliver or
25 did aid, abet, attempt to conspire to manufacture

1 or deliver a quantity of cocaine base a controlled
2 substance under the provisions of Section
3 44-53-110, et. seq. of the South Carolina code.

4 Count 4 reads that Kwaun Ka Shawn Peay did
5 in Sumter County on about November 18th 2010,
6 knowingly and intentionally possess a quantity of
7 marijuana a controlled substance under the
8 provisions 44-53-110, et. seq. of the South
9 Carolina Code of Laws. Count 5, is in Sumter
10 County on or about November 18th 2010, the
11 defendant Kwaun Ka Shawn Peay knowingly and
12 wilfully did oppose or resist the efforts of
13 Officer Justin Yelton a law enforcement officer of
14 this State to lawfully arrest the defendant, and
15 the defendant knew or reasonably should have known
16 that the Officer Justin Yelton was a law
17 enforcement officer in violation of Section
18 16-9-320 (A) of the South Carolina code.

19 Count 6, reads and this is a failure to
20 stop for a blue light. It reads Kwaun Ka Shawn
21 Peay did in Sumter County on or about November
22 18th 2010, while operating a motor vehicle on a
23 road, street or highway of the State of the South
24 Carolina failed to stop his motor vehicle when
25 signaled to do so by law enforcement by means of a

1 siren and or flashing light, in violation of
2 Section 56-5-750 of the South Carolina code.

3 Now ladies and gentlemen of the jury, let
4 me remind you. The fact that the defendant who
5 was arrested, charged and indicted, in no way
6 indicates that he is actually guilty of these
7 charges and should not be inferred that he is
8 guilty. The defendant has pled not guilty of
9 these charges. And therefore the State will have
10 the burden of proving his guilt beyond a
11 reasonable doubt. Now, ladies and gentlemen, my
12 first question. Is there anybody in the jury
13 panel who knows anything about this case?

14 (Whereupon, no response.)

15 THE COURT: Thank you. Mr. Prince, would
16 you place the jury under oath.

17 (Whereupon, the jury is sworn.)

18 THE COURT: Thank you Ladies and
19 gentlemen. Now Ladies and gentlemen, the reason
20 that you are under oath is because this is such
21 crucial stage of the trial. You know just like a
22 building must have a firm foundation to be
23 protected of those who live in it, so must a jury
24 be a firm foundation for the trial for those who
25 participate. The Solicitor for the State and for

1 the Defendant who is on trial. Your answers to
2 these questions will be the foundation by which
3 the attorneys will select this jury. And
4 hopefully, it be an unbiased jury who will
5 diligently listen to the facts of this case and
6 deliver a just verdict.

7 And again, thank you for your complete
8 answers to these questions. The first question I
9 have though is, has anyone ever been related by
10 blood or marriage or have a business or personal
11 relationship with the defendant, Kwaun K. Peay?
12 If you would stand up, Mr. Peay. And please turn
13 around so they can see you. Mr. Peay, you may sit
14 down. Has any member of the jury panel ever had
15 any relationship with Mr. Peay? If so, please
16 stand.

17 Yes, sir. Please state your name and
18 juror number.

19 THE JUROR: Darryl Wright, Juror 176.

20 THE COURT: Yes, sir, Mr. Wright. What is
21 your relationship with Mr. Peay?

22 THE JUROR: By marriage by my wife. My
23 wife is related to him.

24 THE COURT: Okay. and what is -- how
25 close is the relationship?

1 THE JUROR: I am not sure how close the
2 relationship is.

3 THE COURT: Is it cousin, distant cousin?
4 Is it within three degrees of the relationship?
5 That usually doesn't mean a whole lot to.

6 THE JUROR: I just know that they are
7 cousins.

8 THE COURT: But you know him. Would the
9 fact that you know him, make it so that you can't
10 be fair and impartial to the State or the defense
11 in this action?

12 THE JUROR: No, sir.

13 THE COURT: You believe you can be fair
14 and impartial?

15 THE JUROR: I cannot be.

16 THE COURT: Oh, you cannot be fair and
17 impartial. Does the State or the defense have any
18 objection to removing this gentleman for cause?

19 MS. STEVENS: No, sir, Your Honor.

20 MR. CORBETT: Nothing from the State.

21 THE COURT: Thank you, sir. You will not
22 be called for this jury. Now, Ladies and
23 gentlemen, this is a list of possible witnesses in
24 this case. And I will go through the whole list.
25 And then I am going to ask you the same questions

1 if you are you related by blood or marriage or
2 have any personal or business relationship.
3 Officer Justin Yelton of the Sumter County
4 Sheriff's Department. Darlene Dellinger of the
5 Sumter County Sheriff's Department. William Welch
6 of the Sumter County Sheriff's Department. And
7 you all may be seated afterwards. Melvin McLeod
8 from the Sumter County Sheriff's Department.
9 Jerry Kelly of the Sumter County Sheriff's
10 Department. Bryan Rulong of the Sumter County
11 Sheriff's Department. Willie McFadden of the
12 Sumter County Sheriff's Department. Ron Dodson of
13 the Sumter County Sheriff's Department. Kenneth
14 Burris of the Sumter County Sheriff's Department.
15 Jim Atkinson of the Sumter County Sheriff's
16 Department. Bobby Richardson of the Sumter County
17 Sheriff's Department. Mitch Hansen of the Sumter
18 County Sheriff's Department.

19 Does any member of the jury panel know any
20 of these people whose names I have just called?
21 Are you related by blood or marriage or have a
22 personal or business relationship? Yes, ma'am
23 please state your name and juror number.

24 THE JUROR: Juror 14 McKenzie Benning. I
25 have a friends with Mr. Rulong.

1 THE COURT: And he is a witness. A
2 possible witness in this case. Do you believe
3 that you can listen to the evidence and be fair
4 and impartial to the defense as well as the State
5 in this case?

6 THE JUROR: I believe I can be fair, but I
7 am against judgment, sir. It would be kind of
8 hard.

9 THE COURT: That tells me you cannot. Any
10 objection to me removing her for cause.

11 MR. CORBETT: No objection from the State,
12 Your Honor.

13 THE COURT: Thank you, ma'am. You will
14 not be called.

15 MR. CORBETT: Your Honor, may I get that
16 juror number?

17 THE COURT: Yes, ma'am, what was your
18 number again?

19 THE JUROR: 14.

20 THE COURT: 14, I think. Ladies and
21 gentlemen, the attorneys who will be trying this
22 case are Jason Corbett for the Solicitor's Office.
23 And Ms. Lauren Stevens for the Defendant. Has
24 anyone in the jury panel ever been represented by
25 either of these attorneys in any way whatsoever?

1 Or have a close, personal or business relationship
2 with them? If so please stand.

3 (Whereupon, no response.)

4 THE COURT: Thank you, no one is standing.
5 Has any member of the jury panel formed or
6 expressed an opinion about any issue that is
7 involved in this case? If so please stand.

8 (Whereupon, no response.)

9 THE COURT: Thank you, no one is standing.
10 Is there any member of the jury panel who is aware
11 of any bias or prejudice towards either the State
12 or the defense in this case? If so please stand.

13 (Where no response.)

14 THE COURT: Thank you. No one is
15 standing. Is there any member of the jury panel
16 who is also a member of the Grand Jury that
17 indicted this case? If so please stand. Again,
18 the idea is that all the information that you are
19 going to need to make a decision in this case
20 should come from this witness stand, and any other
21 exhibits that will come into evidence. Does
22 anyone know anything about this case?

23 (Whereupon, no response.)

24 THE COURT: Thank you. Now is there any
25 member of the jury panel who is also a member or a

1 contributor of any group which has as it's primary
2 concern the promotion of law enforcement or
3 victim's rights? And these groups will include:
4 Mother's Against Drunk Drivers. Students Against
5 Drunk Drivers. Or Citizens Against Violent
6 Crimes. Of course there will be other
7 organizations that would be similar to these, but
8 the list cannot be complete. Anyone a member of
9 any group like this?

10 (Whereupon, no response.)

11 THE COURT: Thank you. No one is
12 standing. Does any member of the jury panel know
13 of any reason whatsoever why he or she should not
14 serve as a juror in this case, with particular
15 emphasis being on in your ability to be fair and
16 impartial to both the State and the Defendant. If
17 so, please stand.

18 (Whereupon, no response.)

19 THE COURT: Thank you. No one is
20 standing. Does the State have any additional
21 questions it would like for me to ask?

22 MR. CORBETT: Your Honor, may we approach
23 just briefly?

24 THE COURT: You may.

25 (Whereupon, the attorneys approach the

1 bench and confer with judge.)

2 THE COURT: Does the defense have any
3 additional questions that you would like for me to
4 ask?

5 MS. STEVENS: No, sir Your Honor.

6 THE COURT: Now, Ladies and gentlemen, as
7 you all have done once before, the computer is
8 going to spit out a list of names. Your name will
9 be called. When your name is called, unlike in
10 the other courtroom, there is just not a lot of
11 room here. So please just stand where you are at.
12 The State will have an opportunity to strike you
13 and the Defendant will also have a right to strike
14 you. Please don't take it personally if they
15 strike you. Each of these attorneys has some idea
16 in their mind. And they are not against you.
17 They have an idea of what they want as the jurors.
18 So please don't take it personal.

19 Again, if you are selected, please bring
20 all your personal items with you, and have a seat
21 in the jury box. We will select 12 primary jurors
22 and two alternates. And when we are finished with
23 that, I will release the rest of you.

24 THE CLERK: Juror No. 29 Joey Carmon (m-w)
25 accepted. No. 35 Kaylee Cleeper (m-w) state

1 struck. No. 143 James Sanders (m-b) accepted. 61
2 Steven Frye (m-w) defense struck. 87 Kevin Jarvis
3 (m-w) defense struck. 162 Willie Turner (m-w)
4 accepted. 69 David Griffin (m-w) defense struck.
5 47 Lucious Davis (m-b) state struck. No. 71 Dale
6 Hankins (m-w) defense struck. No. 122 James
7 Nettles (m-w) 89 Sammie Johnson, Jr. (m-w)
8 accepted. 85 Sherry Jackson (f-w) accepted. No.
9 13 Kimberly Binggeli (f-w) accepted. No. 72 Jerry
10 Hardee (m-w) accepted. No. 104 Rachell McCray
11 (f-b) accepted. No 38 Kell Compton (m-w) defense
12 struck. No. 7 Marvin Ballard, III (m-w) accepted.
13 No. 28 Jesse Byers (m-w) accepted. No.95 Angela
14 Langlois (f-w) accepted. I think one alternate
15 would be sufficient. No. 27 Clara Burns (f-w)
16 accepted.

17 THE COURT: Mr. Prince, please call the
18 roll of the jury.

19 THE CLERK: Just raise your hand when I
20 call your number and name, please. 29 Joey
21 Carmon. 143 James Sanders. No. 162 Willie
22 Turner. 122 James Nettles Jr. No. 89 Sammie
23 Johnson Jr. No. 85 Sherry Jackson. No. 13
24 Kimberly Binggeli. No. 72 Jerry Hardy. 104
25 Rachell McCray. No. 7 Marvin Ballard, III. No.

1 28 Jessie Byers. No. 95 Angela Langlois. No. 27
2 Clara Burns.

3 THE COURT: Ladies and gentlemen, you all
4 have been selected as the jurors for this case.
5 There are a few matters that we will need to take
6 up before the case actually begins. So I am going
7 to send you back to your jury room, so you can get
8 a cup of coffee or Coca Cola while we take up some
9 pretrial matters. Please make yourselves
10 comfortable. If you need anything, please ask
11 the bailiffs, and they will be happy to get it for
12 you. Thank you, Ladies and gentlemen. We will
13 see you in a few minutes.

14 (Whereupon, the following takes place
15 outside the presence of the jury.)

16 THE COURT: Any objections from the State
17 or the defense concerning the jury that has been
18 impaneled, or the method in which it has been
19 selected?

20 MR. CORBETT: Nothing from the State.

21 THE COURT: Yes, ma'am.

22 MS. STEVENS: Nothing from the defense.

23 THE COURT: They will be our jury. Any
24 motions that we need to take up at this time?

25 MR. CORBETT: Judge, I am not sure if this

1 would take the official form of a motion, but I do
2 want to make the court aware of some testimony
3 that I anticipate coming, and perhaps deal with it
4 now so it doesn't become a problem. On the date
5 of the arrest, excuse me, Judge. On the date of
6 the incident, the State is going to allege that
7 officers went to the Defendant's residence for the
8 purpose of placing him under arrest pursuant to an
9 arrest warrant. My intention and my instruction
10 to my witness at this point has been that we went
11 to his house because we had a warrant for his
12 arrest, and not to discuss the purpose and the
13 reasons behind that arrest warrant.

14 So I did speak with my witness about that
15 matter. And that would be the testimony that we
16 intend to produce. And, Judge, the reason I say
17 that is, we are not trying to put his character
18 into evidence, but I felt we had to establish the
19 basis for going to his residence.

20 THE COURT: Ms. Stevens.

21 MS. STEVENS: Obviously I can't object to
22 the reason that they were there.

23 THE COURT: Right. As long as they don't
24 bring up what it was.

25 MS. STEVENS: Exactly.

1 THE COURT: I mean, you all are on thin
2 ice on that. So if something else can come in
3 that results in a mistrial.

4 MS. STEVENS: Exactly. And my client
5 contends they didn't have warrants. But I
6 understand that their testimony is that they did.
7 I can cross examine that at the time. And we
8 agree that it should be limited to the fact that
9 they had a warrant for his arrest. It could have
10 been for child support. It could have been---

11 THE COURT: Right.

12 MS. STEVENS: ---for anything in the
13 world.

14 THE COURT: Spitting on a sidewalk.

15 MS. STEVENS: Exactly.

16 THE COURT: And I will give a curative
17 instruction if you want, but he is only on trial
18 for these charges. And that if there is any
19 reference to anything else, they should disregard
20 it.

21 MS. STEVENS: Yes, sir.

22 THE COURT: Anything further from the
23 State?

24 MR. CORBETT: And judge I believe that's
25 it.

1 THE COURT: Anything further from the
2 defense?

3 MS. STEVENS: Your Honor, I have a motion
4 and then I understand that my client has a motion.

5 THE COURT: Okay.

6 MS. STEVENS: Mr. Corbett is alleging that
7 these are second. Your Honor, according to the
8 statute first of all, the prior offense is
9 marijuana. Possession with intent to distribute
10 marijuana. But according to the statute, Your
11 Honor, for something to be a second offense, it
12 must have occurred within the last 10 years. By
13 the grace of God, in 21 days---

14 THE COURT: When did he -- did he serve
15 any jail?

16 MS. STEVENS: He did. It was possession
17 with intent.

18 THE COURT: When did he get out?

19 MS. STEVENS: He got probation, Your
20 Honor. And by the grace of God, 23 days it would
21 have 10 years. 23 days had not passed. But
22 because it as 1/3 or something. In other words,
23 it has been more than 10 years by about 2 weeks.

24 THE COURT: Okay. Mr. Corbett.

25 MS. STEVENS: It was 1/7/2002, Your Honor.

1 THE COURT: Does the 10 years apply to
2 drug cases? I know it applies DUI's. Now whether
3 they can bring it up.

4 MS. STEVENS: Yes, Your Honor. There is a
5 statute, and I had it a minute ago when I was
6 discussing it with him. Second or subsequent
7 offense defines, I am looking for the relevant
8 part, Your Honor. For an offense, for it to be a
9 second or subsequent offense. For an offense
10 involving a controlled substance other than
11 marijuana pursuant to this article, the offender
12 has been convicted within the previous 10 years of
13 a first violation of a controlled substance
14 offense provision other than the marijuana
15 provision, offense provision, of this article or
16 of another State or Federal Statute relating to
17 narcotic drugs, depressants, stimulants or
18 hallucinogenic drugs.

19 So therefore, I would argue that 10 years
20 has passed by 2 weeks, and therefore, first of
21 all, it involves marijuana. And second of all, 10
22 years have passed.

23 THE COURT: Mr. Corbett.

24 MS. STEVENS: And that was a direct quote
25 from the statute, Your Honor, Section 44-53-470.

1 Quotation mark second or subsequent offense.

2 Quotation mark defined.

3 THE COURT: Section 44 what?

4 MS. STEVENS: Section 44-53-470.

5 Subsection 3.

6 THE COURT: Okay. I got it.

7 MS. STEVENS: I was just going to give it
8 to him.

9 MR. CORBETT: Judge, we show Mr. Peay's
10 previous conviction on January 9th 2001.

11 THE COURT: And this is 2012. That's been
12 tried so. Well that can be resolved, because
13 there is no evidence is going to come up with
14 those prior ones during the trial. And that
15 really comes down to sentencing.

16 MS. STEVENS: Yes, sir, Your Honor. But I
17 just, I didn't know what the warrant said. I
18 mean, the indictment sometimes.

19 THE COURT: Well I read the indictment,
20 and it didn't say anything about that. So the
21 jury has no idea as to -- they are not going to
22 know which offense this is.

23 MS. STEVENS: Yes, sir, Your Honor. And
24 it is my understanding that my client has a motion
25 of his own, Your Honor.

1 THE COURT: Yes, sir. Mr. Peay.

2 THE DEFENDANT: Good morning, sir.

3 THE COURT: Good morning.

4 THE DEFENDANT: I was wondering if I
5 could -- I had, these are two charges ran
6 concurrent. And I currently had Mr. Smith,
7 Murrell Smith, to -- I retained Mr. Murrell Smith
8 on my first charge. And I was talking to her
9 about my second one. And I was wondering if I
10 could relieve her and retain another lawyer so I
11 will be treated more fairly.

12 THE COURT: Why do you think you won't
13 treated fairly by Ms. Stevens?

14 THE DEFENDANT: No, I am not saying
15 Ms. Stevens done anything. But I really wanted to
16 be, Mr. Murrell Smith, Mr. Murrell Smith, he's in
17 session right now.

18 THE COURT: Right. I understand. But
19 he's not representing him on any -- is Mr. Smith
20 representing you on any of these charges?

21 THE DEFENDANT: See the charges are ran
22 concurrent.

23 THE COURT: No, sir. On any of these
24 charges, on the events that happened on November
25 18th, 2010, is he representing you on any of those

1 charges?

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay. Then Ms. Stevens
4 represents you. And so I am not going to---

5 MR. CORBETT: Judge, may I---

6 THE COURT: We are not going to stop the
7 trial simply because you have got other charges
8 out there. They are not trying you on those
9 charges. And when they try you on those charges,
10 and if Mr. Smith represents you, then I am going
11 to give him all the courtesies that he is entitled
12 to.

13 MS. STEVENS: Your Honor, there has -- and
14 I guess this is the appropriate time to mention it
15 before we swear the jury. There has been an offer
16 from the State to run all of his charges
17 concurrent. Due to the amount of cocaine, powder
18 cocaine that he had, there is a mandatory sentence
19 of 25 years.

20 THE COURT: Right.

21 MS. STEVENS: I think what Mr. Peay is
22 concerned about is the charges that Mr. Smith
23 represents him on, cannot be dealt today with
24 without Mr. Smith being here if we were to plea.

25 THE COURT: We are not going to plea on

1 those cases today. He can't plead on those cases
2 today. The only thing that we can do, is if he
3 pleas, is to plea on these cases. Now if
4 Mr. Smith wants to plea at the same time, and say,
5 look these all happened and the same thing, I
6 will certainly give him every consideration; that
7 they will run concurrent.

8 MS. STEVENS: Well, Your Honor, that is
9 what Mr. Corbett has said that he would put on the
10 record.

11 THE COURT: I mean, I can't imagine that
12 he would get two 25 years to run consecutive.

13 MS. STEVENS: Well the charges that
14 Mr. Smith represents him on are distribution and
15 proximity; is that correct? Two distributions and
16 two proximities? Close to the school?

17 MR. CORBETT: Your Honor, may I confer
18 with counsel for a moment?

19 THE COURT: You may.

20 (Whereupon, attorneys confer.)

21 MS. STEVENS: May I have a moment to
22 confer with my client?

23 THE COURT: You may.

24 MS. STEVENS: Thank you, Your Honor.

25 (Whereupon, Ms. Stevens confers with the

1 Defendant.)

2 THE COURT: There is nothing on the table
3 once the trial starts.

4 MS. STEVENS: I understand, Your Honor.

5 MS. STEVENS: It is a plea, Your Honor.

6 THE COURT: Okay. Bring your client
7 forward.

8 MR. CORBETT: Your Honor, may I approach?

9 THE COURT: You may. Mr. Corbett, do you
10 want to tell me what the status of the
11 negotiations are?

12 MR. CORBETT: Yes, Your Honor.

13 (Whereupon, the plea is taken.)

14 --End of Requested Transcript of Record---

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of General Sessions on January 25, 2012, in Sumter County, Sumter, South Carolina.

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

10/16/12
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/21

State of South Carolina)
)
County of Sumter)
)

The State of South Carolina,
Plaintiffs

vs.

Transcript of Plea
2011-GS-43-00431

Kwaun Ka'Shawn Peay,
Defendant

BEFORE THE HONORABLE W. Jeffrey Young, Judge.

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

Mr. Jason Corbett,
Assistant Solicitor for the State

Ms. Lauren Stevens,
Attorney for Defendant

Margaret T. Sullivan,
Court Reporter

1 MR. CORBETT: May it Please the Court, at
2 this time, the State would call the case of The
3 State versus Kwaun Ka'Shawn Peay. Indictment
4 2011-GS-43-431. Mr. Peay is before you on a true
5 billed indictment alleging trafficking in cocaine
6 base, trafficking cocaine, manufacturing cocaine
7 base, possession of marijuana, resisting arrest
8 and failure to stop for a blue light or siren.
9 Mr. Peay is present in the courtroom with his
10 attorney Lauren Stevens.

11 THE COURT: Where is Lauren Stevens? I
12 think you need to get her.

13 MR. CORBETT: Your Honor, I'm sorry. I
14 think I got ahead of myself just a little bit.

15 THE COURT: That's okay.

16 MR. CORBETT: The State of South Carolina
17 versus Kwaun Ka'shawn Peay. 2011-GS-43-431.
18 Mr. Peay is before the court on a true billed
19 indictment alleging trafficking cocaine base,
20 trafficking cocaine, manufacturing cocaine base,
21 possession of marijuana, resisting arrest, and
22 failure to stop for a blue light or siren.

23 Mr. Peay is present in the courtroom with
24 his attorney Lauren Stevens. Your Honor, if I
25 may, I will hand up the original indictment. And

1 a listing of the state's potential witnesses.

2 THE COURT: Thank you.

3 MS. STEVENS: It is a plea, Your Honor.

4 THE COURT: Bring your client forward.

5 (Whereupon, the Court Breaks.)

6 MR. CORBETT: Your Honor, may I approach.

7 THE COURT: You may. Mr. Corbett, you

8 want to tell me what the status of the

9 negotiations are in this case?

10 MR. CORBETT: Yes, sir, Your Honor. With
11 regard to State versus Kwaun K. Peay Indictment
12 11-431. Your Honor, as the court is aware, a jury
13 has been picked in this case and we are ready to
14 proceed to trial. During the brief recess, State
15 and counsel for the defense have had an
16 opportunity to discuss the matter. And I believe
17 we are at the point, where the defendant would
18 like to tender a guilty plea to a lesser included
19 offense under trafficking cocaine, 28 to
20 100 grams. And trafficking cocaine base 28 to
21 100 grams.

22 The sentence range on the cocaine charge
23 is 7 to 25 years.

24 THE COURT: Is there a mandatory fine with
25 that?

1 MS. STEVENS: I think there is a mandatory
2 fine of \$50,000 on one, and \$25,000 on the other.

3 MS. STEVENS: Your Honor, on the cocaine
4 it is 25,000.

5 MR. CORBETT: I am sorry, the cocaine is
6 50,000...

7 THE COURT: The other one is 25?

8 MS. STEVENS: Yes, sir. I'm sorry, Your
9 Honor, I was incorrect. It is 50 on both.

10 THE COURT: \$50,000 mandatory.

11 MS. STEVENS: Yes, sir.

12 THE COURT: Ms. Stevens.

13 MS. STEVENS: Yes, sir.

14 THE COURT: You represent Kwaun Ka'shawn
15 Peay.

16 MS. STEVENS: Yes, sir.

17 THE COURT: Have you had an opportunity to
18 go over the charges contained in the indictment,
19 the possible punishment, and his constitutional
20 rights?

21 MS. STEVENS: Yes, sir, Your Honor, I
22 have.

23 THE COURT: And you have also been in
24 negotiations with Mr. Corbett. Is this going to
25 take care of all his cases?

1 MS. STEVENS: It will take care of every
2 pending warrant that he has.

3 THE COURT: Now, do you think your client
4 has understood? Oh, I'm sorry. Go ahead.

5 MS. STEVENS: Oh, I was going to wait
6 until you finished talking to me and then.

7 (Whereupon, the defendant is sworn.).

8 THE COURT: Ms. Stevens, do you believe he
9 has understood all that you told him?

10 MS. STEVENS: Yes, sir, I do.

11 THE COURT: And does he intend to plead
12 guilty or not guilty?

13 MS. STEVENS: Guilty, Your Honor.

14 THE COURT: And do you agree with his
15 decision to plead guilty?

16 MS. STEVENS: Yes, sir, Your Honor.

17 THE COURT: And based upon your
18 investigation of all the facts and all the
19 circumstances involved in this case, do you
20 believe if this case were to go to trial, that
21 there would be a substantial likelihood that he
22 would be found guilty on all the charges.

23 MS. STEVENS: The two charges that he has
24 pleading to, definitely, Your Honor.

25 THE COURT: Now, Mr. Peay, I need to ask

1 you some questions to make sure you are entering
2 this guilty plea freely and voluntarily, and
3 noticeably under the full understanding with
4 knowledge. But the first question I have is, are
5 you under the influence of alcohol or drugs today?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you taking any medication
8 that would cloud your judgment?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you aware of any physical,
11 emotional or nervous condition that would keep you
12 from understanding what we are doing here today?

13 THE DEFENDANT: No, sir.

14 THE COURT: Now it's my understanding that
15 you are wanting to plead guilty under the two
16 charges which have been reduced. It would be the
17 trafficking in cocaine base. And this would be
18 28 -- on the cocaine base would be from 28 to
19 100 grams.

20 MS. STEVENS: And that is what he is
21 actually charged with.

22 THE COURT: That's what he is charged
23 with.

24 MS. STEVENS: Yes, sir.

25 THE COURT: So you heard me read the

1 indictment a little while ago. Is what is stated
2 in the indictment the truth, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now as to the trafficking,

5 they have reduced that down to 28, to the cocaine,
6 they have reduced that from 28 grams to 100 grams.

7 You also heard me read the indictment concerning
8 what happened on November 18th, 2010; is that
9 correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is what is stated in the
12 indictment the truth, sir? At least as far as it
13 concerns 28 to 100 grams?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Solicitor, what are the
16 facts?

17 MR. CORBETT: Thank you, Your Honor. Your
18 Honor, this incident took place on November 18th
19 of 2010. Officers with the Sumter County
20 Sheriff's Department had an arrest warrant for
21 Mr. Peay's arrest. They went to his residence on
22 Camden highway; knocked unannounced on the door.
23 Did not receive a response. But they could hear
24 footsteps in the house, and could hear a radio
25 playing. And also smelled what they believed to

1 be marijuana. Based on those findings on the
2 scene, they then contacted their office and had a
3 search warrant prepared.

4 They were formulating a plan on how to
5 take Mr. Peay into custody, and had actually gone
6 to their car to receive some additional tools and
7 items. When they walked to their car, Mr. Peay
8 fled from the residence, managed to get in car and
9 left in his vehicle. I believe the next day or
10 within a couple of days, Mr. Peay turned himself
11 in to law enforcement.

12 As a result of the search warrant,
13 officers entered Mr. Peay's residence. Found a
14 quantity of cocaine powder exceeding 28 grams.
15 And also found a quantity of cocaine base
16 exceeding 28 grams.

17 THE COURT: Mr. Peay, do you agree with
18 the facts as stated by the solicitor?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you in fact guilty of
21 trafficking in cocaine powder, and trafficking in
22 cocaine base?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And You understand from the
25 negotiations that on the trafficking in cocaine,

1 from 28 to 100 grams, that I could sentence you
2 from 7 years to 25 years. And on the other charge
3 trafficking in cocaine base, 28 to 100 grams, the
4 sentence would be up to 15 years. And then both
5 of these would have a 50,000 fine. Do you
6 understand that?

7 MR. CORBETT: Judge, I may I interrupt?
8 Because I believe I misinformed the court. I
9 apologize for that. There are so many different
10 categories here, Judge. Trafficking in cocaine
11 base of 28 grams or more, but less than 100 first
12 offense, that CDR code is 0392. And the sentence
13 is identical to that of cocaine -- of powder
14 cocaine. Both are 7 to 25 years.

15 THE COURT: Okay. So it is not 15. So
16 you are looking at two charges that have from
17 7 to 25 years. But it's my understanding that
18 your attorney and the solicitor have negotiated a
19 sentence of 20 years. Is that your understanding
20 as well?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I need you to speak.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now you understand that with
25 this charge, that it is a most serious, violent

1 offense, or serious violent offense; that you will
2 have to serve 85 percent of the time on this
3 charge. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: That means that you will not
6 even be eligible to apply for parole for about 16

7 and a half years. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now you also understand you
10 are going to lose you driver's license.

11 THE DEFENDANT: Yes, sir.

12 MS. STEVENS: For a year.

13 THE COURT: For a year. But so you fully
14 understand and again if you should -- when you get
15 out, if you get caught another cocaine, you are
16 probably going away for the rest of your life. Do
17 you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And I hope you are smart
20 enough not to let that happen. I just need to
21 inform you of the future ramifications of any
22 further criminal activity on your part.

23 Now when you plead guilty, you waive
24 certain constitutional rights. The first right
25 you waive is your right against

1 self-incrimination. You would never be required
2 to come in here and testify against yourself;
3 however, when you plead guilty you are doing
4 exactly that. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you wish to waive your
7 right against self-incrimination at this time?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now you understand you have a
10 right to a jury trial. We have got a jury sitting
11 back in the jury room. We have got 12, one
12 alternate, who could hear all the evidence. And
13 then they would make the decision of whether or
14 not the State has presented sufficient evidence to
15 convict you beyond a reasonable doubt. During the
16 trial, if you decided not to testify, I would
17 inform those jurors that they couldn't hold that
18 against you. And they couldn't even discuss it.

19 Further, you would be presumed to be
20 innocent. And during the trial, Ms. Stevens could
21 cross examine the witnesses presented by the
22 state. And if she thought it was in your best
23 interest, she could call witnesses on your behalf.
24 But when you plead guilty, you don't get to ask
25 any questions about how the evidence was obtained.

1 You let go of all defenses you might have
2 concerning what the -- whether there was a valid
3 search warrant or anything like that. You no
4 longer get to assert that. So in essence, you
5 don't get to ask any questions, and the State
6 doesn't have to prove anything. Do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Knowing that, do you still
10 wish to waive your right to have a jury trial and
11 confront the witnesses against you? I need your
12 answer---

13 THE DEFENDANT: Yes, sir.

14 THE COURT: ---not someone else's. Now,
15 has anyone threatened you in any way to get you to
16 plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Has anybody promised you
19 anything to get you to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Is the only reason that you
22 are pleading guilty to trafficking in cocaine base
23 and trafficking in cocaine between 28 grams and
24 100 grams, is because you are in fact guilty of
25 trafficking cocaine base 28 to 100 grams and

1 trafficking in cocaine of 28 to 100 grams?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now are you satisfied with the
4 services of Ms. Stevens?

5 THE DEFENDANT: No, sir.

6 THE COURT: You are not satisfied with her
7 services?

8 THE DEFENDANT: No, sir.

9 THE COURT: Why not?

10 THE DEFENDANT: Because she never really,
11 not to say anything bad, but she never really
12 worked with me. She never really tried to, you
13 know, get them to drop---

14 THE COURT: She is ready for there trial.
15 Are you ready to trial? She will work with you
16 right now. Do you want a trial? I mean we will
17 take it to them if you are not satisfied.

18 THE DEFENDANT: Could I get another
19 lawyer?

20 THE COURT: No, sir. Today is the day.
21 And it is going to start within 10 minutes one way
22 or the other.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I mean you might not -- you
25 might not have none what she is going to do. But

1 I can tell you from my experience with
2 Ms. Stevens, she is ready when she comes to trial.
3 But if it you're satisfied with her, that's
4 between you and her. But I'm satisfied as the one
5 who is going to be trying this case, that she has
6 done what you asked. She's been prepared to go
7 forward. And so but that will be for a different
8 form.

9 MS. STEVENS: Yes, sir.

10 THE COURT: Now do you need to speak to
11 her any further at this point and time?

12 THE DEFENDANT: Who? Ms. Stevens?

13 THE COURT: Yes, sir.

14 THE DEFENDANT: No, sir.

15 THE COURT: Now have you understood all of
16 my questions?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions for
19 me. I am going to give you an opportunity to
20 speak. But do you have any questions specifically
21 at this time?

22 THE DEFENDANT: No, sir.

23 THE COURT: Now and you understand that
24 you will only have 10 days in which to file an
25 appeal concerning this, after this is over with.

1 As to the fact that you pled guilty, or the
2 sentence that I give you. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now under indictment

5 2011-GS-43-0431, Count 1, trafficking in cocaine
6 base 28 to 100 grams. How do you plead, guilty or
7 not guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: As to Count 2, trafficking in
10 cocaine 28 to 100 grams. How do you plead guilty
11 or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: I find a substantial, factual
14 basis for the plea. I find that the defendant has
15 entered into the plea freely and voluntary. He
16 has had the advice of counsel. And although he
17 says he is not satisfied with that, the court sees
18 nothing in what is happening here that would give
19 the court reason to think that she had not acted
20 as a professional, and done what she could have
21 for her client. I will accept the plea.

22 Anything?

23 MS. STEVENS: Well, Your Honor.

24 THE COURT: What is his criminal history?
25 That's the one thing I do need.

1 MR. CORBETT: Judge, as previously
2 discussed.

3 THE COURT: I think we talked about the
4 marijuana conviction.

5 MR. CORBETT: Yes, sir. Possession with
6 intent to distribute marijuana from approximately
7 10 years ago.

8 THE COURT: And nothing recently.

9 MR. CORBETT: No, sir.

10 THE COURT: Yes, ma'am.

11 MS. STEVENS: Normally on a negotiated
12 sentence, Your Honor, I don't really say very
13 much, because obviously everybody knows what the
14 sentence is going to be. I know this has been a
15 difficult decision for Mr. Peay and his family.
16 And as his mother so correctly pointed out, this
17 does not just affect him, it affects the whole
18 family. I know it has been a difficult decision
19 for him to make. He is a young man. To him 17
20 and a half years, is a lifetime. And the 25 that
21 he was facing originally if we went to trial,
22 plus---

23 THE COURT: That was a minimum.

24 MS. STEVENS: A minimum; yes, sir. Plus
25 the amount of time that you could have made

1 consecutive. I felt he would be found guilty, and
2 I didn't want him to really spend the rest of his
3 life in jail. I can't say, "I feel you. I am in
4 your shoes to either him or his mother." Because

5 I can't. I cannot imagine what is going through
6 his mind right now or his mother and girlfriend's

7 mind right now. I have a son, and it would kill
8 me to be standing here knowing he was going to
9 jail for 17 and a half years.

10 Having said that, I would rather Kwaun go
11 to jail for 17 and a half years than 22 and a
12 half, 30, 35, which was a possible outcome. He is
13 pleading to two charges out of a 7-count
14 indictment. And they are dropping several other
15 charges against him. I feel that this is best
16 resolution for Mr. Peay. I am sorry that he feels
17 dissatisfied. But, Your Honor, I would ask that
18 you follow the negotiation, because I think that
19 it is the right thing to do for Mr. Peay in this
20 case, as well as, the rest of his cases.

21 THE COURT: Would Mr. Peay or any of his
22 family members or girlfriend like to say anything?

23 MS. PEAY: My name is Arisa Peay.

24 THE COURT: Yes, ma'am.

25 MS. PEAY: I am Kwaun's mother. And I

1 know he has made bad choices. And I'm not---

2 THE COURT: If you don't speak up, I can't
3 hear you.

4 MS. PEAY: I know he has made bad choices

5 in life. He has made bad choices. And don't

6 think -- and I've never condoned anything. Any

7 wrongdoing with none of my boys. And he has made
8 bad choices, but he is a good person. He's not a
9 violent person. He's mild mannered. In the
10 community, I've always been told about how he
11 helps the poor little boys that didn't have coats
12 or shoes or wearing shoes with holes in them or
13 whatever. The ones that didn't have the parents
14 that would take care of them like I did my boys.
15 But I just wanted to say he has made bad choices
16 in life. But overall, he is a good person.

17 THE COURT: Thank you, Mr. Peay, would you
18 like to say anything?

19 THE DEFENDANT: Yeah, I would like to
20 apologize to the court and my community and my
21 mother and my girl and my kids. That's it.

22 THE COURT: Anything further from the
23 State?

24 MR. CORBETT: Judge, just if I may, to
25 avoid any potential problems, Judge, under the

1 charge with possession -- excuse me, trafficking
2 in cocaine base, may I confirm that that is
3 sentence code 0392 on the sheet? Trafficking
4 cocaine base?

5 THE COURT: Trafficking cocaine base
6 you've got 2359.

7 MR. CORBETT: Judge, that is actually the
8 CDR code for trafficking in cocaine. I may
9 have---

10 THE COURT: Trafficking in cocaine base.
11 And it is CDR code 2359. Do you need me to change
12 that?

13 MR. CORBETT: Yes, sir. Ms. Stevens, if I
14 may get you to look at this with me. Trafficking
15 cocaine base.

16 MS. STEVENS: 0392.

17 MR. CORBETT: 0392 on the cocaine base,
18 Your Honor.

19 THE COURT: And then for the bigger
20 cocaine is there any difference?

21 MS. STEVENS: It's 2359. I think he got
22 them backwards.

23 THE COURT: You got them backwards.
24 Trafficking in cocaine is 2359. Trafficking in
25 cocaine base is 0392.

1 MR. CORBETT: Yes, sir. Thank you.

2 THE COURT: Please give me your attention.
3 Does he understand the plea?

4 MS. STEVENS: Yes, sir. I was explaining

5 that we would just make -- they don't go by what

6 is written on the line, they go by this number

7 called the CDR code. And we were just making sure
8 that the CDR code were correct on the sentencing
9 sheet. Because if the CDR code is wrong, they
10 will sentence him to whatever they want to.

11 THE COURT: So it's my understanding, and
12 you understand that on both of these, you can
13 receive 7 to 25. And a mandatory \$50,000 fine.
14 However, there has been a negotiated 20 years, and
15 \$50,000 fine on each one, which I am going to run
16 concurrent. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The Sentence of the Court on
19 Kwaun Ka'shawn Peay under Indictment
20 2011-GS-43-431, on the charge of trafficking in
21 cocaine base is 20 years and the payment of a
22 \$50,000 fine. The charge of trafficking in
23 cocaine 28 to 100 grams, the Sentence is that you
24 be committed to the State Department of
25 Corrections for a period of 20 years and that you

1 pay a \$50,000 fine. These sentences will run
2 concurrent. Good luck.

3 ---End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the
Third Judicial Circuit of the State of South Carolina,
~~do hereby Certify that the foregoing is a true, accurate~~
and complete Transcript of Record of the proceedings had
and evidence introduced in General Sessions Court on
January 31, 2011, in Sumter County, Sumter, South
Carolina.

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

3/26/12
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/2021

THE RUTHERFORD LAW FIRM, LLC

J. TODD RUTHERFORD
ATTORNEY AT LAW2113 PARK STREET
P.O. Box 1452
COLUMBIA, SC 29202
TELEPHONE: (803) 256-3003
FACSIMILE: (803) 256-9698ALEXANDRA BENEVENTO
ATTORNEY OF COUNSEL

RECORDED

2012 FEB 13 PM 12:06

909 WEST EVANS STREET
FLORENCE, SC 29505
TELEPHONE: (843) 407-5061
FACSIMILE: (843) 407-5063JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

February 9, 2012

Sumter County Clerk of Court
Attn: Clerk of Court
141 N. Main Street
Sumter, SC 29150**Re: State vs. Kwaun K. Peay**
Warrant Nos.: M442510, M442511
Motion to Reconsider Sentence

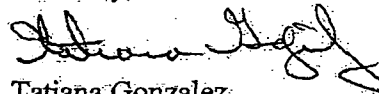
To Whom It May Concern:

Please find enclosed an original Motion to Reconsider Sentence and one (1) copy of the above reference Motion. It would be greatly appreciated if you would please mail back a clocked copy in the self address envelope that is enclosed.

Thank you in advance for your attention and cooperation in this matter.

Should you be in need of anything else or have any questions or concerns regarding this matter please feel free to contact our office.

Sincerely,

Tatiana Gonzalez
Legal Assistant to J. Todd Rutherford

/tg

Enclosure

THE RUTHERFORD LAW FIRM, LLC

J. TODD RUTHERFORD
ATTORNEY AT LAW

2113 PARK STREET
P.O. Box 1452
COLUMBIA, SC 29202

TELEPHONE: (803) 256-3003
FACSIMILE: (803) 256-9698

September 9, 2013

Via Facsimile: (803) 774-6159

The Honorable William Jeffrey Young
Attn: Scheduling Clerk
215 N. Harvin Street
Sumter, SC 29150

**Re: The State vs. Kwaun Peay
Motion to Reconsider Sentence**

To Whom It May Concern:

Please accept this correspondence as a written request to withdraw our request for a hearing on a Motion to Reconsider Sentence in the above referenced matter. This request is being made because the Defendant has file for a PCR hearing.

We thank you in advance for your attention and consideration in this matter.

Should you have any questions regarding this correspondence, please feel free to contact our office at (803) 256-3003.

Sincerely,



Tatiana Gonzalez
Legal Assistant to J. Todd Rutherford

/tgg

FORM 5
RECORDED

STATE OF SOUTH CAROLINA

2012 SEP -7 PM 2:17 IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

JAMES C. GAMBRETT
CLERK OF COURT
SUMTER COUNTY, S.C.

Kwaun Ka'Shawn Peay, SCDC # 3494
Full name and prison number (if any) of Applicant.

2012-GP-43-1769

Barbara Shaper
DEPUTY CLERK OF COURT

SUMTER COUNTY APPLICATION FOR
SOUTH CAROLINA

v.

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional
2. Name and location of Court which imposed sentence Sumter County General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-43-0431
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 25, 2012 - Trafficking in cocaine base - Sentence of 20 years and \$50,000

fine

(b) January 25, 2012 - trafficking in cocaine 28 to 100 grams - Sentence of 20 years and \$50,000 fine. Concurrent to above.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No.

8. If you answered "yes" to (7), list:

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) I hired Todd Rutherford to file a Motion to Reconsider Sentence and I thought this was the same as filing an appeal. By the time I realized it was not the same as an appeal it was too late to file an appeal.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel regarding trial preparation.
- (b) Ineffective assistance of counsel regarding trial notice which resulted in an involuntary plea.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel did not speak to client regarding possible trial issues or strategies, evidentiary issues, or possible defenses
- (b) Trial counsel did not provide adequate notice of trial to client and did not provide client with sufficient time and information to make an informed decision whether to plea.
- (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? Motion to Reconsider.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Todd Rutherford filed a Motion to Reconsider on February 9, 2012. The grounds of said motion are not listed within the motion.
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:

i. Sumter County General Sessions Court.

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. No disposition has been entered by the Court.

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. See response to (c).

ii. _____

iii. _____

iv. _____

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

i. None.

ii. _____

iii. _____

iv. _____

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

No.

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Lauren Stevens, 141 N. Main Street, Room 100, Sumter, South Carolina 29150.
- ii. James Todd Rutherford, Post Office Box 1452, Columbia, South Carolina 29202.
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Guilty plea and sentencing.
- ii. Filed motion to reconsider sentence.
- iii. _____
19. State clearly the relief you seek in filing this application:
Requesting that guilty plea be vacated.
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA)
)
County of Sumter)

VERIFICATION

I, Kwaun Ka'Shawn Peay, 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.

Kwaun Peay

SWORN to and subscribed before me this 5th
day of September, 2012.

Kristy DeGibong (L.S.)
Notary Public

My Commission Expires: July 25, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

RECORDED
IN THE COURT OF COMMON PLEAS

2012 SEP -7 PM 2:18

KWAUN PEAY, SCDC # 349444,)
Applicant,)

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

vs.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Defendant.)

I certify that on this date I served the Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.



Kristy Goldberg
Attorney for Defendant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 5th day of September, 2012

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2013 JAN 16 PM 3:32

2012-CP-43-1769

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Kwaun Ka'Shawn Peay, #349

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief, filed September 7, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the March 2011 term of the Sumter County Grand Jury under a six count indictment (2011-GS-43-0431) for (1) Trafficking Cocaine Base – More than 28 Grams, Less than 100 Grams; (2) Trafficking Cocaine 200 Grams or More, But Less than 400 Grams; (3) Manufacturing Cocaine Base; (4) Possession of Marijuana; (5) Resisting Arrest; and (6) Failure to Stop for Blue Light/Siren. He was represented by Lauren Stevens, Esquire. On January 25, 2012, the Applicant pled guilty before the Honorable W. Jeffrey Young. He was sentenced to twenty years imprisonment and a \$50,000.00 for Trafficking Cocaine Base –28 Grams to 100 Grams and twenty years imprisonment and a \$50,000.00 fine Trafficking Cocaine –28 Grams to 100 Grams; with the sentences to be served concurrently. The remaining charges were *nolle prossed* pursuant to the plea. The Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Trial counsel did not speak to client regarding possible trial issues or strategies, evidentiary issues, or possible defenses.
 - b. Trial counsel did not provide adequate notice of trial to client and did not provide client with sufficient time and information to make an informed decision whether to plea.

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina

January 15, 2013

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State of South Carolina)
County of Sumter)

In the Court
Of Common Pleas

Docket No: 2012-CP-43-1769

Kwaun Ka'Shawn Peay,)
Applicant,)

vs.

Transcript of Record
Post-Conviction Relief

State of South Carolina,)
Respondent.)

October 2, 2013
Sumter, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge.

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

Christy Goldberg, Esquire
Attorney for the Applicant

Daniel Gourley, Assistant Attorney General
Attorney for the Respondent

Brenda J. Sigwald, Circuit Court Reporter
For the Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 **POST-CONVICTION RELIEF HEARING**

2 **THE COURT:** All right. Yes, sir.

3 **MR. GOURLEY:** Yes, Your Honor, may it please the
4 Court. The next case is Kwaun Peay versus State of South
5 Carolina, Docket No. 2012-CP-43-1769. The applicant is
6 presently confined in the South Carolina Department of
7 Corrections pursuant to orders of commitment of the Sumter
8 County Clerk of Court.

9 The applicant was true-billed indicted at the March
10 2011 term of the Sumter County Grand Jury under a six count
11 indictment for trafficking cocaine base one to twenty --
12 less than a hundred grams, trafficking cocaine 200 grams or
13 more but less than 400 grams; manufacturing cocaine base,
14 possession of marijuana, resisting arrest and failure to
15 stop for a blue light.

16 He was represented in this matter by Lauren
17 Stevens, on January 5th 2012, Mr. Peay entered a guilty
18 plea in front of the Honorable Jeffrey Young. He was
19 sentenced to 20 years imprisonment, a \$50 thousand fine for
20 trafficking cocaine base 28 grams to 100 grams; and 20
21 years imprisonment and a \$25 thousand fine for trafficking
22 cocaine, 28 grams to one hundred grams; with the sentences
23 to be run concurrently. The remaining charges were nolle
24 prosed pursuant to a plea.

25 The applicant did not appeal his guilty plea or

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

1 sentence. Subsequently, Mr. Todd Rutherford filed a motion
2 for reconsideration on February 9th, 2012. That motion was
3 withdrawn on September 9th of 2013 of this year.

4 The State made its return on January 15th, 2013 and
5 he's represented in this matter by Ms. Christy Goldberg.

6 **THE COURT:** All right. Ms. Goldberg, anything
7 before you call your first witness?

8 **MS. GOLDBERG:** No, Your Honor.

9 **THE COURT:** All right. You may call your first
10 witness.

11 **MS. GOLDBERG:** At this time, I would call Kwaun
12 Peay.

13 **THE COURT:** All right. If you would come around
14 and be sworn, please.

15 **KWAUN KA'SHAWN PEAY,**
16 having been duly sworn, testified as follows:

17 **THE BAILIFF:** State your name and spell your last
18 for the record.

19 **THE WITNESS:** Kwaun Peay.

DIRECT EXAMINATION

20 **BY MS. GOLDBERG:**

21 **Q** All right. Mr. Peay, where are you currently
22 housed?
23

24 **A** At Lieber Correctional Facility.

25 **THE COURT:** You'll have to speak up a little bit

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

1 for me, please.

2 THE WITNESS: Lieber Correctional Facility.

3 THE COURT: Thank you.

4 BY MS. GOLDBERG:

5 Q And what sentence are you serving?

6 A Twenty years.

7 Q For what charges?

8 A Trafficking cocaine and cocaine base.

9 Q And did you -- were you convicted by way of a
10 guilty plea or a trial?

11 A Guilty plea.

12 Q Who was your attorney?

13 A Lauren Stevens.

14 Q Was she retained or appointed?

15 A Appointed.

16 Q And at that time, did you have -- you said you were
17 convicted of two charges; is that correct?

18 A Yes, ma'am.

19 Q Did you have other charges at that time as well?

20 A Yes, ma'am.

21 Q Were those -- do you know what happened to those?

22 A They were dismissed.

23 Q Did you have more than one attorney at this time?

24 A Yes, ma'am.

25 Q Who was your other attorney?

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

- 1 A Murrell Smith.
- 2 Q And was he retained or appointed?
- 3 A Retained.
- 4 Q Did you receive a plea offer in this case?
- 5 A Yes, ma'am.
- 6 Q And what was your plea offer?
- 7 A Twenty-five years.
- 8 Q How long did Ms. Stevens represent you prior to the
9 plea? Approximately.
- 10 A Talking about -- I don't really understand.
- 11 Q Did she represent you the whole time you were
12 charged with this offense?
- 13 A Yes, ma'am.
- 14 Q Were you on bond or were you in jail?
- 15 A On bond.
- 16 Q And while you were on bond, did you meet with
17 Ms. Stevens to talk about this case?
- 18 A Yes, ma'am.
- 19 Q Did you meet with her several times or how many
20 times would you say?
- 21 A Two times.
- 22 Q Two times. All right. Tell me about the first
23 time you met with her?
- 24 A Well, she -- when I went in, she just asked me was
25 I going to plea or take a trial. And then that was

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

1 basically it. And then the second time when I went to her,
2 she was like -- I was asking her that -- couple of things.
3 But she wasn't really saying nothing. She was like, either
4 you're going to tell on somebody or you're going to do 25
5 years.

6 Q She told you, you had two choices, one is 25 years
7 and the other one was to essentially be a witness against
8 someone else?

9 A Yes, ma'am.

10 Q Okay. Did she give you any more details about what
11 you needed to do and what your options are?

12 A No, ma'am.

13 Q That was all she told you?

14 A Yes, ma'am.

15 Q Did she ever review your discovery with you?

16 A No, ma'am.

17 Q Do you know what discovery is?

18 A (No answer.)

19 Q Did she ever review with you the evidence in this
20 case?

21 A No, ma'am.

22 Q Police reports and the warrants and things like
23 that?

24 A I mean she might have ran over the warrants.

25 Q Okay. But no police reports?

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

- 1 A No, ma'am.
- 2 Q Not -- no search warrants?
- 3 A No, ma'am.
- 4 Q Did she ever discuss with you the possibility of a
5 jury trial?
- 6 A No, ma'am.
- 7 Q Did she ever talk to you about any defenses that
8 might be available to you if you had a jury trial?
- 9 A No, ma'am.
- 10 Q And you said she never talked with you about the
11 search warrant, correct?
- 12 A No, ma'am.
- 13 Q On the day -- you entered a guilty plea on January
14 25th; is that correct?
- 15 A Yes, ma'am.
- 16 Q Was that your first day going to court that week?
- 17 A No, ma'am. My second day.
- 18 Q Okay. Tell me what happened the first day you went
19 to court that week.
- 20 A The first day I went, I told the judge that I had
21 another lawyer and he gave me one day to leave, but my
22 lawyer -- other lawyer said he couldn't do it because he
23 was -- he had something else to do.
- 24 Q That was Murrell Smith?
- 25 A Yes, ma'am.

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

- 1 Q He told you he was in session?
- 2 A Yes, he was in session.
- 3 Q Okay. And that was on January 24th?
- 4 A Yes, ma'am.
- 5 Q Did you speak with Ms. Stevens on January 24th?
- 6 A Yes, ma'am.
- 7 Q And what did y'all talk about?
- 8 A She said -- says you're not going to tell nobody,
9 you're going to do 25 years -- 22 out of 25 years.
- 10 Q Do you know why you were in court on January 24th?
- 11 A For drug charges.
- 12 Q Did you know if you were supposed to plea or have a
13 trial or if you were just -- was it roll call or -- what
14 did you think it was?
- 15 A Well, she just called me one day and said I had to
16 be in court the next day.
- 17 Q Okay. So she called you January 23rd?
- 18 A Yes, ma'am.
- 19 Q Told you to be in court January 24th?
- 20 A Yes, ma'am.
- 21 Q Did she tell you why you needed to be in court?
- 22 A She just left a message on the answering machine
23 and said I had to be in court.
- 24 Q Okay. Then when you got to court on the 24th, did
25 you discuss the possibility of a jury trial?

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

- 1 A Yes, ma'am.
- 2 Q And what did y'all say? What did she talk about?
- 3 A Well, we didn't really discuss it. When we came,
4 she asked me what was I going to do.
- 5 Q And what did you say?
- 6 A I was about to get the jury trial, but then I
7 decided not to.
- 8 Q Okay. So on January 24th, the judge said he'd let
9 you have one day to get in touch with Murrell Smith?
- 10 A Yes, ma'am.
- 11 Q And Murrell Smith said he was still in session and
12 couldn't help you, correct?
- 13 A Yes, ma'am.
- 14 Q So when you came back on January 25th, what
15 happened?
- 16 A I asked the judge could I get another lawyer and he
17 told me no.
- 18 Q Okay.
- 19 **MS. GOLDBERG:** Your Honor, for the record, I
20 believe there are two transcripts in front of you that are
21 the same date, same judge. I'm not sure why they're broken
22 up. One of them is titled guilty plea. The other is
23 titled transcript of plea. If you look at the one titled
24 guilty plea, on page 20, that is where the applicant asked
25 for his counsel to be relieved.

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

1 THE COURT: All right. Thank you Ms. Goldberg.

2 MS. GOLDBERG: No problem.

3 BY MS. GOLDBERG:

4 Q All right. Mr. Peay, and why did you ask the judge
5 to relieve Ms. Stevens?

6 A Because I wasn't given a fair chance.

7 Q And why do you think that?

8 A Because she never went over nothing with me, no
9 strategies. She never went over any plan or anything.

10 Q Were you prepared to go to trial on that day?

11 A No, ma'am.

12 Q What ended up happening on January 25th?

13 A I pleaded to 20 years.

14 Q And why did you plea to 20 years?

15 A I really felt I had no better choice. I had no
16 other choice.

17 Q Did you feel forced to plead guilty?

18 A Yes, ma'am.

19 Q Did you feel coerced to plead guilty?

20 A Yes, ma'am.

21 Q What do you think should have happened differently?

22 A I should have went to trial.

23 Q And what do you think Ms. Stevens should have done
24 differently?

25 A She should -- she should have told me to go to

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

1 trial too.

2 Q And do you know at this time any defenses that she
3 would have presented on your behalf or anything specific?

4 A Like, the reasons they came to my house, I never
5 found that out until about a couple of weeks ago.

6 Q Okay. What do you want this court to do now?

7 A Vacate my plea.

8 Q Do you want a jury trial?

9 A Yes, ma'am.

10 Q Do you understand that if the Court did vacate your
11 plea that the solicitor's office could bring back your
12 original charges and give you a jury trial for them?

13 A Yes, ma'am.

14 Q You understand that they could also bring back any
15 charges that were dismissed as a result of your plea and
16 they could try you for those as well?

17 A Yes, ma'am.

18 Q After your guilty plea, did you file an appeal?

19 A Yes, ma'am.

20 Q What happened?

21 A He filed -- Todd Rutherford filed an appeal, but it
22 -- I don't know what happened.

23 Q Okay. And I think that was actually a motion to
24 reconsider; does that sound right?

25 A Yes, ma'am.

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

- 1 Q Was -- did Todd Rutherford represent you at all
2 prior to your guilty plea?
- 3 A No, ma'am.
- 4 Q Who approached Mr. Rutherford after your guilty
5 plea?
- 6 A My parents.
- 7 Q Do you know if they paid him to file a motion to
8 reconsider?
- 9 A Yes, ma'am.
- 10 Q And then he filed the motion to reconsider?
- 11 A Yes, ma'am.
- 12 Q Did you ever have a hearing on that?
- 13 A Oh, you say did he file a motion to reconsider?
14 No, ma'am.
- 15 Q To your knowledge he didn't?
- 16 A No, ma'am.
- 17 Q And you never had a hearing, correct?
- 18 A No, ma'am.
- 19 Q Did you ever -- if he had filed a motion to
20 reconsider, did you ever authorize him to withdraw that
21 motion?
- 22 A No, ma'am.
- 23 Q Did you want a motion to reconsider to go forward?
- 24 A Yes, ma'am.
- 25 Q And if you had had a motion to reconsider, what

Kwaun Ka'Shawn Peay - Direct Examination by Ms. Goldberg

1 would you have asked for?

2 A Ten years.

3 Q Less time?

4 A Yes, ma'am.

5 Q Is there anything you would have told the judge in
6 that motion to get the judge to sentence to you to less
7 time? Anything you can think of?

8 A Yes, ma'am.

9 Q Okay. What?

10 A That -- that I regret everything and that I learned
11 my lesson.

12 Q Okay. You would have apologized?

13 A Yes, ma'am.

14 Q Is there anything else about Ms. Stevens
15 representation that you felt was ineffective or inadequate?

16 A How she was adamant about me telling on someone and
17 I didn't understand that. I told her I wasn't, you know --
18 but she just kept going with that.

19 Q Did she ever say that she wanted you to tell on
20 anyone specific?

21 A No, but she said someone who's -- they thought I
22 was buying something from or something like that.

23 Q Okay. So who -- so she wanted you to tell on who
24 you were getting the drugs from. That's what she was
25 asking?

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

1 A Uh-huh.

2 Q And she brought that up several times?

3 A Yes, ma'am.

4 Q And you were not satisfied -- you were not happy
5 with the fact that she brought that up several times?

6 A Yes, ma'am.

7 Q Is there anything else that she did or said that
8 you believed was ineffective or inappropriate?

9 A No, ma'am.

10 Q Is there anything else that you need to tell this
11 court and this court needs to address for this hearing?

12 A No, ma'am.

13 Q Thank you very much. The attorney general is going
14 to ask you some questions. Okay.

15 THE COURT: Thank you. Thank you, Ms. Goldberg.

16 MS. GOLDBERG: Thank you, sir.

17 THE COURT: Mr. Gourley?

18 MR. GOURLEY: May it please the Court.

19 **CROSS-EXAMINATION**

20 **BY MR. GOURLEY:**

21 Q Mr. Peay, do you recall how many times you met with
22 your attorney?

23 A Twice.

24 Q Twice? And you said you never reviewed any type of
25 discovery material with him? Or with her?

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

- 1 A No, she read the warrants, but that -- I think
2 that's about it.
- 3 Q You never saw anything else but the warrants?
- 4 A (Witness shook head.)
- 5 Q Okay. Did you give your attorney any type of leads
6 or witnesses for her to investigate?
- 7 A No, sir.
- 8 Q And you remember the solicitor stating the facts of
9 what they believed occurred that day on the record at your
10 guilty plea?
- 11 A Yes, sir.
- 12 Q And you remember agreeing with those?
- 13 A Yes, sir.
- 14 Q And you told the judge you were guilty of these
15 charges, right?
- 16 A Yes, sir.
- 17 Q Okay. And you recall telling the judge that no one
18 had promised you anything to get you to plead guilty?
- 19 A Yes, sir.
- 20 Q Okay. And no one had coerced you to plead guilty?
- 21 A No, sir.
- 22 Q You don't remember that?
- 23 A (Witness shook head.)
- 24 Q Okay. You don't remember the judge asking you that
25 question?

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

- 1 A Oh, I said no one coerced me.
- 2 Q No one coerced you?
- 3 A No, sir.
- 4 Q Be just a minute ago, you told your counsel that
5 someone had forced you to plead guilty?
- 6 A I guess I didn't understand what coerced mean.
- 7 Q You understand what coerced means now?
- 8 A No. What does it mean?
- 9 Q Like threaten you, push you into doing something --
- 10 A Yes, sir. They said like, I could get 45 years if
11 I didn't plea.
- 12 Q And that's correct though?
- 13 A Okay.
- 14 Q You could face 45 years if you didn't plead?
- 15 **THE COURT:** Answer out loud for me.
- 16 **THE WITNESS:** Yes, sir.
- 17 **BY MR. GOURLEY:**
- 18 Q Okay. But when you told the judge that no one had
19 coerced you, you were lying?
- 20 A Yes, sir.
- 21 Q Okay. And you recall the judge advising you of
22 your constitutional rights, your right to a jury trial,
23 your right to present witnesses on your behalf, your right
24 to remain silent?
- 25 A Yes, sir.

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

1 Q Okay. And now, you had proceeded to a jury trial,
2 right?

3 A Yes, sir.

4 Q And then you elected not to proceed with the jury
5 trial following your selection of the jury, right?

6 A Yes, sir.

7 Q Okay. And now as part of your plea deal, it was a
8 negotiated sentence, right?

9 A No, sir, it wasn't -- well, yes, sir. Yes, sir, it
10 was.

11 Q Okay. So you understood when you pled guilty you
12 were only going to receive 20 years?

13 A Yes, sir.

14 Q And the judge advised you that you would have to
15 serve a minimum of 85 percent of that sentence, right?

16 A Yes, sir.

17 Q And that turned out to be about 16 and a half
18 years?

19 A Yes, sir.

20 Q Okay. So you knew all that before you pled guilty?

21 A Yes, sir.

22 Q Okay. You kept mentioning that Ms. Stevens stated
23 that you would possibly have to do 25 years if you didn't
24 plead guilty?

25 A Yes, sir.

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

1 Q And you understand that the minimum sentence that
2 you could receive if you went to trial and were found
3 guilty was 25 years? That's the bare minimum?

4 A No, sir.

5 Q On the charges that you were facing, the minimum
6 sentence was 25 years.

7 A No, sir.

8 Q You don't recall the judge telling you that?

9 A No, it was like 7 to 25 and 7 to 20, I believe.

10 Q No, they had that incorrect, I believe.

11 A That's what it says in my transcript.

12 MR. GOURLEY: Give me one -- court's indulgence,
13 Your Honor.

14 THE COURT: Yes, sir.

15 (WHEREUPON there was a pause in the proceedings.)

16 MR. GOURLEY: Okay. I'll withdraw that question,
17 Your Honor.

18 BY MR. GOURLEY:

19 Q Do you want a trial?

20 A Yes, sir.

21 Q And you understand you could face everything that
22 you were originally charged with?

23 A Yes, sir.

24 Q Okay. Now, you stated for your motion for
25 reconsideration you would like to apologize to the Court.

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

1 A Yes, sir.

2 Q You realize you apologized to the Court during your
3 guilty plea?

4 A Yes, sir.

5 Q Okay. And you understood when you pled guilty that
6 you were going to see -- were going to receive 20 years?

7 A Yes, sir.

8 Q Okay.

9 MR. GOURLEY: No further questions, Your Honor.

10 THE COURT: Thank you.

11 Anything in redirect, Ms. Goldberg?

12 MS. GOLDBERG: No, Your Honor.

13 THE COURT: All right. Thank you. Thank you very
14 much.

15 Anything further, Mr. Peay?

16 THE WITNESS: No, sir.

17 THE COURT: Thank you. Thank you very much. You
18 may step down.

19 All right. Ms. Goldberg, you may call your next
20 witness.

21 MS. GOLDBERG: Your Honor, at this time the
22 applicant rests.

23 THE COURT: Thank you. Thank you very much,
24 Ms. Goldberg.

25 Mr. Gourley?

Lauren Stevens - Direct Examination by Mr. Gourley

1 **MR. GOURLEY:** Yes, sir, Your Honor, we would call
2 Ms. Lauren Stevens to the stand, please.

3 **THE COURT:** All right, Ms. Stevens, if you would
4 come around and be sworn for us, please.

5 **LAUREN STEVENS,**
6 having been duly sworn, testified as follows:

7 **THE BAILIFF:** State your name and spell your last
8 for the record.

9 **THE WITNESS:** Lauren Boswell Stevens,
10 S-t-e-v-e-n-s.

11 **DIRECT EXAMINATION**

12 **BY MR. GOURLEY:**

13 Q Ms. Stevens, you represented Mr. Peay?

14 A Yes, sir.

15 Q And how long did you represent him for?

16 A I was just looking at my letter and it appears that
17 I was appointed in January of 2011, I believe.

18 Q And during your representation, how many times
19 would you say you met with Mr. Peay?

20 A I don't know. If he says it was two, then I have
21 no reason to disbelieve him.

22 Q Did y'all file discovery motions in this case?

23 A I did indeed.

24 Q Okay. Did you review that with Mr. Peay?

25 A Yes, I did indeed.

Lauren Stevens - Direct Examination by Mr. Gourley

1 Q And in regards to -- well, there was a plea
2 negotiation in this deal, correct?

3 A Yes.

4 Q And do you recall what that was?

5 A He would plead to lesser charges for the negotiated
6 20-year sentence, of which he would do 85 percent.

7 Q Okay. Now, did Mr. Murrell Smith represent him in
8 the -- at the same time that you were representing him?

9 A He informed me that he did, yes.

10 Q Okay. Was Mr. Murrell Smith ever involved in his
11 case?

12 A Mr. --

13 Q To your knowledge?

14 A Mr. Smith never contacted me concerning Mr. Peay,
15 no.

16 Q Now, y'all had pulled a jury, correct?

17 A Correct.

18 Q And you were prepared to go to trial?

19 A I was indeed.

20 Q Okay. And Mr. Peay decided to plead guilty?

21 A Yes, he did.

22 Q Did he ever give you any leads or witnesses to
23 investigate?

24 A No, he did not.

25 Q Did you ever coerce him into pleading guilty?

Lauren Stevens - Direct Examination by Mr. Gourley

1 A No. I do not believe that telling him what he is
2 facing -- the penalty that he would face if he were to go
3 forward with a trial, which was substantially higher than
4 what he would face with a negotiated plea is coercion. I
5 told him that a judge could make his sentences run
6 consecutive if he went too trial and that the mandatory
7 minimum on one of them was 25 and that he could end up an
8 old man if he decided not the take a negotiated plea, but
9 the choice was his. We pulled a jury. If you're ready to
10 go to trial, I'm ready to go to trial.

11 Q Right.

12 A These are your options.

13 Q Right. So you were fully prepared to take this
14 case to trial?

15 A Yes.

16 Q Do you recall any investigation you reviewed in
17 this case?

18 A I reviewed the discovery. I felt that the State
19 had very good evidence against Mr .Peay. I did mention to
20 him that he might want to give information to the police in
21 hopes that they would help him.

22 Q Uh-huh.

23 A But I did not press the point. I merely mentioned
24 it when we were discussing negotiations and I told him that
25 it may help him to receive a lesser sentence if he were to

Lauren Stevens - Direct Examination by Mr. Gourley

1 cooperate.

2 Q Now, do you do that with most of your clients?

3 A I do indeed.

4 Q That's usually typically beneficial in the plea
5 negotiations?

6 A There was a lot of crack and a lot of cocaine. And
7 I did not believe that Mr. Peay was, quote, unquote, a big
8 dog.

9 Q Right.

10 A I thought he was a little dog and with that much
11 product that the police would be very interested in finding
12 out where he got it from.

13 Q Okay. Did Mr. Peay understand that he was going to
14 receive 20 years when he pled guilty?

15 A Yes, we talked the fact that it was 85 percent
16 because any sentence -- any charge for which he could
17 receive 20 or more years is an 85 percent, no parole. We
18 also talked about the fact that I do believe it was violent
19 and would be strike one and that if he were to be convicted
20 of another violent crime, he would serve 85 percent of it,
21 no matter what his sentence was.

22 Q Uh-huh.

23 A And I also believe that trafficking may be serious
24 and, therefore, it would be strike one of three in the life
25 without parole category.

Lauren Stevens - Cross-Examination by Ms. Goldberg

1 Q So he was well aware of what he was doing when he
2 pled guilty?

3 A He knew the consequences of pleading guilty and he
4 knew the consequences of going to trial.

5 Q Did he --

6 MR. GOURLEY: No further questions, Your Honor.

7 THE COURT: Thank you. Thank you, Mr. Gourley.
8 Ms. Goldberg?

9 CROSS-EXAMINATION

10 BY MS. GOLDBERG:

11 Q Ms. Stevens.

12 A Yes, ma'am.

13 Q You stated that you did review discovery with Mr.
14 Peay?

15 A Yes.

16 Q Did you have an appointment with him or how did
17 that take place?

18 A I do not -- I don't re-- I do not recall.

19 Q Do you actually recall reviewing discovery with
20 him?

21 A Yes, I do.

22 Q And do you recall when it was?

23 A No, not the exact date, no I do not.

24 Q Do you know where it was?

25 A In my office, in our conference room.

Lauren Stevens - Cross-Examination by Ms. Goldberg

1 Q At what point was the plea offer extended in this
2 case?

3 A I don't have the exact date, but he was aware of
4 the negotiations.

5 Q Well, my question is -- essentially was the plea
6 offer extended well prior to the trial, the day of trial --
7 when was it.

8 A Knowing the solicitor, it was probably the day of
9 trial.

10 Q The day of trial?

11 A Yes.

12 Q So you would have anticipated going to trial on
13 that day?

14 A Yes.

15 Q Did you prepare for trial with Mr. Peay? Meet with
16 him to prepare for trial?

17 A No.

18 Q How come?

19 A The solicitor's office gives out a trial list and
20 you never actually know whether you are going to be called
21 for trial at any given time, so I was prepared to go to
22 trial, but I didn't know for sure whether we were actually
23 going to go to trial on that particular day. I was in the
24 same office for 12 twelve years with the same phone number.
25 If Mr. Peay wanted to meet with me at any time, I would have

Lauren Stevens - Cross-Examination by Ms. Goldberg

1 been available.

2 Q When was he notified that trial would be going
3 forward?

4 A I'm not sure if we had started the process of
5 sending out letters, letting our defendant's know they were
6 on the trial list at that point because I can't remember if
7 we were getting a trial list 10 days ahead of time. If we
8 were getting a trial list 10 days ahead of time, then he
9 would have been sent a letter, letting him know that he was
10 on the potential trial list. If not someone on our staff
11 would have called him.

12 We also had a telephone number that was given to
13 every client when they applied to the public defender's
14 office and they were told to call that number. If they
15 were on the trial list, it would have said on a telephone
16 number, in alphabetical order that he was on the trial list
17 for the following week.

18 Q They were supposed to call that number only after
19 they received the letter or every week?

20 A Every week there was general sessions.

21 Q For a whole year while this was pending, they were
22 supposed to call that number every week?

23 A Every week there was general sessions and they were
24 aware that was the policy, yes.

25 Q I see what you're saying. When you prepared for a

Lauren Stevens - Cross-Examination by Ms. Goldberg

1 trial in this case, what defenses did you anticipate using?

2 A The only thing that we could have tried was that
3 the house was not necessarily his. He fled out the back
4 door when the police were waiting to execute the search
5 warrant. And they found drugs in various parts of the
6 house. The only chance we possibly could have had was that
7 it was not his house and it was not his product. I don't
8 think it would be a successful defense, however, but that
9 would have been what we would have tried to argue to the
10 jury since he was not found in the house when the product
11 was there; and that just because he fled, didn't mean that
12 he left because of what was in the house, but he didn't
13 want to be arrested, that he didn't have knowledge of what
14 was in the house.

15 Those types of things because basically their case
16 was, he was in the house, he fled, the drugs were in the
17 house, and they found mail with his name on it, addressed
18 to that address.

19 Q Did you discuss that -- as a defense concept, did
20 you discuss that with the applicant at any point?

21 A I do not remember. I do not recall.

22 Q Okay. Do you happen to know what happened to his
23 other charges that Mr. Murrell Smith represented him on?

24 A I'm assuming they were part of the ones that were
25 dismissed. It was my understanding that every other charge

Lauren Stevens - Cross-Examination by Ms. Goldberg

1 against him, even the ones that I did not represent him on
2 were going to be dismissed as part of this plea -- plea
3 agreement.

4 Q Nothing further.

5 THE COURT: Redirect?

6 MR. GOURLEY: Your Honor, just briefly.

7 **REDIRECT EXAMINATION**

8 BY MR. GOURLEY:

9 Q Ms. Stevens, Mr. Peay was out on bond during this
10 time, correct?

11 A Yes, he was.

12 Q And when he signed the bond ticket, doesn't it
13 state on the bond that he has to be present starting on
14 this date until this case is called to trial?

15 A It does indeed; it does indeed.

16 Q And if he's not there, what occurred.

17 A They will either issue a bench warrant or either
18 try him in his absence. Or both.

19 Q And because he signed that bond, he's responsible
20 to be there, it's not your responsibility to bring him
21 there, correct?

22 A Correct.

23 MR. GOURLEY: No further questions, Your Honor.

24 THE COURT: Recross examination, Ms. Goldberg?

25 MS. GOLDBERG: No, Your Honor.

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

1 A Because it was a defense.

2 Q And you didn't know if you had one?

3 A No, ma'am.

4 **MS. GOLDBERG:** Nothing further, Your Honor.

5 **MR. GOURLEY:** All right. Just briefly.

6 **CROSS-EXAMINATION**

7 BY MR. GOURLEY:

8 Q Mr. Peay, you were out on bond at this time?

9 A Yes, yes, sir.

10 Q Did you ever go to Ms. Stevens' office?

11 A Yes, sir.

12 Q Okay. And so you knew where she was?

13 A Yes, sir.

14 Q And you were out on bond for approximately how
15 long? Do you recall? You were out on bond in 2011,
16 correct?

17 A Uh-huh.

18 Q And your plea was 2012, January of 2012?

19 A Uh-huh.

20 Q So during that time, you could have gone to
21 Ms. Stevens' and that way discuss potential defenses you
22 had, right?

23 A Yes, sir.

24 Q And you didn't do that?

25 A She -- she normally told me when to come see her.

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

1 Q Okay. But you could have gone and met with her
2 though.

3 A Yeah.

4 Q You could stop by and say, Hey, I want to meet with
5 you?

6 A Yes, sir.

7 Q Okay.

8 MR. GOURLEY: No further questions, Your Honor.

9 MS. GOLDBERG: Nothing further.

10 THE COURT: Thank you. Thank you very much. You
11 may step down.

12 Anything further, Ms. Goldberg?

13 MS. GOLDBERG: No, Your Honor, I could sum it up in
14 a few sentences.

15 THE COURT: All right. Anything further as far as
16 witnesses from the State, Mr. Gourley.

17 MR. GOURLEY: No, Your Honor.

18 THE COURT: All right. I'll be glad to hear from
19 you Ms. Goldberg.

20 MS. GOLDBERG: Thank you, Your Honor. Basically
21 from the testimony of both witnesses, it appears here that
22 Mr. Peay and Ms. Stevens did not meet and thoroughly
23 discuss possible defenses at trial. He was there and
24 regardless of what appointments he could have had prior to,
25 doesn't sound like he missed it. Ms. Stevens didn't claim

Kwaun Ka'Shawn Peay - Cross-Examination by Mr. Gourley

1 that he missed any appointments that she tried to schedule
2 with him, it just -- there was a lack of communication
3 between the parties. He was there in court on January
4 24th, he was there in court on January 25th, and it appears
5 this still wasn't discussed. He was never informed of what
6 possible defenses he may have.

7 I would argue that that directly affects whether
8 the plea was voluntarily and intelligently made and
9 therefore we would just ask that the plea be vacated.

10 **THE COURT:** Thank you. Thank you, Ms. Goldberg.
11 Mr. Gourley.

12 **MR. GOURLEY:** Your Honor, Mr. Peay was out on bond
13 during this time. It was not Ms. Stevens' responsibility
14 to track down her client for him to come meet with her.
15 She met with him two times. She stated -- her testimony
16 here today that she was prepared to go to trial. A jury
17 trial -- a jury was drawn and she was prepared to go to
18 trial and Mr. Peay voluntarily pled guilty when he was
19 given a proposed notice sentence of 20 years, dismissing
20 four other counts.

21 Further more, Your Honor, Mr. Peay stated that he
22 was not coerced to the judge during the guilty plea. He
23 stated today that he was coerced. I believe, Your Honor
24 that affects his credibility and for those reasons, we
25 would ask that Your Honor dismiss Mr. Peay's post

1 conviction relief application.

2 **THE COURT:** All right. Thank you. Thank you,
3 Mr. Gourley.

4 If y'all would please submit proposed orders within
5 30 days and specifically also address the transcript of the
6 plea. I have not had the opportunity to fully and
7 completely read both of these transcripts yet. I've read
8 parts of them. On page 13, where the Court asks Mr. Peay,
9 now, are you satisfied with the services of Ms. Stevens and
10 his response was no, sir and the Court asked him again,
11 you're not satisfied with her services, his response,
12 again, is no, sir. And the Court asked why not.

13 And if you would address that in light of Boykin
14 versus Alabama and the voluntariness of the plea in your
15 proposed orders. If you would e-mail them only to my
16 law -- each other of course, and to my law clerk. He
17 manages them for me.

18 All right. Thirty days sufficient, Ms. Goldberg?

19 **MS. GOLDBERG:** Yes, Your Honor.

20 **THE COURT:** All right. Thank you. Thank you very
21 much.

22 Good luck to you, Mr. Peay. Good luck to you.
23 Defendant.

24 **THE DEFENDANT:** Thank you, judge.

25 **THE COURT:** And thank you for being with us

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Ms. Stevens.

* * * * * END OF TRANSCRIPT * * * * *

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State of South Carolina)
County of Aiken) **Certificate of Reporter**

I, THE UNDERSIGNED, Brenda J. Sigwald,
Official Court Reporter for the Fifth Judicial Circuit of
the State of South Carolina, do hereby certify that I
reported the proceedings in the captioned case in the Court
of Common Pleas in and for the State of South Carolina on
the 2nd day of October, 2013.

I FURTHER CERTIFY that the 36 foregoing pages,
constitute a true, accurate and complete transcript of said
hearing.

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

IN WITNESS WHEREOF, I have hereunto set my hand and
seal at Aiken County, this 24th day of March, 2014

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

\$	5	appointment ⁽¹⁾ - 25:16 appointments ⁽²⁾ - 32:24, 33:1 approached ⁽¹⁾ - 13:4 argue ⁽²⁾ - 28:9, 33:7 arrest ⁽¹⁾ - 3:14 arrested ⁽¹⁾ - 28:13 Assistant ⁽¹⁾ - 1:21 assuming ⁽¹⁾ - 28:24 Attorney ⁽³⁾ - 1:20, 1:21, 1:21 attorney ⁽⁵⁾ - 5:12, 5:23, 5:25, 15:13, 15:22, 16:5 authorize ⁽¹⁾ - 13:20 available ⁽²⁾ - 8:8, 27:1 aware ⁽³⁾ - 25:1, 26:3, 27:24	31:7	completely ⁽¹⁾ - 34:7 concept ⁽¹⁾ - 28:19 concerning ⁽¹⁾ - 22:14 concurrently ⁽¹⁾ - 3:23 conference ⁽¹⁾ - 25:25 confined ⁽¹⁾ - 3:6 consecutive ⁽¹⁾ - 23:6 consequences ⁽²⁾ - 25:3, 25:4 constitute ⁽¹⁾ - 36:13 constitutional ⁽¹⁾ - 17:22 contacted ⁽¹⁾ - 22:14 convicted ⁽³⁾ - 5:9, 5:17, 24:19 Conviction ⁽¹⁾ - 1:8 conviction ⁽¹⁾ - 34:1 CONVICTION ⁽¹⁾ - 3:1 cooperate ⁽¹⁾ - 24:1 correct ⁽¹³⁾ - 5:17, 8:11, 8:14, 10:12, 13:17, 17:12, 22:2, 22:16, 22:17, 29:10, 29:21, 29:22, 31:16 correctional ⁽²⁾ - 4:24, 5:2 Corrections ⁽¹⁾ - 3:7 counsel ⁽³⁾ - 10:25, 17:4, 36:15 count ⁽¹⁾ - 3:10 counts ⁽¹⁾ - 33:20 County ⁽⁵⁾ - 1:2, 3:8, 3:10, 36:2, 36:18 couple ⁽²⁾ - 7:2, 12:5 course ⁽¹⁾ - 34:16 Court ⁽¹³⁾ - 1:1, 1:24, 3:4, 12:10, 15:18, 19:25, 20:2, 34:8, 34:10, 34:12, 36:7, 36:9, 36:23 COURT ⁽³⁰⁾ - 3:2, 4:6, 4:9, 4:13, 4:25, 5:3, 11:1, 15:15, 15:17, 17:15, 19:14, 20:10, 20:13, 20:17, 20:23, 21:3, 25:7, 29:5, 29:24, 30:1, 30:4, 30:7, 30:11, 32:10, 32:15, 32:18, 33:10, 34:2, 34:20, 34:25 court ⁽¹⁴⁾ - 3:8, 8:16, 8:19, 9:10, 9:16,
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RECORDED

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER 2013 DEC -9 PM 12: 29

IN THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT

Kwaun Ka'Shawn Peay, #34941)
JAMES C. CAMPBELL)
CLERK OF COURT)
SUMTER COUNTY S.C.)
Applicant,)

Case No. 2012-CP-43-1769

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief application filed on September 7, 2012. Respondent made its Return on January 15, 2012. An evidentiary hearing into the matter was convened on October 2, 2013, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Kristy Goldberg, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the March 2011 term of the Sumter County Grand Jury under a six count indictment (2011-GS-43-0431) for (1) Trafficking Cocaine Base-More than 28 Grams, Less than 100 Grams; (2) Trafficking Cocaine 200 Grams or More, But Less than 400 Grams; (3) Manufacturing Cocaine Base; (4) Possession of Marijuana; (5) Resisting Arrest; and (6) Failure to Stop for Blue Light/Siren. He was represented by Lauren Stevens, Esquire. On January 25, 2013, the Applicant pled guilty before the Honorable W.

Jeffrey Young. He was sentenced to twenty years imprisonment and a \$50,000.00 fine for Trafficking Cocaine- 28 Grams to 100 Grams; with the sentences to be served concurrently. The remaining charges were *nolle prossed* pursuant to the plea. Applicant through Todd Rutherford, Esquire, filed for a motion to reconsider the sentence on February 9th, 2012. By letter dated September 9, 2013, Todd Rutherford withdrew Applicant's request for a hearing on motion to reconsider sentence.

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

1. Ineffective assistance of counsel regarding trial preparation
 - a. "Trial counsel did not speak to client regarding possible trial issues or strategies, evidentiary issues, or possible defenses."
2. Ineffective assistance of counsel regarding trial notice which resulted in involuntary plea.
 - a. "Trial counsel did not provide adequate notice of trial to client and did not provide client with sufficient time and information to make an informed decision whether to plea."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Lauren Stevens, Esquire (Counsel). This Court also had before it a copy of Applicant's guilty plea transcript, the records involving the motion for reconsideration, the records of the Sumter County Clerk of Court, and records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he met with Counsel twice prior to his guilty plea. Applicant testified during the first meeting, Counsel Stevens asked if he was going to plead or take the case to trial. Applicant testified on the second meeting, Counsel



Stevens explained that he needed to tell on someone or accept a twenty five year plea deal. However, Applicant testified he was out on bond prior to his guilty plea. Applicant testified on January 24 Applicant told the trial judge that he was represented by Murrell Smith (Counsel Smith); however Counsel Smith could not be present during the court proceeding because he had to be in general sessions court. Applicant testified Counsel Stevens again reiterated to him on January 24th that if he refused to tell on someone he would be serving twenty two out of twenty five year sentence. Applicant testified that he asked for another attorney on January 25th, but the judge denied his request. Applicant testified he requested new trial because he felt he was not given a fair chance due to Counsel's failure to review discovery material and lack of meetings. Applicant testified he chose to plead guilty as a result of the judges denial of his request for a new attorney.

Applicant testified that he never received nor reviewed discovery with Counsel Stevens. Applicant testified that he did review the arrest warrants. Applicant testified Counsel Stevens never discussed any possible defenses or trial strategies. Applicant testified he did not give Counsel Stevens any leads or witnesses to investigate. Applicant testified he felt the search warrant should have been challenged by Counsel Stevens. However, Applicant recalled telling the plea judge that he understood his constitutional rights. (Tr. p. 11-12). Applicant recalled telling the plea judge that no one had promised or coerced him into pleading guilty (Tr. p. 12). Applicant further recalled telling the plea judge that he was guilty of all charges. (Tr. p. 12-13).

Applicant testified after the guilty plea, his parents paid Todd Rutherford (Rutherford) to file a motion for reconsideration. However, Applicant explained that Rutherford did not represent him on the underlying guilty plea. Applicant testified that he never heard anything from Rutherford and was unaware that Rutherford filed the motion for reconsideration.



Applicant testified that he never authorized Rutherford to withdraw his motion for reconsideration.

Following Applicant's testimony, Counsel Stevens was called to testify by the State. Counsel Stevens testified that she was appointed to Applicant's case sometime in January 2011. Counsel Stevens testified that she met with Applicant twice prior to his guilty plea. Counsel Stevens testified that Applicant was out on bond the entire time. Counsel Stevens explained that Applicant knew where her office was located and Applicant had her telephone number if he had any questions or concerns. Counsel Stevens testified she filed for and reviewed discovery with Applicant. Counsel testified that the State had very good evidence against Applicant. Counsel testified the Solicitor's office at the time gave very little notice as to when a case would be called for trial. Counsel Stevens testified she sent a letter to Applicant's address and tried to call him in an attempt to notify him that his case was going to be called for trial.

Counsel Stevens further testified that she told Applicant he was facing a minimum mandatory sentence of twenty five years if he proceeded to trial. Counsel Stevens testified she explained to Applicant that the plea judge could run all sentences consecutive and "he could be an old man" by the time he gets out of jail. Counsel Stevens testified that Applicant was well aware of all the consequences of his plea. Counsel Stevens testified she was prepared to take the case for trial and Applicant chose to plead guilty. Counsel explained that Merrell Smith represented Applicant on unrelated charges.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their



testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474



U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Plea counsel ineffective for failing to speak with Applicant regarding possible trial issues or strategies, evidentiary issues, or possible defenses.

This Court finds Applicant's allegation that he was denied effective assistance of plea counsel for failing to discuss with him possible trial issues or strategies, evidentiary issues, or possible defenses is without merit. This Court finds the guilty plea transcript, along with Counsel's credible testimony, reveals Applicant freely and voluntarily pled guilty. Counsel Stevens testified she met with Applicant twice prior to his guilty plea. Counsel Stevens testified she reviewed and discussed all discovery material with Applicant prior to his guilty plea. Counsel Stevens further testified that the State's evidence against Applicant was "very good." Counsel Stevens testified that Applicant was out on bond the entire time and Applicant knew where her office was located. Counsel Stevens further testified that Applicant had her office phone number if he had any questions or concerns. Further, Applicant testified that he did not give Counsel Stevens any witnesses or leads to investigate. This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

This Court notes that the plea transcript reflects Applicant explaining to the plea judge that he was not satisfied with Counsel and requesting a new attorney. (Tr. p.13). The plea court denied Applicants request and found Counsel Stevens was fully prepared to take the case to trial if Applicant chose to proceed with a jury trial. (Tr. p 13-14). The plea court further found Applicant "entered into the plea freely and voluntary. He has the advice of counsel. And



although he says he is not satisfied with that, the court sees nothing that would give the court reason to think that she had not acted as a professional, and done what she could have for her client.” (Tr. p. 15). To find a guilty plea is voluntarily and knowingly entered into, the record must establish a defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (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. In the present case, the plea court sufficiently complied with the requirements of Boykin to ensure that Applicant was making a free and knowing decision to plead guilty. This Court further finds this issue raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Plea Counsel ineffective for not providing adequate notice of trial to Applicant and not providing Applicant with sufficient time and information to make an informed decision whether to plea.

This Court finds Applicant's allegation of ineffective assistance of plea counsel for not providing adequate notice of trial to client and not providing client with sufficient time and information to make an informed decision whether to plea is without merit. This Court finds the guilty plea transcript, along with Counsel Stevens credible testimony, reveals Applicant freely and voluntarily pled guilty. Counsel Stevens testified the Solicitor's office gave very little notice prior to trial. Counsel Stevens explained that Applicant's name was on the trial docket every week and his case would be subject to call at any point. Counsel Stevens testified after she was



given notice of trial, she attempted to contact Applicant via a letter mailed to his address and multiple phone calls to his listed number. Counsel Stevens testified Applicant was out on bond. This Court finds that Applicant has not shown that Counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

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 Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds 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 that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's




behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26 day of Nov, 2013.



R. KNOX MCMAHON
Presiding Judge
Third Judicial Circuit


_____, South Carolina

WITNESSES

W. Welch
Sheriff
Sumter County

DOCKET NO. 2011-GS-43-0431

The State of South Carolina
County of SUMTER

COURT OF GENERAL SESSIONS

March TERM 2011

THE STATE

VS.

KWAUN KA'SHAWN PEAY

M442510 M442511 M442512

M442513 M442514 M442515

ACTION OF GRAND JURY

True Bill

Indictment for

- Trafficking Cocaine Base, 28g to 100g
- Trafficking Cocaine, 200g to 400g
- Manufacturing Cocaine Base
- Possession of Marijuana
- Resisting Arrest
- Failure to Stop for Blue Light or Siren

James J. Spindel Jr.
Foreperson of Grand Jury
Date: 3/31/2011

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Trafficking Cocaine Base, 28g to 100g
Trafficking Cocaine, 200g to 400g
Manufacturing Cocaine Base
Possession of Marijuana
Resisting Arrest
Failure to Stop for Blue Light or Signal

CERTIFIED TRUE COPY
OF ORIGINAL FILE
Stephan Harper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on March 31, 2011 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE
TRAFFICKING COCAINE BASE
MORE THAN 28 GRAMS, LESS THAN 100 GRAMS

That Kwaun Ka'shawn Peay did in Sumter County on or about November 18, 2010 knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than twenty-eight grams but less than one-hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375, S. C. Code of Laws, 1976, as amended.

COUNT TWO
TRAFFICKING COCAINE
200 GRAMS OR MORE, BUT LESS THAN 400 GRAMS

That Kwaun Ka'shawn Peay did in Sumter County on or about November 18, 2010, knowingly, sell, deliver, purchase or bring in to this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of 200 grams or more, but less than 400 grams, the same being a controlled substance, a within the meaning of Section 44-53-370, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370, S. C. Code of Laws, 1976, as amended.

COUNT THREE
MANUFACTURING COCAINE BASE

That Kwaun Ka'shawn Peay did in Sumter County on or about November 18, 2010, manufacture, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to manufacture, distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR TRAFFICKING COCAINE BASE, TRAFFICKING COCAINE, MANUFACTURING COCAINE BASE, POSSESSION OF MARIJUANA, RESISTING ARREST AND FAILURE TO STOP FOR A BLUE LIGHT WITH THE AFORESAID NAME OF KWAUN KA'SHAWN PEAY SHOWN THERON:

COUNT FOUR
POSSESSION OF MARIJUANA

That Kwaun Ka'shawn Peay did in Sumter County, on or about November 18, 2010, knowingly and intentionally possess a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370, S. C. Code of Laws, 1976, as amended.

COUNT FIVE
RESISTING ARREST

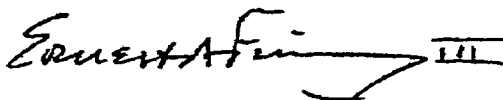
That in Sumter County, South Carolina, on or about November 18, 2010, the Defendant, Kwaun Ka'shawn Peay, knowingly and willfully did oppose or resist, the efforts of Officer Justin Yelton, a law enforcement officer of this State, to lawfully arrest the Defendant and the Defendant knew or reasonably should have known that Officer Justin Yelton was a law enforcement officer, in violation of Section 16-9-320(a), Code of Laws of South Carolina, (1976, as amended)

COUNT SIX
FAILURE TO STOP FOR BLUE LIGHT/SIREN

That Kwaun Ka'shawn Peay did in Sumter County on or about November 18, 2010, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his motor vehicle when signaled to do so by law enforcement vehicles, by means of a siren and/or flashing light, in violation of Section 56-05-0750, S. C. 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.

Solicitor



STATE OF SOUTH CAROLINA

14 IN THE COURT OF GENERAL SESSIONS

COUNTY OF Sumter
STATE VS.
AKA: Kwaun Ka'shawn Peay
Race: 2 Sex: M Age: 30
DOB: SS#
Address:
City, State, Zip: Rembert, SC 29128
DL#: SID#

INDICTMENT/CASE#: 2011-GS-43-0431
A/W#: M442510
Date of Offense: 11/18/2010
S.C. Code §: 44-53-0375(C)(2)(B)
CDR Code #: 0389

DEPUTY CLERK OF COURT
SENTENCE SHEET
SUMTER COUNTY
SOUTH CAROLINA

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Cocaine Base 28 grams to 100 grams

CONVICTED OF or PLEADS

in violation of § 44-53-0375(C)(2)(b) of the S.C. Code of Laws, bearing CDR Code #
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45
w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Corbett, Jason W SC Bar# 065348 Defendant Kwaun Peay Attorney for Defendant Lawrence Stevens SC Bar# 9505

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 120 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 50,000.00; provided that upon the service of days/months/years and/or payment
of \$ 50,000.00; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: w/ All Charges
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-20 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP
days/hours Public Service Employment

Table with 3 columns: Description, Rate, Amount. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), 3% to County (if paid in installments), TOTAL.

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

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

Clerk of Court/ Deputy Clerk: James C. Campbell
Court Reporter: Margaret Sullivan
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2156
Sentence Date: 1-25-12

STATE OF SOUTH CAROLINA

COUNTY OF Sumter
STATE VS.
Kwaun Ka'shawn Peay

AKA:
Race: 2 Sex: M Age: 30
DOB: SS#:
Address:
City, State, Zip: Rembert, SC 29128
DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Cocaine ~~Base 200 grams to 400 grams~~ 28g to 100g

in violation of § 44-53-0370(e)(2)(d) of the S.C. Code of Laws, bearing CDR Code # 0288
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-43

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Jason Corbett 065346 Kwaun Peay Lauren Steiner 9505
Corbett, Jason W SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months years or under the Youthful Offender Act not to exceed ___ years
and/or to pay a fine of \$ 50,000.00; provided that upon the service of ___ days/months/years and/or payment
of \$ 50,000.00; plus costs and assessments as applicable*; the balance is suspended with probation for ___

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

CONCURRENT or CONSECUTIVE to sentence on: All Charges
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-43-40 to be calculated and applied
by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Recipient: _____
*Fine: _____

§ 14-1-206 (Assessments 107.5 %)		\$ 50,000
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 53,750
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3120.90
TOTAL		\$ 107,150.90

Clerk of Court/ Deputy Clerk James C. Campbell
Court Reporter: Margaret Sullivan
SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS
~~25 years 100,000~~
INDICTMENT/CASE#: 2011-GS-43-0431
A/W#: M442511
Date of Offense: 11/18/2010
S.C. Code § : 44-53-0370(e)(2)(d)
CDR Code #: 0288

SENTENCE SHEET

CONVICTED OF or PLEADS

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

Presiding Judge _____
Judge Code: 2156
Sentence Date: 1-25-12

7-25
50,000

2359

W. J. [Signature]