

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

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S.C. Supreme Court

REYNALDO GONZALEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000100

APPENDIX

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INDEX

INDEX	i
MOTION FOR CONTINUATION HEARING TRANSCRIPT (OCTOBER 9, 2008)	1
GUILTY PLEA HEARING TRANSCRIPT (JANUARY 14, 2009)	18
APPLICATION FOR POST-CONVICTION RELIEF	43
RETURN AND PARTIAL MOTION TO DISMISS	49
AMENDMENT TO ORIGINAL APPLICATION FOR POST-CONVICTION RELIEF	56
POST-CONVICTION RELIEF HEARING TRANSCRIPT (MAY 8, 2013)	80
APPLICANT'S EXHIBIT # 1 (MEMORANDUM FROM CHIEF JUSTICE TOAL, DATED MARCH 1, 2004)	195
POST-CONVICTION RELIEF CONTINUATION HEARING TRANSCRIPT (SEPTEMBER 18, 2013)	196
ORDER OF DISMISSAL	202
MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULES 52 AND 59 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE	217
ORDER FROM THE HONORABLE R. LAWTON MCINTOSH (JANUARY 7, 2014)	220
CLERK OF COURT RECORDS	221

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

Plaintiff,

-vs-

Renaldo Gonzalez,

Defendant.

2007-GS-04-167/169, 2208

October 9, 2008

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Rame Campbell, Esquire
Assistant Solicitor for Tenth Judicial Circuit
Attorney for the State

Druanne White, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

INDEX

Motion for Continuance
Certificate of Reporter

PAGE
3

EXHIBITS

No

DESCRIPTION

ID EV

No Exhibits Were Presented During the Hearing

State v. Renaldo Gonzalez
Motion for Continuance

2007-GS-04-167/169, 2208

3

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 9:12 a.m.)

4 THE COURT: Let me ask the State a question.
5 According to the motion, the tapes were not turned over
6 until October the 2nd. Is that correct or incorrect?

7 MS. WHITE: Not the tapes, Judge.

8 THE COURT: Pardon?

9 MS. WHITE: Not the tapes.

10 THE COURT: The tapes?

11 MS. WHITE: The tapes were turned over ---

12 THE COURT: It's the physical evidence.

13 MS. WHITE: Yes, sir.

14 THE COURT: You're talking about the scales and
15 the drugs on October the 2nd?

16 MS. WHITE: That's when I was afforded an
17 opportunity to go look at it. But, Judge, I ---

18 THE COURT: Well, let me just ask -- let me
19 make sure I've got my dates right. What about the ten
20 tape recordings that says September 24th? Is that when
21 they were turned over?

22 MR. CAMPBELL: That's correct, Your Honor.

23 MS. WHITE: That's right.

24 MR. CAMPBELL: Those are tape recordings of my
25 confidential informant. And we turned it over and looked

1 -- in anticipation of going to trial. Pursuant to the
2 rules, we have ten days to turn it over to her, and
3 that's what we did.

4 THE COURT: All right. Let me make a statement
5 to begin with to everybody concerned. Okay? Apparently,
6 the public defender, Mr. Tavernier, filed a motion
7 apparently on May the 1st, 2008. Okay? Now, according
8 to Rule 5, the State has thirty days to respond to that.

9 MS. WHITE: No, sir. Well, what -- Kurt
10 Tavernier filed a motion on November 15th of 2006. I've
11 got that motion attached.

12 THE COURT: All right. November the 15th,
13 2006. The State has thirty days under the rule to comply
14 with that motion. Okay? That's the way it's supposed to
15 be played. Now, I understand occasionally people talk
16 and they go look at it and view it personally and run
17 copies, et cetera, and there's no formal exchange. But
18 the rule says thirty days.

19 Now, Ms. White, I know you weren't representing the
20 Defendant at the time. Your remedy, if you don't receive
21 it in thirty days, is to make a motion to compel. Okay?

22 MS. WHITE: Yes, sir.

23 THE COURT: I mean, it's real simple. If you
24 don't get it within thirty days, then you make a motion
25 to compel and the Court orders it to be produced.

State v. Renaldo Gonzalez
Motion for Continuance

2007-GS-04-167/169, 2208

5

1 MS. WHITE: Yes, sir.

2 THE COURT: Rather than having all this yah-yah
3 back and forth. It doesn't accomplish anything.

4 MS. WHITE: Your Honor ---

5 THE COURT: All you've got to do is file a
6 motion to compel.

7 MS. WHITE: I just went ahead and filed my own
8 discovery motion, Your Honor, in May. I wasn't sure ---

9 THE COURT: Well, you didn't have to do that.
10 All you had to do was file a motion to compel in May and
11 have a hearing.

12 MS. WHITE: This is why I did it. Because I
13 couldn't I find an affidavit of service. We called back
14 out to the Public Defender's office, and they said we
15 don't file an affidavit of service, we just give it to
16 them. So in order to do a motion to compel, I've got to
17 have an affidavit of service. And I didn't have that.

18 THE COURT: But even after you filed your
19 motion and didn't get everything you were entitled to --
20 now, I know on cases there are always a continuing
21 discovery process. In other words, the Prosecutor can't
22 produce what he doesn't have in his possession. And you
23 were in the Prosecutor's office for many years. You
24 understand sometimes statements or notes or whatever are
25 found later in the Sheriff's office file that weren't

1 produced by the Sheriff and they're ultimately produced
2 by the Solicitor. So that happens. It's a continuing
3 process. All you've got to do is file a motion to
4 compel.

5 MS. WHITE: Yes, sir. Well, they've been
6 gradually giving us the evidence. And I filed ---

7 THE COURT: Well, all I'm trying to say to you,
8 all these issues need to be resolved before a case is put
9 on the trial docket. When it's put on the trial docket
10 is not the time to be making motions. I'm going to grant
11 your motion to continue because you want to get the drug
12 test, you want to get the voice identification. All I'm
13 trying to say to you, in the future, don't wait until the
14 case comes up on the docket. File your motion to compel
15 after thirty days.

16 MS. WHITE: Your Honor, I'd like to put
17 something ---

18 THE COURT: Do you understand what I'm saying?

19 MS. WHITE: Yes, sir. Oh, absolutely. Your
20 Honor, I'd like to put something on the record though.
21 We ---

22 THE COURT: Well, I'm going to grant you a
23 continuance.

24 MS. WHITE: Yes, sir.

25 THE COURT: What do you want to put on the

1 record?

2 MS. WHITE: I want to put on the record, Your
3 Honor, I had gotten a plea offer on this ---

4 THE COURT: I'm not involved in the plea offer.
5 That's between you and the Solicitor.

6 MS. WHITE: I understand that, Your Honor. But
7 what I'm saying is we were ready to plead this week. We
8 are ready to plead this week with the plea offer. The
9 problem is I got my plea offer that expired before I got
10 my tapes, before I got the physical evidence and before I
11 got the chain of custody. And Judge, I -- the minute I
12 saw this evidence on October 2nd, the last thing I really
13 needed to look at in the State's care and custody, I met
14 with my client the next day, October 3rd. I called the
15 State on October 3rd and I said, what are we going to do
16 next week because, you know, let's go ahead and do a
17 plea. I was told then well, the plea is withdrawn.
18 Judge, I hadn't -- that put me in a terrible position
19 because how on Earth can I plead somebody and face a
20 P.C.R. if I haven't seen the physical evidence, I haven't
21 seen the chain of custody and I didn't have the tapes?
22 And so I would like to put on the record that my client
23 -- I called the day after I saw this evidence and said,
24 okay, now we've seen everything. But I cannot plead a
25 client, Judge, and come up here a year later in front of

1 you for a P.C.R. and have to explain why I didn't see any
2 of these things. I have to see them.

3 THE COURT: Okay. I understand that. I
4 understand that. I'm trying to give you the mechanism in
5 the future to get the documents.

6 MS. WHITE: Yes, sir.

7 THE COURT: That's all I'm trying to do. Okay?

8 MS. WHITE: Yes, sir.

9 THE COURT: If you had filed your motion within
10 thirty days, you wouldn't have had to find out. Okay?

11 MS. WHITE: Judge ---

12 THE COURT: I'm not going to get into the plea
13 bargain.

14 MS. WHITE: Yes, sir.

15 THE COURT: You know, the Solicitor's running
16 the program that the Chief Justice wants, put some offers
17 on the table. Now, how the Solicitor wants to deal with
18 that, that's their business.

19 MS. WHITE: But ---

20 THE COURT: And as far as the plea bargain is
21 concerned, as far as -- you know me, it's a
22 recommendation. I can accept it or reject it.

23 MS. WHITE: But Judge, it's a ---

24 THE COURT: Okay?

25 MS. WHITE: The problem is it's a plea to a

1 charge, and the charge requires a mandatory twenty-five.

2 THE COURT: That's right.

3 MS. WHITE: And if you look at the memo from
4 Chief Justice Toal in 2004, she says it's unethical for
5 us to do this. And I can't be put in a position ---

6 THE COURT: What's unethical for you to do?

7 MS. WHITE: This is what she says. She says,
8 "It has come to my attention that solicitors in some
9 circuits are offering plea agreements to defendants on
10 the condition they forego discovery," which is what I
11 would have to do. I'd have to forego that discovery
12 because the thing expired before I got the discovery.

13 THE COURT: Well, I don't think that's the
14 situation here. I don't think anybody has told you, Ms.
15 White, we're not going to give you the discovery, but you
16 go ahead and accept this plea offer. And that's what she
17 was addressing. And I generally ask the Prosecutor in
18 every plea, are you withholding any discovery as a result
19 of this plea? That's what she's talking about. Not this
20 situation. Okay?

21 MS. WHITE: I'm not accusing them of
22 withholding discovery.

23 THE COURT: Okay.

24 MS. WHITE: What I'm saying is, when you tell
25 me I have to plead by September 15th and you have the

1 evidence in your control that I cannot see without your
2 help and you don't give it to me until after September
3 15th. And I've asked and asked, and we've got emails
4 starting in July. We filed our own discovery motion.
5 We've done all these things, yet, I can't -- that is
6 withholding my discovery. They're telling me I have to
7 plead. We have all this evidence in our control, and
8 we're not giving it to you before you plead. That puts
9 me in a very bad ethical position. And I'm not pointing
10 fingers. I don't want to point fingers. I just don't
11 want to be put in a position where I get sued later
12 because I didn't do my job. And it doesn't benefit any
13 of us for me to plead somebody without doing my job.

14 THE COURT: I understand, Ms. White. I suggest
15 next time you file your motion to compel and you will get
16 your stuff. Whatever you want. That's the avenue.
17 Don't wait until it comes up on the trial roster. File
18 your motion to compel when you haven't received it in
19 thirty days. That's what the system requires. I'm not
20 going to get into the argument about the plea or what
21 kind of recommendation they're going to make and what
22 kind of recommendation they aren't going to make.

23 MS. WHITE: Your Honor ---

24 THE COURT: But do you understand what I'm
25 saying to you?

1 MS. WHITE: Yes, sir. But I don't want to
2 inundate the Court. Judge, I mean, that's common is to
3 gradually ---

4 THE COURT: Do you understand what I'm saying
5 to you?

6 MS. WHITE: Yes, sir. I do understand.

7 THE COURT: That's for your protection.

8 MS. WHITE: Yes, sir.

9 THE COURT: That's your avenue to get your
10 information.

11 MS. WHITE: Yes, sir.

12 THE COURT: Okay. I suggest you do it.

13 MS. WHITE: Well, in the future, I will. But I
14 like to work with them, Judge, because I understand it
15 takes more than thirty days sometimes. And I don't want
16 to run to the Court every time it's more than thirty
17 days. But then again, I don't want to be put on the
18 docket and have my pleas taken ---

19 THE COURT: Well, this has been -- I mean,
20 technically it's been -- November, when was it? When did
21 Tavernier request it? November 15th, '06?

22 MS. WHITE: He made his request ---

23 THE COURT: I mean, that's been almost two
24 years.

25 MS. WHITE: But I couldn't prove that they had

1 been served, Judge, because there was no affidavit. We
2 called back after we got the file and said, do you have
3 an affidavit of service there? And so we couldn't ---

4 THE COURT: Well, I'm sure this gentleman could
5 address that issue.

6 MS. WHITE: Well, maybe he can.

7 THE COURT: I mean, it's been almost two years.

8 MS. WHITE: Yes, sir.

9 THE COURT: And then you get on the case, what,
10 in May?

11 MS. WHITE: Yes, sir. And that's when I filed
12 my own discovery.

13 THE COURT: And you filed one. So you filed it
14 in May; thirty days would have expired in June.

15 MS. WHITE: Yes, sir.

16 THE COURT: That was what, July, August,
17 September, October?

18 MS. WHITE: Yes, sir.

19 THE COURT: Almost four months ago.

20 MS. WHITE: Right.

21 THE COURT: Okay. Now, Solicitor, when do you
22 want to try this case?

23 MR. CAMPBELL: Your Honor, I recommend the week
24 of ---

25 THE COURT: She wants to do a test on the

State v. Renaldo Gonzalez
Motion for Continuance

2007-GS-04-167/169, 2208

13

1 drugs, and she wants to do a voice analysis. I'm going
2 to grant her continuance.

3 MR. CAMPBELL: Yes, sir. Your Honor, on those
4 issues raised on the drugs tested, there's proper
5 procedure and protocol are going to have to be heard in
6 order for an independent lab to be tested because several
7 issues are raised with that. We don't know if she's
8 contesting the fact that are the weights bad. Is she
9 contesting that? Because the drug analysis that she was
10 provided on July 1st is one thousand three hundred and
11 thirty grams of meth. There's three pounds of
12 methamphetamines. We're not even close to a statutory
13 limit on the penalty such as ten to twenty-eight grams,
14 twenty-eight to a hundred grams. There's no issue on
15 that. And I don't know if she's contesting the fact that
16 it's just -- whether the drugs are correctly meth or
17 cocaine or crack or if she's saying that the lab is at
18 fault in analysis. And we need to know exactly what she
19 ---

20 THE COURT: I don't know. And I don't think
21 she has to address that problem to you. She's going to
22 have to probably follow SLED's protocol to have an
23 independent evaluation. And as long as she follows
24 SLED's lab protocol, that's fine. And that's what she's
25 going to have to find. But I don't think she has to

1 identify to you at this point in time what she thinks is
2 wrong.

3 MR. CAMPBELL: We would like a date then set
4 that she has to do that.

5 THE COURT: Well, whatever the SLED drug
6 profile -- excuse me -- lab protocol calls for for
7 independent evaluation, you both are going to have to
8 follow. And I don't know what that protocol is.

9 MR. CAMPBELL: Your Honor, I'm going to hand up
10 -- Michael Miller, who is the head of the Anderson/Oconee
11 Forensic Regional Lab is here in the courtroom today. He
12 has been the director -- in fact, he started this lab --
13 since George Ducworth has been here.

14 THE COURT: Did he do the evaluation, or did
15 SLED do it?

16 MR. CAMPBELL: Actually, his lab did it.
17 Meredith ---

18 THE COURT: All right. So SLED wasn't
19 involved?

20 MR. CAMPBELL: No. But his policy is also
21 based upon SLED's protocol. And I'm going to hand up --
22 he sent me a letter at my request on what to do for an
23 independent analysis and what procedures have to be
24 followed. Because we still have to keep the proper chain
25 together and we just need ---

State v. Renaldo Gonzalez
Motion for Continuance

2007-GS-04-167/169, 2208

15

1 THE COURT: Well, what are you asking me to do?

2 All I'm going to do is I'm going to ---

3 MR. CAMPBELL: We just want to make certain
4 that it's done right.

5 THE COURT: --- is I'm going to order her to
6 follow Anderson/Ocone Regional Forensic Laboratory's
7 protocol in doing the evaluation.

8 MR. CAMPBELL: I guess first we need to go back
9 to when we want to try the case. I recommend -- I'm
10 doing a murder case in November, so I recommend let's do
11 it in December.

12 THE COURT: All right. When do we have a term
13 in December?

14 MR. CAMPBELL: I believe December 1st is the
15 first term of court we have in General Sessions.

16 THE COURT: All right. Ms. White, we'll set it
17 for December 1st. That gives you a month and a half.
18 Well, almost two months to do whatever you're going to do
19 with the drugs and the voice analysis.

20 MS. WHITE: Yes, sir. Your Honor, I would like
21 to put on the record ---

22 THE COURT: Do you want a copy of this forensic
23 lab protocol?

24 MS. WHITE: I've got it. He just handed it to
25 me.

1 THE COURT: Okay.

2 MS. WHITE: I would like to put on the record,
3 Your Honor, that I will -- I want to give advance notice
4 of this. I am going to be making a motion that the State
5 should comply with the plea offer since it would have put
6 me in a very unethical position to advise my client to
7 plead before I'd been given the essential evidence in the
8 case. So I just -- just so there's no surprise, I want
9 to make sure that this is known at this point. And I
10 will file a motion to do that.

11 THE COURT: All right. Let me see the
12 attorneys up here. Mr. Tavernier, you were standing up.
13 Anything you want to add to this?

14 MR. TAVERNIER: Your Honor, I can verify ---

15 THE COURT: Why don't you come on up here.

16 (WHEREUPON, the hearing ended at approximately 9:25
17 a.m.)

18 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

State v. Renaldo Gonzalez
Motion for Continuance

2007-GS-04-167/169, 2208

17

CERTIFICATE OF REPORTER

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 9th day of October 2008.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

August 1, 2013

Russell H. Teller

Circuit Court Reporter

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1

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—

1

;

Donna Brady
Official Court Reporter

1 January 14, 2009

2 (WHEREUPON, court convened with all parties present,
3 when the following proceedings were had:)

4 MR. CAMPBELL: Your Honor, before you is Reynaldo
5 Gonzalez, charged in indictment number 07-168 for
6 conspiracy, 07-169 for trafficking in meth, and 08-2208
7 for possession of cocaine. He's represented by Ms.
8 White.

9 THE COURT: Mr. Gonzalez, would you raise your right
10 hand please.

11 REYNALDO GONZALEZ, being first duly
12 sworn, testified as follows:

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Thank you, sir. How old are you,
15 Mr. Gonzalez?

16 THE DEFENDANT: Fifty-two.

17 THE COURT: Fifty-two?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you still live at
20 in Anderson?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is this your wife with you today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: What's your date of birth?

25 THE DEFENDANT: [REDACTED] 56.

1 THE COURT: What's your social security number?

2 THE DEFENDANT: 1.

3 THE COURT: Do you understand on the drugs,
4 conspiracy, you can get up to 12 and a half years?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And on the trafficking you can get up to
7 25 years?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions about the
10 charge or the maximum time you could receive?

11 THE DEFENDANT: No, sir.

12 THE COURT: I believe you got a third offense, for
13 possession of cocaine first you can get up to three
14 years?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have all of them been indicted? They
19 all been true billed?

20 MR. CAMPBELL: Yes, sir.

21 THE COURT: All right. Mr. Gonzalez, have you had
22 any drugs or alcohol in the last 24 hours?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you taking any prescription
25 medication?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What are you taking?

3 THE DEFENDANT: Heart medication, blood pressure
4 medicine, and blood thinner.

5 THE COURT: You take them every day?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you take them this morning?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do they help you with -- what's your
10 heart condition? What's wrong?

11 THE DEFENDANT: I had two heart catheterizations, I
12 had three stints in my heart. And I have high blood
13 pressure and high cholesterol.

14 THE COURT: Does the medication help you?

15 THE DEFENDANT: Sir?

16 THE COURT: Does the medication help you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Does the medication interfere with your
19 thought process?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you understand why you're here today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: What is that in your pocket and in your
24 ears?

25 THE DEFENDANT: I can't hear without it. I can

1 barely hear you now.

2 THE COURT: What, it just boosts the volume?

3 THE DEFENDANT: Yes, sir.

4 MS. WHITE: It's his hearing aid, Judge.

5 THE COURT: What wrong with your hearing?

6 THE DEFENDANT: I lost about 35, 45 percent hearing
7 in both ears. I used to work at Duke Power, at Bad Creek
8 they were blasting dynamite, noisy equipment.

9 THE COURT: You didn't wear proper ear protection?

10 THE DEFENDANT: No, sir. It didn't help any.

11 THE COURT: So you lost all high frequency?

12 THE DEFENDANT: Yes.

13 THE COURT: How long have you had that problem?

14 THE DEFENDANT: Probably about 19 years.

15 THE COURT: Nineteen years?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Mrs. White, have you explained to
18 the defendant the charge contained in the indictment?

19 MS. WHITE: Yes, sir.

20 THE COURT: Have you explained to him the possible
21 punishment?

22 MS. WHITE: Yes, sir.

23 THE COURT: Have you explained to him his
24 constitutional rights --

25 MS. WHITE: Yes, sir.

1 THE COURT: -- including right to a jury trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Does he wish to waive these rights?

4 MS. WHITE: Yes, sir.

5 THE COURT: In your opinion, does he understand the
6 charges, the punishment, and his constitutional rights?

7 MS. WHITE: He does.

8 THE COURT: How does he wish to plead?

9 MS. WHITE: Guilty.

10 THE COURT: From your investigation of the facts and
11 circumstances of the investigation, do you feel the state
12 could produce sufficient evidence to find the defendant
13 guilty beyond a reasonable doubt?

14 MS. WHITE: I do. But, Your Honor, for purposes of
15 possible appeal, I do need to put some things on the
16 record at some point, just briefly. But, yes, I do.

17 THE COURT: All right. Has he ever been ordered to
18 submit to a mental evaluation competency to stand trial?

19 MS. WHITE: Other than his hearing. I want to make
20 clear for the record I told him if he can't hear
21 anything, please talk to me about it because he does have
22 hearing loss. Other than miscommunication, because of
23 that sometimes, I have not noted any problems at all.

24 THE COURT: You think he understood the conversation
25 I've had with him?

1 MS. WHITE: Yes.

2 THE COURT: Are you aware, other than his hearing,
3 are you aware of any other physical, mental, or emotional
4 condition that would affect his understanding of what's
5 taking place today?

6 MS. WHITE: No, sir.

7 THE COURT: Thank you so very much.

8 All right. Mr. Gonzalez, are you satisfied with the
9 manner in which your attorney has advised you and
10 represented you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you talked with her for as often
13 and as long as you feel necessary?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need more time to talk to your
16 attorney?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you understood the talks that you
19 have had with your attorney?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has she done everything that you feel
22 like she should have done?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is there anything that she's done you do
25 not think she should have done?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you completely satisfied with your
3 lawyer's services?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. How far did you go in
6 school, Mr. Gonzalez?

7 THE DEFENDANT: Ninth grade, Your Honor.

8 THE COURT: Did you complete the ninth?

9 THE DEFENDANT: Yes, sir. I had to drop out of
10 school to help my parents out.

11 THE COURT: And you worked at Duke Power; is that
12 correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What did you do at Duke Power?

15 THE DEFENDANT: Did a lot. I was a line worker, I
16 was a rod buster, I was a gap builder, insulation
17 installer.

18 THE COURT: And when did you stop your work at Duke
19 Power?

20 THE DEFENDANT: Ninety-two, your Honor.

21 THE COURT: Was it because of your heart?

22 THE DEFENDANT: No, sir. They just laid me off.

23 THE COURT: Laid you off?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You get any type of severance pay?

1 THE DEFENDANT: No, sir, because I just was a
2 subcontractor through Duke Power.

3 THE COURT: Subcontractor. What type of work do you
4 do now?

5 THE DEFENDANT: I'm self-employed. I'm a
6 contractor.

7 THE COURT: What type of contract work?

8 THE DEFENDANT: I build houses, remodel houses,
9 vinyl siding, shingles, electrical, plumbing. I do it
10 all. I been doing this remodeling stuff now about 17 or
11 18 years, Your Honor.

12 THE COURT: Are you married?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How long have you been married?

15 THE DEFENDANT: Eighteen years.

16 THE COURT: Do you have any children?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How many?

19 THE DEFENDANT: I got -- I have one of my own. She
20 has one of her own.

21 THE COURT: Have you ever been treated for alcohol
22 abuse or drugs?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you ever been treated for any type
25 of mental illness?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you aware of any physical, mental,
3 or emotional problem that might keep you from
4 understanding what you're doing today?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Do you understand that you
7 have the right to remain silent under the Fifth Amendment
8 to the constitution?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: No one can make you testify against
11 yourself. It's the state's responsibility to prove you
12 guilty beyond a reasonable doubt. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: When you enter a guilty plea, you will
15 have to acknowledge your guilt. You will be testifying
16 against yourself. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you willing to give up your Fifth
19 Amendment rights to remain silent and enter your guilty
20 plea?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand you're entitled to a
23 jury trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that at a jury trial,

1 your attorney could present evidence, make motions to
2 suppress evidence, call witnesses on your behalf. You
3 could testify on your behalf at trial. Do you
4 understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You also understand that the state would
7 be required to prove you guilty beyond a reasonable doubt
8 and all 12 jurors would have to find you guilty or vote
9 to find you guilty. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: It would take a unanimous jury verdict
12 to find you guilty. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Knowing that about a jury trial, do you
15 want a jury trial?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you understand you have the right to
18 appeal this guilty plea ten days from today?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you been involved in the criminal
21 process prior to today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How many times?

24 THE DEFENDANT: Approximately five or six times,
25 Your Honor.

1 THE COURT: Five or six times?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. What were the previous
4 charges?

5 THE DEFENDANT: Receiving money under false
6 pretenses, driving under -- uh, DUI, twice. Uh, criminal
7 domestic violence. All these charges are a good while
8 back, your Honor.

9 THE COURT: How long ago?

10 THE DEFENDANT: Approximately five, six years ago,
11 your Honor.

12 THE COURT: Did you serve any time as a result of
13 any of these charges?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: How much time did you serve?

16 THE DEFENDANT: Another one of those times was child
17 support, it was 18 days. Eighteen days. Approximately
18 40 days, Your Honor, all those combined.

19 THE COURT: Do you understand the trafficking charge
20 you will not be eligible for parole. Do you understand?
21 You'll have to serve --

22 THE DEFENDANT: Right.

23 THE COURT: You'll have to serve 85 percent of the
24 sentence. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You will not be eligible for parole, do
2 you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It's a no parolable offense. Do you
5 understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any questions about that?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Has anybody coerced you to
10 make you plead guilty?

11 THE DEFENDANT: Sir? Excuse me?

12 THE COURT: Has anybody threatened you or
13 intimidated you to make you plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you pleading guilty of your own free
16 will and accord?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you had enough time to make your
19 decision to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Does the recommendation --
22 what's the recommendation, Solicitor?

23 SOLICITOR: Cap of 18 years concurrent sentence.

24 THE COURT: All right. There's a recommendation
25 from the state of a cap of 18 years and all sentences be

1 run concurrent, which means they'll run together. Do you
2 understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand it's a recommendation
5 by the state, the Court can accept it or reject it; do
6 you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Other than the recommendation by the
9 state, Solicitor, are any charges being dropped?

10 MR. CAMPBELL: That's it. No, Your Honor.

11 THE COURT: Any charges being reduced?

12 MR. CAMPBELL: The trafficking for a plea has been
13 reduced from 400 plus grams down to 28 to a hundred.

14 THE COURT: Other than reducing the charge on the
15 trafficking and the recommendation, have any other
16 promises been made to you in order to make you plead
17 guilty?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you understood all my questions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you answered them truthfully and
22 correctly?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions you would like
25 to ask the Court or your attorney?

1 THE DEFENDANT: No, sir.

2 THE COURT: How do you wish to plead?

3 THE DEFENDANT: Guilty.

4 THE COURT: Are you guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: What I'm going to do is, and I'll
7 take -- we'll do the trafficking and conspiracy -- is
8 conspiracy on the trafficking?

9 MR. CAMPBELL: Yes, sir.

10 THE COURT: And possession on a different time?

11 MR. CAMPBELL: All at the same time.

12 THE COURT: All right. Mr. Gonzalez, what I'm going
13 to do is ask the solicitor to give me the facts in the
14 case. Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I want you to listen. After he gives me
17 the facts, I'm going to ask you if you agree or disagree.
18 If you disagree, I want to know specifically what facts.
19 Can you do that?

20 THE DEFENDANT: Yes, sir.

21 MR. CAMPBELL: Thank you, Your Honor. Your Honor,
22 prior to November 3, 2006, he approached an individual in
23 a bar here in Anderson about purchasing some drugs. This
24 individual actually knew a narcotics officer and called
25 him, says, "I can buy some meth."

1 They made an arrangement for three pounds of
2 methamphetamines. Actually, initially they were trying
3 to buy five, but they went to buy 3 pounds of meth, a
4 little over \$60,000. They went to his house at [REDACTED]
5 [REDACTED] in Anderson. The transaction was
6 conducted. A narcotics officer was actually present
7 during the entire deal. As a result, he was arrested on
8 the spot. One bag had 448 grams, another one had
9 435 grams, another one had 447 grams of meth. The
10 cocaine was a powder cocaine, they found there was
11 .48 grams.

12 He actually was not the main man. He was actually
13 working with an individual or knew Sandoval Hernandez,
14 who they actually had some information on, our narcotics
15 officers. And he got the drugs from him. And then he
16 would pay back whatever he needed to.

17 As a result, after he was arrested, he actually --
18 he did cooperate with the law enforcement and did attempt
19 to do a reverse sting on this Hernandez. And he also
20 cooperated in another undercover buy for them, for the
21 officers.

22 His prior record, he has a DUI in '97, 2000; breach
23 of trust in '01.

24 This case was initially set up for trial. I had
25 offered 15 years for a plea. Miss White, as a result --

1 we had a miscommunication, which we have since resolved
2 and got worked out. We've come to an agreement of a cap
3 up of 18 years, leave it up to Your Honor's discretion.
4 Since then this case has been a plea.

5 THE COURT: This is the case where there was a
6 dispute between 15.

7 MR. CAMPBELL: Yes, sir.

8 THE COURT: I remember now.

9 MR. CAMPBELL: Initially Kurt Tavernier was the
10 attorney on the case. And we were getting ready, at that
11 point you relieved Mr. Tavernier and retained Miss White,
12 who I can say has been quite actively involved in the
13 case.

14 THE COURT: Mr. Gonzalez, as far as the facts of the
15 crime themselves, the trafficking, conspiracy, and
16 possession, do you agree with those facts?

17 MS. WHITE: Basically, he got paid a thousand
18 dollars to be the go-between. That's what we're talking
19 about. He wasn't the one with the drugs. He was the go
20 between, was supposed to be paid. All this is over a
21 thousand dollars, what he was supposed to be paid. Other
22 than that, Your Honor, that's correct.

23 THE COURT: Other than that, you agree with the
24 facts?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. I find there's a factual
2 basis for the plea, and that he's freely and voluntarily
3 made the decision to plead guilty upon the advice of his
4 attorney. All elements of the charge have been met.
5 I'll be glad to hear from the state and glad to hear from
6 you, Ms. White, or whoever you would like. Put whatever
7 you'd like to on the record.

8 MR. CAMPBELL: You heard what I had to say, Your
9 Honor.

10 THE COURT: Glad to hear from you, Mrs. White.

11 MS. WHITE: Your Honor, if you'll just bear with me,
12 this will only take a minute. If he gets over 15, I need
13 to lay this out if you don't mind. He was arrested on
14 November 4, 2006. He had another attorney who requested
15 discovery pretty much immediately. No discovery was
16 provided for approximately a year and a half.

17 I got hired in May of '08. I filed discovery. We
18 got the beginning of it, the initial portion July first.
19 At that point, on July 7, I began requesting to see the
20 physical evidence. I got additional portions of
21 discovery, which is completely normal in a case, on
22 September 9th and September 12, 2008. However, I still
23 did not have the ten tape recordings, I didn't have the
24 chain of custody. One of the narcotics officers involved
25 in this had died. I did not have a drug report on the

1 sale, I had not seen the physical evidence, I made
2 several other requests to see that.

3 On September 5 my client was offered a 15 year plea
4 and it turned out it was supposed to expire on
5 September 16th. But at that point I still didn't have
6 any of those things. So I got the ten tape recordings.
7 I went and viewed the evidence, on October 2nd I was
8 allowed to do that. On October 3rd -- and I also got the
9 drug report that day.

10 THE COURT: I think I continued the case when it was
11 on the trial roster because of what you're talking about
12 now, right?

13 MS. WHITE: Yes, sir. And October 3rd, the day
14 after I saw the physical evidence, I got back, said let's
15 talk about this offer now. At that time I was told that
16 it was withdrawn. So I just wanted to put that on the
17 record, and say we just didn't feel we were in a position
18 to do anything at that point. We hadn't heard anything.
19 We didn't see the chain of custody, the physical
20 evidence, the drug reports. So, Your Honor, I know it's
21 a cap of 18; but I would ask that you -- he has never had
22 a prior drug offense, he's got a lot of health
23 problems -- I would ask you go along with the 15 or
24 lower.

25 THE COURT: Okay. All right. I'll be glad to hear

1 from you, Mr. Gonzalez.

2 THE DEFENDANT: Sir?

3 THE COURT: Anything you would like to tell me?

4 THE DEFENDANT: I just made a mistake, your Honor.
5 I hadn't had any work at that time and I just wanted to
6 make a quick buck, I reckon.

7 THE COURT: How long have you been in the dealing of
8 drugs?

9 THE DEFENDANT: No time, your Honor.

10 THE COURT: Well, obviously you were. You
11 approached somebody to do a buy. If you were the go
12 between, you were involved in it. How long you been in
13 the business of selling drugs?

14 THE DEFENDANT: I can -- Your Honor, I can honestly
15 tell you that --

16 THE COURT: You telling me this is the sole offense
17 you've been involved in --

18 THE DEFENDANT: Yes, sir.

19 THE COURT: -- period? You get caught the very
20 first time, that's what you telling me?

21 THE DEFENDANT: Yes, sir.

22 MS. WHITE: Your Honor, I don't think they have any
23 evidence to the contrary.

24 THE COURT: I'm just asking if that's what he's
25 telling me. I want to make sure I understood what he's

1 telling me. I'm not trying to dispute what he said. I
2 just want to make sure what he's telling me.

3 THE DEFENDANT: Your Honor, what people don't seem
4 to understand is that, you know, all it was is I called
5 to ask him "if" he knew, and I didn't know that he did
6 that kind of thing. I just went over there and he handed
7 them to me. That was it. I didn't pay him no money.
8 Didn't give him no money. I didn't know he dealt drugs
9 like that.

10 MS. WHITE: Your Honor, the narcotics officer even
11 agrees it was an accommodation sale, I think it was a
12 thousand dollars he was supposed to be paid. I think
13 that's even in their reports.

14 THE COURT: Anything else, Mr. Gonzalez?

15 THE DEFENDANT: No, sir.

16 THE COURT: Glad to hear from your wife -- from your
17 wife.

18 MRS. GONZALEZ: I just pray that you give him
19 leniency and mercy.

20 THE COURT: All right. Tell me about this buy again
21 real carefully. I know you told me briefly. I was
22 signing the papers, I probably wasn't paying attention
23 like I should have. Okay.

24 MR. CAMPBELL: An individual at a bar here in
25 Anderson, he was at that bar, he approached the

1 individual, asked him could he use anything, need
2 anything. I think initially he was trying to sell him
3 some powder cocaine.

4 The guy's like, "I don't mess with that, I do meth.
5 Can you get me some?"

6 At that point this individual had correspondence
7 with some narcotics officers, our sheriff's department,
8 called them up, said, "Hey, I got a guy wants to sell me
9 some meth." Well, they decided to work it, do some
10 weight. Initially they were trying to buy five pounds of
11 meth. But with his contact he could only get three
12 pounds at that time. They had agreed upon a price. It
13 was a little, about \$66,000. They had gone back and
14 forth dickering over the price, how much his cut would
15 be, and that type of business.

16 At that point they did the buy at his house. The
17 individual plus a narcotics officer in plain clothes went
18 in and they conducted the buy. There was an exchange of
19 some money. Initially, like Miss White said, he was
20 being paid a thousand dollars. That was exchanged, they
21 had other money in the car. After he showed them the
22 methamphetamines and they tested it to make sure it was
23 meth, the signal was given and a take down team came in
24 and he was arrested.

25 THE COURT: Arrested him at that time?

1 MS. WHITE: We would differ in that. The CI came to
2 him, told him he would pay a thousand dollars to do that.
3 That's the difference.

4 THE COURT: Well, I mean, it doesn't make any
5 difference as far as sentence is concerned. Anything
6 else, Miss White?

7 MS. WHITE: No, sir. Also he called him. He had a
8 business card of him from work. So we do differ on those
9 initial facts, your Honor.

10 THE COURT: As far as the time is concerned, there
11 was a dispute of approximately three years between the 15
12 resulted before and now the cap of 18?

13 MS. WHITE: Yes, sir. Our position is we didn't
14 have discovery yet. They wait two years --

15 THE COURT: I understand.

16 MS. WHITE: -- we shouldn't be penalized.

17 THE COURT: I understand your position. There was a
18 dispute of three years --

19 MS. WHITE: There is.

20 THE COURT: -- between the prior --

21 MS. WHITE: That's correct, Your Honor.

22 THE COURT: -- and then it was taken off the table.

23 MS. WHITE: That's correct. Well, it's just a cap
24 they're recommending now. They're not recommending a
25 sentence of 18, they're recommending a cap.

1 THE COURT: All right. I'm with you.

2 All right, I understand. On indictment number 169,
3 sentenced to the state department of corrections 198
4 months. That's 16 and half years. It doesn't let you
5 put 16 and a half, I have to convert it to months. Okay.
6 That's halfway between the 15 and 18. Run that
7 concurrent with the other indictments. How long was he
8 in jail? How much credit is he entitled to?

9 THE DEFENDANT: Eighteen days, Your Honor.

10 THE COURT: Eighteen days. Solicitor, does that
11 sound correct?

12 MR. CAMPBELL: That sounds about right, Your Honor.

13 THE COURT: Give him credit for 18 days.

14 MS. WHITE: Thank you, Your Honor.

15 THE COURT: And on indictment number 168, that's the
16 conspiracy, sentenced to the state department of
17 corrections for a period of ten years. And that's
18 concurrent. Give credit for 18 days. The 2208, that's
19 the possession of cocaine, sentenced to the state
20 department of corrections a period of three years. And
21 that's also concurrent. Give him credit for 18 days.
22 Thank you very much.

23 MS. WHITE: Thank you, your Honor.

24 THE COURT: Thank you.

25 * * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF ANDERSON)
6
78 I, Donna M. Brady, Official Court Reporter for the
9 Tenth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete Transcript of Record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the Court of General Sessions for
14 Anderson County, South Carolina, on the 14th day of
15 January, 2009.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
1920 April 25, 2009
2122 Donna M. Brady
23 Donna M. Brady
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Anderson)Reynaldo Gonzalez)

Full name and prison number, if any, of applicant.)

332772)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2011 - CP - 04 - 00395

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention McCormick C.I. 386 Redemption
Way McCormick, SC 29899

2. Name and location of Court which imposed sentence Anderson County
Court of General Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2007-GS-04-169 Trafficking Methamphetamines

(b) 2007-GS-04-168 Conspiracy to Traffic Meth.

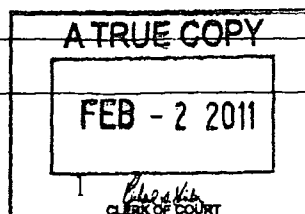
(c) 2008-GS-04-2208 Possession of cocaine

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

(a) January 14, 2009

(b) u

(c) u



CLERK OF COURT
ANDERSON SC
2011 FEB - 2 A 9:59
GENERAL SESSIONS

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

7. If you answered "yes" to (6), list

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

i. S.C. Court of Appeals

ii. N/A

iii. N/A

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

i. Conviction affirmed

ii. N/A

iii. N/A

(c) the date of each such result:

i. September 2010

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

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

(a) 5th, 6th, 14th Amendment violations; Subject

(b) Matter Jurisdiction violations; Ineffective

(c) Assistance of Counsel violations; Due Process violations

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Petition for Review and or Memorandum
will follow once a case number is assigned

(b) u

u

(c) u

u

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) 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) COUNSEL WAS INEFFECTIVE. Did not discover
- (b) THESE EGREGIOUS INJUSTICES UNTIL AFTER THE
- (c) PRIOR PROCEEDINGS CONCLUDED.

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. ~~REDACTED~~ ~~REDACTED~~ DRUMMOND White
- ii. LAURELLE Cantey Durant
- iii. N/A

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

- i. PLEA hearing
- ii. Direct Appeal
- iii. N/A

18. State clearly the relief you seek in filing this application.

SENTENCE AND conviction vacated; order issued to expunge Record; all monies paid are returned

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

YES

STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF Anderson)

I, Reynaldo Gonzalez, 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.

Reynaldo Gonzalez

Sworn to and subscribed before me

This 28 day of Jan, 2011

Joseph L Young L.S.

Notary Public for South Carolina

My Commission Expires 8-28-2011

CLERK'S OFFICE
ANDERSON SC
2011 FEB - 21 A 9:59
GRAND JURY SESSIONS

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

I, Reynaldo Gonzalez, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

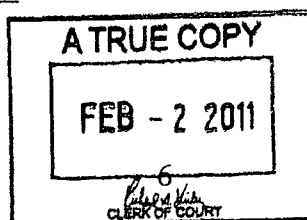
Reynaldo Gonzalez
Applicant

Sworn to and subscribed before me

This 28 day of Jan, 2011

Joseph L Young L.S.

Notary Public for South Carolina

My Commission Expires: 8-28-2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No.: 2011-CP-04-395
COUNTY OF ANDERSON	)	
	)	
Reynaldo Gonzalez, #332772,	)	
	)	
Applicant,	)	
	)	RETURN AND
v.	)	PARTIAL MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return and Partial Motion to Dismiss to the application for post conviction relief (PCR) filed February 2, 2011, 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 Anderson County Clerk of Court. The Applicant was indicted at the January 2007 term of the Anderson County Grand Jury for Conspiracy to Traffic Methamphetamine (2007-GS-04-168) and Trafficking Methamphetamine (2007-GS-04-169). Applicant was subsequently indicted for Possession of Cocaine (2008-GS-04-2208). He was represented by Druanne D. White, Esquire. On January 14, 2009, the Applicant pled guilty to the charges. The Honorable J.C. Nicholson, Jr., sentenced the Applicant to confinement for concurrent periods of ten (10) years for Conspiracy to Traffic Methamphetamine, one-hundred and ninety-eight (198) months for Trafficking Methamphetamine, and three (3) years for Possession of Cocaine.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Reynaldo Gonzalez, 2010-UP-405 S.C. Ct. App. filed September 16, 2010).

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's direct appeal records, and the guilty plea transcript. Respondent reserves the right to supplement its Return upon receipt of relevant materials.

II.

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

1. 5th, 6th, 14th Amendment Violations
2. Subject Matter Jurisdiction Violations
3. Ineffective Assistance of Counsel
4. Due Process Violations

III.

The Applicant claims violations of the 5th, 6th, and 14th Amendments, as well as due process violations. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that these allegations should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. These allegations are so vague that it is impossible for the State to respond.

IV.

The Respondent submits that the Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, the Applicant was indicted by the Anderson County Grand Jury. The indictments were true-billed and signed by the foreman of the grand jury. The said indictments contain all the necessary elements of each offense, and further cite the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g.,* Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). The Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face.

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 610 S.E.2d 494; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, the Respondent would move for summary judgment on this allegation

pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

V.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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).

VI.

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

VII.

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

VIII.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the State requests that a hearing be held.

Respectfully submitted,

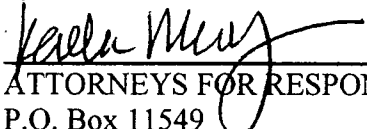
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

March 15, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
	)	2011-CP-04-395
	)	
REYNALDO GONZALEZ, #332772	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Carolyn Galloway, Esquire
P.O. Box 13
Anderson, SC 29622

DATED this 15th day of March, 2012



Lena Pelishenko, Legal Assistant
 For Respondent

Original

STATE OF SOUTH CAROLINA)
Anderson County)

IN THE COURT OF COMMON PLEAS

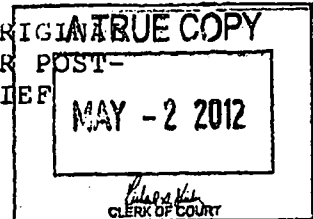
Reynaldo Gonzalez, #332772,
Applicant,

Case No.: 2011-CP-04-00395

vs.

AMENDMENT TO ORIGINAL
APPLICATION FOR POST-
CONVICTION RELIEF

State of South Carolina,
Respondent.



Comes Now, the above named Applicant, who moves this Honorable Court to amend his original application for post conviction relief to include the issues presented on the attached pages. Opposing counsel has been duly served. See "Certificate of Service", also attached.

FILED-CLERK'S OFFICE
ANDERSON SC
2012 APR 26 A 11:31
COMMON PLEAS AND
GENERAL SESSIONS

Reynaldo Gonzalez, #332772

Reynaldo Gonzalez

McCI 2-4 145-B
386 Redemption Way
McCormick, SC 29899
Applicant

~~COUNSEL WAS INEFFECTIVE FOR FAILURE TO INFORM THE APPLICANT THAT THERE WERE DEFECTS IN THE CHAIN OF CUSTODY OF THE ALLEGED ILLEGAL DRUGS IN THIS CASE, AND THAT THE APPLICANT COULD HAVE MOVED FOR SUPPRESSION OF THE ALLEGED ILLEGAL DRUGS DURING A TRIAL, WHICH RENDERED THE APPLICANT'S PLEA OF GUILTY NOT KNOWINGLY, VOLUNTARILY OR INTELLIGENTLY MADE AND DENIED THE APPLICANT DUE PROCESS OF LAW.~~

The Applicant was arrested at his residence in connection with an undercover sting involving the sale of a large quantity of what was alleged to be methamphetamine (meth) on November 3, 2006. Tr. p. 16, l. 11. Investigator Toby Jordan, along with an undercover operative/confidential informant were present and represented themselves as drug buyers.

Investigator Jordan submitted a follow-up "Investigative Report" in connection with this incident, in that report Investigator Jordan states the Applicant "removed three (3) sealed plastic packages, allegedly containing meth, from behind a couch in the living room and brought all three packages into the kitchen and placed them on a bar. See Exhibit - A, attached, which is page one of Investigator Jordan's Follow-up Report.

The Report went on to say that the "u/o took a knife out of his pocket and cut one of the packages open and took out a small amount for testing". See Exhibit - B, attached, which is page two (2) of Investigator Jordan's Follow-up Report. The Report also states that "all items were collected from the residence and transported to the Anderson County Sheriff's Office." See Exhibits -B&C, which are pages 2 and 3 of the Report.

The Report does not indicate who retrieved the items from the residence and transported them to the Sheriff's Office, but

on the "Initial Chain of Custody Report" Agent Roger K. Scogins of the Anderson County Sheriff's Office states that he seized from the Applicant while at the Applicant's residence on November 3, 2006 the following items: 3 Evidence Bags containing the following: (A) Approx. 480 grams off-white rock like substance; (B) Approx. 458 grams off-white rock substance; (C) Approx. 481 grams off-white rock like substance; 1 Evidence Bag containing clear baggie of off-white powder substance. The Chain of Custody Report went on to say that Agent Scogins made delivery of these evidence bags to the "Evidence Locker" at the Anderson County Sheriff's Office. See Exhibit - D, attached, which is a copy of the Initial Custody Form, Form B (Rule 6).

The Form B (Rule 6) Initial Custody Form submitted by Agent Scogins indicates a break in the chain of custody of the alleged illegal drugs he allegedly placed in the Evidence Locker. The evidence that the chain of custody is broken is that Agent Scogins simply report that he delivered the substances to the "Evidence Locker". He does not list the name of any evidence custodian on the form that he delivered the allegedly illegal substances to, even though there is a space for that information on the form.

The alleged illegal drugs remained in the Evidence Locker at the Sheriff's Office from November 3, 2006 until December 4, 2006, when Margaret N. Vecchio, an Anderson County Sheriff's Deputy, received a sealed Best Kit #10210 from "Evidence

Storage", and delivered it to Meredith Lanford at the Anderson Oconee Forensic Lab. Deputy Sheriff Vecchio states on the "Chain of Custody" form that was submitted by her that it was "unknown" to her who "originally seized" the contents in the Best Kit. Therefore, there is no link between *Agent Scogins* and Deputy Sheriff Vecchio. There is a missing link in the chain between these two individuals. See Exhibit - E, which is the Chain of Custody form submitted by Deputy Sheriff Vecchio.

The identity of the evidence custodian in this case is unknown, if there ever was one, it seems that anybody who wanted to put in or take any evidence out the Anderson County Sheriff's Office Evidence Locker can do so without anyone monitoring what goes in or comes out. There is no evidence of how many people had access to the Evidence Locker, which means there should have been other people listed in the chain of custody report because, if they had access to the Evidence Locker, they had custody of the alleged illegal drugs delivered there by Agent Scogins on November 3, 2006.

Deputy Sheriff Vecchio's "Chain of Custody" report clearly shows that a "person" should have had custody of the Best Kit that she received from Evidence Storage because there is a section on the form for a person's name from whom she received the Best Kit on December 4, 2006, but in that section Deputy Sheriff Vecchio only prints "Evidence Storage". See Exhibit - E, attached.

The admission of evidence is addressed to the sound

discretion of the trial court. State v. Williams, 297 S.C. 290, 293, 376 S.E.2d 773, 774 (1989). Because the Applicant never went to trial, because of counsel's actions, the opportunity to present this to the trial court was not available.

"[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable". State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007). When "the substance analyzed has passed through several hands the evidence must not leave to conjecture as to who had it and what was done with it between the taking and the analysis". Denton v. Pellum, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957)(quoting Rogers v. Commonwealth, 90 S.E.2d 257, 260 (Va. 1955)).

In the instant case, there is no evidence how many people handled the evidence once Agent Scogins left it unattended in the Evidence Locker on November 3, 2006 and when Deputy Sheriff Vecchio received it on December 4, 2006. Evidence is inadmissible under the rule when the offering party omits a link in the chain of possession by failing to establish the identity of each custodian at least as far as practicable. State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474 (Ct. App. 2005).

Even if the State's position is that the alleged illegal drugs were not tampered with because they were sealed in a Best Kit evidence bag, this would not satisfy the chain of custody requirement. In State v. Chisolm, 355 S.C. 175, 584 S.E.2d 401

(Ct. App. 2003), the South Carolina Court of Appeals ruled the trial court erred in admitting drug evidence despite the missing links in the chain of custody because the State demonstrated that the evidence had ~~not~~ been tampered with by the time the chemist received it for analysis. The Court also found in the case of State v. Hatcher, Opinion No.: 4604 (2009), that the trial court's reliance on the lack of proof that the evidence was somehow tainted was alone not enough to establish a sufficient chain of custody.

In the instant case, there is no evidence whatsoever that the Best Kit received by Deputy Sheriff Vecchio on December 4, 2006 contained the items that were allegedly left in the Evidence Locker by Agent Scogins on November 3, 2006, Scogins allegedly delivered four (4) different evidence bags to the Evidence Locker, Agent Scogins' initial chain of custody report did not mention Agent Scogins placing any of the alleged drug evidence in a sealed Best Kit. Had the Applicant gone to trial, the trial court would have had no alternative but to have suppressed the alleged drug evidence on a proper motion made by counsel challenging the chain of custody.

The Applicant believes that he has established that because counsel failed to inform him of the defects in the chain of custody and that he could have moved for suppression of the alleged illegal drugs during a trial, 1) counsel's representation fell below an objective standard of reasonableness and 2) there is a reasonable probability that but for counsel's errors, the

Applicant would not have pleaded guilty but would have insisted on going to trial. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). accord Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Because of the foregoing the Applicant was denied his Sixth Amendment right to the effective assistance of counsel¹ and his right to due process of law under the South Carolina Constitution Article I, §3 and the Fourteenth Amendment of the United States Constitution.

1. Counsel knew that there were some defects in the "chain of custody", this was evident by the hand written notation that counsel made on a document received in the Discovery. See Exhibit - H, attached.

COUNSEL WAS INEFFECTIVE FOR FAILING TO ADVISE THE APPLICANT THAT, IF HE GO TO TRIAL, THE APPLICANT COULD MOVE FOR SUPPRESSION OF THE ALLEGED ILLEGAL DRUGS IN THIS CASE DUE TO THE UNLAWFUL WARRANTLESS ENTRY AND ARREST OF THE APPLICANT IN HIS HOME, WHICH RENDERS THE APPLICANT'S PLEA OF GUILTY NOT KNOWINGLY, VOLUNTARILY OR INTELLIGENTLY MADE AND DENIED THE APPLICANT DUE PROCESS OF LAW.

The Applicant was arrested in his home in connection with the charges he's convicted of. See guilty plea hearing transcript, page 16, lines 1-11 and page 22, lines 16-24, also see the first page of Investigator Toby Jordan's Follow-up Report, which is Exhibit - A, attached.

The officers that entered the Applicant's residence and arrested the Applicant and searched the residence did not have an arrest or a search warrant during this period of time. The officers that were a part of take down team that entered the Applicant's home and arrested him and conducted a search acted illegally. Even if they believed that they had probable cause for their action, that's irrelevant because, probable cause alone is insufficient to justify a warrantless entry into a person's home. In Payton v. New York, 445 U.S. 573, 590 (1980), the United State Supreme Court held that "a warrantless entry into a suspect's dwelling for a routine felony arrest is prohibited by the Fourth Amendment in the absence of a valid consent or exigent circumstances. No consent was given, nor did an exigent circumstance existed. The officers entered the Applicant's residence for the sole purpose of arresting him for the sale of methamphetamine. After the arrest they conducted an illegal search of the premises.

In Welsh v. Wis., 466 U.S. 740, 750 (1984), the Court held that "presumption of unreasonableness attaches to all warrantless home entries".

The holding in Payton is based on the special protection individuals enjoy in their homes under the Fourth Amendment. Payton, Id. at 589.

In State v. Jones, 536 S.E.2d 679 (S.C. 2000), the South Carolina Supreme Court ruled that the officers actions in that case, where they inserted false information in a search warrant affidavit falsely characterizing a confidential informant as a police officer to obtain a search warrant, was illegal because their actions amounted to them not having an affidavit at all. The officers' action in the Jones' case underscores the importance of obtaining a search warrant before entry into a person's home, the officers in Jones' case went to the extreme by submitting false information in the warrant's affidavit.

In the Jones case the officer knew illegal drugs were on the premises, as did the officers in this case. The officers in this case did not even attempt to get a search warrant before entry into the Applicant's home. The lead officer in this case simply could have left other members of the take down team to keep the Applicant's house under surveillance until he went and got a search warrant based on the signal from the undercover operative that the drugs were present in the house. Or, they could have simply make the drug buy and arrest the Applicant later for the sale after obtaining a warrant. These officers acted over zealously and violated the Applicant's constitutional rights.

In the instant case, the Applicant pled guilty on the advice of counsel, but had counsel advised the Applicant that it was a Fourth Amendment right violation for the officers to have entered his home without a search warrant and arrested him, and, he could have moved for suppression of the alleged illegal drugs during a pre-trial suppression hearing had he gone to trial was ineffective assistance of counsel.

The Applicant's plea of guilty was not made knowingly, voluntarily or intelligently made because counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability that but for counsel's errors, the Applicant's would not have pleaded guilty but would have insisted on going to trial. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); accord Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

COUNSEL WAS INEFFECTIVE FOR ADVISING THE APPLICANT TO PLEAD GUILTY WHEN THERE WAS NO FACTUAL BASIS FOR THE PLEA DUE TO THE FACT THAT THE CHEMIST WHO PERFORMED THE DRUG ANALYSIS IN THIS CASE WAS NOT "CERTIFIED" BY S.L.E.D. TO DO SO, NOR HAS SHE EVER TESTIFIED IN COURT OR WAS EVER QUALIFIED AS AN EXPERT, WHICH RENDERED THE APPLICANT'S PLEA OF GUILTY NOT KNOWINGLY, VOLUNTARILY OR INTELLIGENTLY MADE AND IS A DENIAL OF DUE PROCESS OF LAW.

The chemist in this case, Meredith L. Lanford, employed by the Anderson/Oconee Regional Forensics Laboratory, was not certified by the State Law Enforcement Division (SLED) to conduct any type of analysis on methamphetamine or cocaine, two of the drugs allegedly involved in this case. She has never testified in court or has ever been qualified as an expert. See Exhibit - F, which is the Form A, Rule 6, report submitted in this case by Ms. Lanford. The only substance that SLED certified Ms. Lanford to analyze is "marijuana". See Exhibit - F.

Because Ms. Lanford has never been qualified as an "expert" or was "certified" by SLED at the time she performed any type of analysis in this case makes any opinion as to what the substances were that she analyze unreliable.

In Spartanburg Regional Medical Center v. Bulsa, 308 S.C. 322, 417 S.E.2d 648 (Ct. App. 1992), the South Carolina Court of Appeals stated that expert testimony is essential where the topic is not a matter within the common knowledge and experience of most lay persons. See also Armstrong v. Union Carbide, 308 S.C. 235, 417 S.E.2d 597 (Ct. App. 1992). Here, Ms. Lanford had various training as a Forensic Chemist, see Exhibit - F, but she did not list any training in analyzing methamphetamine or cocaine

and she isn't an expert. In the "Trial Handbook for South Carolina Lawyers", Third Edition, (2004), section 15:6, page 568, an "example" is given, citing Walker v. The Bluff Apartments, where the expert was a licensed residential builder and licensed building inspector, and taught building codes to various groups. However, there was no evidence she had any architectural experience or training; hence, the Court correctly found she could not testify as to an architect's standard of care. Furthermore, the Court found that she did not state in her affidavit the standard of care required by an architect and the deviation from that standard.

Here, the chemist does not indicate that she has any training in analyzing meth or cocaine, even though she has training in analyzing other drugs, such as marijuana. The Federal Rules of Criminal Procedure, Rule 11(b)(3), states that the factual basis requirement protects a defendant from voluntarily pleading guilty without realizing that his or her conduct is not within the charge. In the instant case, there is no evidence that the Applicant's conduct amounted to trafficking in meth or possessing cocaine because the drug analysis cannot be deemed reliable because of the "uncertified chemist". In U.S. v. Adam, 448 F.3d 492, 502 (2d Cir. 2006), the Court found that failure to establish factual basis for guilty plea to cocaine conspiracy was substantial defect and required reversal and remand.

In light of the foregoing argument, the Applicant received

ineffective assistance of counsel, which is a violation of Article I, §14 of the South Carolina Constitution and the Sixth Amendment of the United States Constitution.

Also, the Applicant was denied due process of law under Article I, §3 of the South Carolina Constitution and the Fourteenth Amendment of the United States Constitution.

THE APPLICANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE THE CUMULATIVE EFFECT OF THE PREVIOUSLY STATED ERRORS BY COUNSEL WOULD ENTITLE HIM TO RELIEF, WHICH RENDERED THE APPLICANT'S PLEA OF GUILTY NOT KNOWINGLY, VOLUNTARILY OR INTELLIGENTLY MADE AND A DENIAL OF DUE PROCESS OF LAW.

The previously presented issues overwhelmingly shows that counsel's performance was ineffective, the cumulative error doctrine should be applied in this case, because, one issue standing alone mandates reversal of the Applicant's guilty pleas, counsel's failure to raise these issues coupled with advising the Applicant to plead guilty was very prejudicial to the Applicant's cause in this matter. Cf. State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) ("cumulative error doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial"). Counsel advised the Applicant to plead guilty, that advice was prejudicial to the Applicant because had he gone to trial he would have had legitimate challenges to the admissibility of the alleged illegal drugs.

For the foregoing reasons the Applicant would not have pleaded guilty and would have insisted on going to trial. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

The Applicant also was denied his right to due process of law.

CONCLUSION

The Applicant believes that he has established, in light of the previously presented arguments, that his guilty plea counsel violated both prongs of the Strickland test, in that counsel's performance was deficient and that the Applicant was prejudiced, and he would not have pleaded guilty and would have insisted on going to trial in accordance with the doctrine as set forth in Hill v. Lockhart.

The Applicant now ask this Honorable Court to grant him a new trial.

This 24 day of April, 2012

Respectfully submitted,

Reynaldo Gonzalez

Reynaldo Gonzalez #332772

McCI F-4 145-B

386 Redemption Way

McCormick, SC 29899

Applicant

Exh. b. f - A

CASE#2006-40532
INV. FOLLOW-UP
INV. TOBY JORDAN
REF: REYNALDO GONZALEZ

ON 11/03/2006, AFTER NUMEROUS PHONE CALLS IN REFERENCE TO PURCHASING FIVE POUNDS OF CRYSTAL METHAMPHETAMINE. AFTER THE PHONE CALLS, THE DEAL WAS SET TO ONLY DO THREE POUNDS OF METH BECAUSE THE SUPPLIER OF REYNALDO GONZALEZ WOULD ONLY DO THREE INSTEAD OF FIVE POUNDS. THE DEAL WAS SET TO HAPPEN AT THE RESIDENCE OF REYNALDO GONZALEZ WHICH IS LOCATED AT 506 AUBURN AVE. IN ANDERSON COUNTY. THIS AGENT WAS GOING TO GO TO THE RESIDENCE WITH AN UNDERCOVER OPERATIVE AND BE A PART OF THE TRANSACTION.

AT APPROXIMATELY 2:22 PM, THIS AGENT ALONG WITH THE UNDERCOVER OPERATIVE ARRIVED AT THE RESIDENCE OF REYNALDO GONZALEZ. UPON ARRIVAL, THE TARGET (GONZALEZ) WAS STANDING IN THE DRIVEWAY NEXT TO A JEEP CHEROKEE. I WAS SITTING IN THE PASSENGER SIDE FRONT SEAT AND THE UNDERCOVER OPERATIVE WAS SITTING IN THE DRIVER SEAT. THE TARGET GOT INTO THE BACK PASSENGER SIDE SEAT. REYNALDO ASKED IF WE WANTED TO DO THE DEAL IN THE VEHICLE OR INSIDE HIS RESIDENCE. THE U/O TOLD REYNALDO THAT HE WOULD RATHER BE INSIDE THE RESIDENCE. ALL THREE OF US, GOT OUT OF THE VEHICLE AND WENT INTO THE RESIDENCE USING A SIDE DOOR LOCATED IN THE CARPORT. ONCE INSIDE THE RESIDENCE, REYNALDO TOLD US TO LOCK THE DOOR. THIS AGENT LOCKED THE DOOR THAT WE CAME INTO. ALL THREE OF US WALKED INTO THE KITCHEN AREA WHERE A BAR WAS LOCATED. REYNALDO CHECKED BOTH OF US FOR A WIRE, BY RUBBING ON OUR CHEST AND BACK. BOTH MYSELF AND THE U/O WERE WEARING A WIRE, BUT THEY WERE NOT LOCATED BY REYNALDO. AFTER HE CHECKED US FOR A WIRE, HE ASKED WHERE THE MONEY WAS AT. THE UNDERCOVER OPERATIVE PULLED OUT \$1,000 IN U.S. CURRENCY AND HANDED IT TO REYNALDO GONZALEZ. THE U/O TOLD REYNALDO THAT WAS HIS PART, BUT HE WANTED TO SEE THE PRODUCT BEFORE HE GOT THE REST OF THE MONEY OUT. THE PHONE CALLS WITH REYNALDO ABOUT THE PRICE WAS \$13,250 A POUND, AND AN EXTRA \$1,000 FOR HIM FOR SETTING UP THE DEAL. REYNALDO THEN WALKED INTO HIS LIVING ROOM AND REMOVED THREE SEALED PLASTIC PACKAGES FROM BEHIND A COUCH IN THE LIVING ROOM. REYNALDO BROUGHT ALL THREE PACKAGES INTO THE KITCHEN AND PLACED THEM ON THE BAR. REYNALDO SAID "THERE THEY ARE". MYSELF AND THE U/O OPERATIVE THEN STARTED LOOKING AT THE PRODUCT. THE PRODUCT (CRYSTAL METH "ICE") WAS SEALED INSIDE THE PLASTIC BAGS. THE U/O ASKED IF WE COULD CHECK OUT THE PRODUCT.

REYNALDO SAID YES. THE U/O TOOK A POCKET KNIFE OUT OF HIS POCKET AND CUT ONE OF THE PACKAGES OPEN. THE U/O ASKED REYNALDO IF HE HAD A GLASS WE COULD PUT SOME WATER IN TO CHECK THE PRODUCT. REYNALDO STATED "YES" AND POINTED TOWARDS A CABINET. THIS AGENT WALKED OVER TO THE CABINET AND GRABBED A GLASS AND PUT WATER INSIDE THE GLASS. I TOOK THE GLASS OVER TO THE BAR AND THE U/O PLACED A SMALL AMOUNT OF THE PRODUCT INTO THE GLASS. THIS AGENT OBSERVED SOME OF THE PRODUCT TO GO TO THE BOTTOM OF THE GLASS AND A COUPLE OF PIECES OF THE PRODUCT TO DANCE AROUND IN THE WATER. THE U/O TOLD REYNALDO THAT THE PRODUCT HAD SOME CUT IN IT, AND IT WAS NOT 100% PURE. REYNALDO TOLD US THAT IF WE WANTED MORE PURE PRODUCT THAT IT WOULD COST MORE. THE U/O TOLD REYNALDO THAT HE WOULD GO OUT TO THE VEHICLE AND GET THE MONEY. THE U/O UNLOCKED THE DOOR AND WENT OUT TO THE CAR. THIS AGENT STAYED INSIDE THE RESIDENCE WITH REYNALDO AND CONTINUED TALKING TO HIM. I TOLD REYNALDO THAT WE COULD MOVE THIS PRODUCT BECAUSE IT LOOKED VERY GOOD. DURING THIS CONVERSATION, THE U/O GAVE THE GO-WORD FOR OTHER AGENTS TO ENTER INTO THE RESIDENCE. DURING MY CONVERSATION WITH REYNALDO, I HEARD HIM SAY "WHO THE FUCK IS THAT?". I TURNED AROUND FACING THE WINDOW IN THE LIVING ROOM AND SAW OTHER AGENTS GETTING OUT OF THEIR VEHICLES AND RUNNING TOWARDS THE CARPORT. I THEN HEARD REYNALDO SAY "WHAT THE FUCK", AND LOOK DOWN AS IF HE WAS GOING TO GRAB SOMETHING. I SAID "WHAT THE HELL'S GOING ON". REYNALDO ALMOST WENT LIMP, BECAUSE HE KNEW THAT HE WAS CAUGHT. WHEN AGENT ENTERED THE RESIDENCE, I GOT DOWN ON THE FLOOR, AND OBSERVED AGENTS BLASSINGAME, AND SCOGINS IN THE KITCHEN AREA PLACING HANDCUFFS ON BOTH MYSELF AND REYNALDO GONZALEZ. I WAS TAKEN OUT OF THE RESIDENCE AND MY HANDCUFFS WERE TAKEN OFF. THIS AGENT OBSERVED LT. LOOPER TO HAVE THE CELL PHONE OF REYNALDO GONZALEZ. I WENT BACK INTO THE RESIDENCE A FEW MINUTES LATER AND AGENT MIKE WILLIAMS AND LT. LOOPER WERE TALKING WITH REYNALDO GONZALEZ. I WENT INTO THE BACK ROOM WHERE THEY WERE TALKING WITH HIM. REYNALDO DID STATE THAT HE GOT THE PRODUCT FROM ANOTHER HISPANIC MALE UP OFF OF LIBERTY HWY. THIS AGENT KNEW THE AREA HE WAS TALKING ABOUT AND HAD AN IDEA OF WHO HE GOT THE PRODUCT FROM. WHILE TALKING TO HIM, HIS CELL PHONE RANG. GONZALEZ WAS ASKED WHO WAS CALLING, AND HE LOOKED AT THE PHONE NUMBER AND SAID IT WAS THE HISPANIC MALE THAT HE GOT THE PRODUCT FROM. GONZALEZ SPOKE ON THE PHONE WITH THIS PERSON IN SPANISH AND IT WAS A SHORT CONVERSATION. LT. LOOPER HANDED THE CELL PHONE TO GONZALEZ AND TOLD HIM TO ANSWER IT. GONZALEZ DID SAY THAT WAS HIM CHECKING TO SEE IF EVERYTHING WAS ALL RIGHT. GONZALEZ TOLD THAT EVERYTHING WAS OK, THAT THE PEOPLE DIDN'T SHOW UP YET. ALL ITEMS WERE

COLLECTED FROM THE RESIDENCE AND REYNALDO GONZALEZ WAS TRANSPORTED TO THE ANDERSON COUNTY SHERIFF'S OFFICE WHERE HE WAS INTERVIEWED BY THIS AGENT. THIS AGENT DID MARANDIZE THE SUSPECT WHICH WAS DOCUMENTED BY AN ADVISE OF RIGHTS FORM WHICH IS LOCATED IN THIS AGENTS CASE JACKET. GONZALEZ DID ADVISE THIS AGENT THAT HE HAD RECEIVED THE PRODUCT FROM A HISPANIC MALE, BUT DID NOT KNOW HIS NAME. GONZALEZ DID TELL THIS AGENT HOW TO GET TO HIS HOUSE AND THIS AGENT KNEW THE HOUSE HE WAS SPEAKING OF. THIS AGENT SHOWED GONZALEZ A PHOTO OF ARNULFO SANDOVAL HERNANDEZ, AND GONZALEZ TOLD THIS AGENT "THAT'S HIM". A WRITTEN STATEMENT WAS TAKEN FROM GONZALEZ WHICH IS ALSO LOCATED IN THIS AGENTS CASE JACKET. THE STATEMENT DOES CONTAIN HISTORICAL CONTENT OF GONZALEZ GETTING OTHER POUNDS OF METH FROM THE SAME HISPANIC MALE. GONZALEZ WAS TRANSPORTED TO THE ANDERSON COUNTY SHERIFF'S OFFICE DETENTION CENTER WITHOUT INCIDENT WHERE WARRANTS WERE SERVED ON HIM FOR TRAFFICKING METHAMPHETAMINE, CONSPIRACY TO TRAFFIC METHAMPHETAMINE, AND POSSESSION OF COCAINE.

A SEARCH INVENTORY WAS COMPLETED SHOWING WHAT WAS LOCATED AT THE RESIDENCE AND WHERE IT WAS LOCATED AT. THIS IS ALSO LOCATED IN THE CASE JACKET ALONG WITH PHOTOGRAPHS OF THE ITEMS TAKEN FROM THE RESIDENCE. THIS IS STILL AN ONGOING INVESTIGATION AT THIS TIME.



TOBY JORDAN/INVESTIGATOR
ACSO/NARCOTICS

CONTROL NO. C10210

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM B (RULE 6)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

(Initial Custody)

This is to certify that I ROGER K. SCOBINS am employed by

(Name)

ANDERSON COUNTY SHERIFFS OFFICE

(Name of Agency or Department)

and that on

11-03

(Date)

, 06, I seized fromREYNALDO GONZALEZ

(Name)

pursuant to

UNDERCOVER BUY/BUST OPERATION

(State Whether Subject to a Warrant, Lawful Arrest or Otherwise)

at or near

ANDERSON, S.C. 29625

(Place Where Seized)

the following substance(s) or container(s):

(Describe substance or container with sufficient particularity to distinguish it.)

3 EVIDENCE BAGS CONTAINING FOLLOWING:(A) APPROX 480 GRAMS OFF-WHITE ROCK LIKE SUBSTANCE(B) APPROX 458 GRAMS OFF-WHITE ROCK LIKE SUBSTANCE(C) APPROX 481 GRAMS OFF-WHITE ROCK LIKE SUBSTANCE1 EVIDENCE BAG CONTAINING CLEAR BAGGIP OF OFF-WHITE POWDER SUBSTANCE.On 11/03/2006, I made delivery of the above described

(Date)

substance(s) or container(s) to EVIDENCE LOCKER of

(Name)

ANDERSON COUNTY SHERIFFS OFFICE

(Law Enforcement Agency)

in substantially the same condition

as when I received it.

Roger K. Scobins

(Signature)

Place: _____

Date: _____

Sworn before me on this _____ day of _____,

Notary Public for South Carolina

My Commission expires: _____

EXHIBIT - D

216-005705
mkz

Exhibit - E

Control No. C-10210

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)

**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL**

(Subsequent Change of Custody)

This is to certify that I Margaret N. Vecchio am employed by
(Name)

Anderson County Sheriff's Office as Deputy Sheriff and that on
(Name of Agency or Department) (Capacity of Employment)

December 4, 2006 I received In Person
(Date) (Specify Whether by Mail or in Person)

from Evidence Storage of Anderson County Sheriff's Office
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

unknown to me :
(Name of Person Making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

Sealed Evidence Best Kit # C-10210

On December 4, 2006 I made delivery of the above described
(Date)

substance(s) or container(s) to Meredith Lanford of
(Name)

Anderson Oconee Forensic Lab in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Margaret N. Vecchio
(Signature)

Place: Anderson County Sheriff's Office

Date: December 4, 2006

Sworn before me on this 4 day of December 2006

(J. Thomas Clamp, Jr.) [Signature]

My Commission expires: 5 May 2010

Exhibit - F

22

ITEMS OF EVIDENCE:

I am a Forensic Chemist employed by the Anderson/Oconee Regional Forensics Laboratory, and certified by the Anderson/Oconee Regional Forensics Laboratory as a chemical analyst qualified to perform testing and analysis for controlled/dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the SC Code of Laws and Rule 61-4 of the Department of Health and Environment Control.

The following legally reliable forensic laboratory procedures were used to conduct this analysis:

- | | | |
|---|--|--|
| ☒ Chemical Test | ☒ Ultraviolet Spectroscopy | ☐ Liquid Chromatography |
| ☐ Microscopic Test | ☒ Gas Chromatography | ☐ Published Literature |
| ☒ Infrared Spectroscopy | ☒ Mass Spectrometry | ☐ Other: |

Meredith L. Lanford

Meredith L. Lanford

Forensic Chemist

Date

6/19/07

9/24/08---Rec'd letter from Rame with Supplemental Discovery with new indictment and informant information.

9/26/08---Rec'd disk with taped phone calls from Solicitor's office. (via hand delivery)

9/28/08---Druanne listened to tapes of phone calls pertaining to this case.

9/29/08---Email back and forth with Laura, trying to set up time to view evidence.

10/02/08---Went to ACSO to review evidence. Also, Druanne talked to Rame to discuss offer on case.

10/02/08---Was given chain of custody by Tommy Clamp, ACSO.

10/02/08---Rec'd Lab test results via fax from Solicitor.

LTR says we previously rcvd tape but
don't see anything showing we were
served or provided w/ the tape.
TAPE RCVD 24th? DON'T see anything
on this

LAB Results sent in 7/1/08 packet. Are
results you rcvd 10/2 any different?

Chain of custody different than
what we rcvd 7/1/08?

STATE OF SOUTH CAROLINA)
Anderson County)

IN THE COURT OF COMMON PLEAS

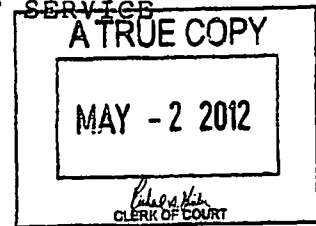
Reynaldo Gonzalez, #332772,
Applicant,

Case No.: 2011-CP-04-00395

vs.

CERTIFICATE OF SERVICE

State of South Carolina,
Respondent.



The above named Applicant certify that he has on this day served a copy of the attached Amendment to Original Application for Post-Conviction on the Respondent by delivering a copy of same to the McCormick Correctional Institution mail room, with sufficient postage prepaid, and properly addressed as follows:

This 24 day of April, 2012

Alan Wilson
Attorney General for South Carolina
Post Office Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

SWORN to and subscribed before me this

24 day of April, 2012

JC Franklin
Notary Public of South Carolina

My Commission Expires 12-16-2019

Reynaldo Gonzalez, #332772

Reynaldo Gonzalez
McCI F-4 145-B
386 Redemption Way
McCormick, SC 29899
Applicant

FILED-CLERK'S OFFICE
ANDERSON SC
2012 APR 26 A 11:11
COMMON PLEAS AN
GENERAL SESSION

STATE OF SOUTH CAROLINA) IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
) 2011-CP-04-00395
REYNALDO GONZALEZ,)
))
APPLICANT,)
))
VERSUS)
))
))
STATE OF SOUTH CAROLINA,)
))
RESPONDENT.) DATE: MAY 8, 2013
ANDERSON, SOUTH CAROLINA

POST-CONVICTION RELIEF HEARING

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

CAROLYN GALLOWAY, ATTORNEY AT LAW
ATTORNEY FOR THE APPLICANT

WALT WHITMIRE, ESQUIRE
ATTORNEY FOR THE STATE

WITNESSES: ROGER SCOGGINS, DRUANNE WHITE, KURT TAVERNIER,
RAME CAMPBELL

PROVIDED FOR: SCCID - LORIE NE FRENCH

FOR COPIES CONTACT: Jo Rice
jrice@sccourts.org
Official Court Reporter
South Carolina Judicial Department

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
<u>ROGER SCOGGINS</u>				
MS. GALLOWAY	10-15			
<u>KURT TAVERNIER</u>				
MS. GALLOWAY	16-22			
MR. WHITMIRE		23-25		
<u>REYNALDO GONZALEZ</u>				
MS. GALLOWAY	26-52			
MR. WHITMIRE		53-59		
<u>DRUANNE WHITE</u>				
MS. GALLOWAY	59-85			
MR. WHITMIRE		85-89		
<u>RAME CAMPBELL</u>				
MR. WHITMIRE	90-101		107-108	
MS. GALLOWAY		102-106		
CERTIFICATE				115

EXHIBITS

APPLICANT'S EXHIBIT #1...MEMORANDUM	70
---	----

1 THE COURT: Mr. Whitmire.

2 MR. WHITMIRE: May it please the Court, Your Honor.

3 This is the last case of the week for PCRs. This is
4 Reynaldo Gonzalez versus The State of South Carolina, case
5 number: 2001-CP-04-395. Mr. Gonzalez is confined in the
6 Department of Corrections pursuant to an order from The
7 Anderson County Clerk of Court. Mr. Gonzalez was indicted
8 during the January of 2007 term of the Anderson County
9 Grand Jury for conspiracy and trafficking methamphetamine
10 400 grams or more and subsequently indicted for possession
11 of cocaine. He was represented by, first, Mr. Tavernier,
12 and then he was represented by Ms. White. On January 14,
13 2009, the Applicant pled guilty to the charges. Judge
14 Nicholson sentenced the Applicant to be confined for
15 concurrent periods: 10 years for conspiracy to traffic
16 methamphetamine and 198 months which comes out to 16 1/2
17 years for trafficking methamphetamine, 3 years for
18 possession of cocaine. A timely notice of appeal was filed
19 on the Applicant's behalf. The South Carolina Court of
20 Appeals affirmed Mr. Gonzalez's conviction and sentence,
21 State v. Reynaldo Gonzalez, 2010-UP-405, 2006, 2010. Mr.
22 Gonzalez filed his application for post-conviction relief
23 February 2, 2011. The State filed its return on May 7,
24 2012. Mr. Gonzalez filed an amended application for post-
25 conviction relief for an amended application and I believe

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

1 has that in the packet and additionally, counsel filed an
2 amended application for post-conviction relief yesterday,
3 May 7th, 2013. At this time, I will turn matters over to
4 Mr. Gonzalez and I think there is a list of witnesses that
5 she intends on calling first.

6 THE COURT: Ms. Galloway, let me ask you, was this was
7 a plea under a recommendation?

8 MS. GALLOWAY: It was a plea under recommendation,
9 yes, sir.

10 THE COURT: Okay. Go ahead.

11 MS. GALLOWAY: A recommendation of a cap.

12 THE COURT: Eighteen?

13 MS. GALLOWAY: Yes, sir.

14 THE COURT: All right.

15 MS. GALLOWAY: Do you want us to identify exactly what
16 issues?

17 THE COURT: It helps me out if I put grounds down that
18 you are asserting. I assume, ineffective assistance.

19 MS. GALLOWAY: Ineffective assistance of counsel ---

20 THE COURT: For each one?

21 MR. WHITMIRE: Yes, sir.

22 MS. GALLOWAY: And also, I believe that one of the
23 allegations or some of the allegations may assert
24 prosecutorial misconduct in regard to failure to timely
25 provide discovery information.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

1 THE COURT: Okay. Now, before you start, let me tell
2 you a little bit about how I do on these things. Tell me
3 your ineffective grounds, please?

4 MS. GALLOWAY: All right. Your Honor, the Applicant
5 basically alleges that this is -- the first four are from
6 his amended PCR complaint: 1) that counsel was ineffective
7 for failure to inform him that there were defects in the
8 chain of custody and that he could have moved for
9 suppression at trial, therefore his plea was not knowingly,
10 voluntarily, and intelligently made. 2) He alleges there
11 was an unlawful, warrant-less entry into his property and
12 that counsel failed to inform him that she could move for a
13 suppression at trial, therefore the plea was not knowingly,
14 voluntarily and intelligently made. 3) That the chemist
15 who analyzed the alleged drugs in this case was not
16 certified by SLED when the initial analysis was done. She
17 never testified in court, should never have been qualified
18 as an expert, that his attorney could have objected to this
19 if they had gone to trial and that evidence could have been
20 suppressed. 4) That counsel, Ms. White, never consulted
21 with previous counsel Kurt Tavernier in re: an offer of
22 twelve years that was on the table.

23 THE COURT: Which counsel? Ms. White never relayed to
24 Mr. Tavernier or ---

25 MS. GALLOWAY: No, that Ms. White never contacted Mr.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

1 Tavernier to discuss any previous offers and he alleges
2 there was an offer of 12 years that was on the table and/or
3 maybe probation.

4 THE COURT: And/or what?

5 MS. GALLOWAY: Probation. He also alleges that there
6 was an offer of probation on the table, along with the
7 twelve years.

8 THE COURT: All right.

9 MS. GALLOWAY: Your Honor, in regard to the
10 allegations. There are seven additional issues that my
11 client wanted me to assert and I filed those yesterday.

12 THE COURT: Any objections, first, Mr. Whitmire?

13 MR. WHITMIRE: No, Your Honor. Ms. Galloway kindly
14 has given me notice.

15 MS. GALLOWAY: I did contact him, Your Honor, and
16 asked him if it was okay. He even let me do it by email.
17 All right. Accepting the plea without full discovery.
18 Failure of defense counsel to accept -- and this is
19 repetitive -- to accept the 12-year verbal offer when the
20 Defendant was facing 25 years. I believe that's
21 repetitive. Allowing the guilty plea to go forward even
22 though there were defects in the sentencing sheet. Mr.
23 Gonzalez alleges that a sentencing sheet on the trafficking
24 charge was marked with an "X" on lesser included offense on
25 the trafficking charge which he alleges is PWID. He

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

1 alleges that is non-violent and he could have gotten a
2 15-year offense or possible probation and parole.

3 THE COURT: Tell me that one more time, please.

4 MS. GALLOWAY: All right. He alleges that on the
5 sentencing sheet on the trafficking charge.

6 THE COURT: Let me look at it. I've got it. Okay.

7 MS. GALLOWAY: All right. He alleges that the box
8 that is down below is marked "Lesser included offense".

9 THE COURT: Okay.

10 MS. GALLOWAY: His position is that the lesser
11 included offense of the trafficking is PWID, that there is
12 a 15-year offense with possible probation and parole and
13 what he pled to, there's no probation or parole. He
14 alleges that counsel didn't inform him of that.

15 THE COURT: Okay.

16 MS. GALLOWAY: All right. He alleges that he did not
17 knowingly plead guilty because he did not know the full,
18 that his attorney did not disclose to him the full details
19 of the plea and what he means there, Your Honor, is that he
20 is saying that he did not understand what a cap of 18 meant
21 at that time.

22 THE COURT: In the plea colloquy -- who did this,
23 Nicholson?

24 MS. GALLOWAY: Yes, sir.

25 THE COURT: Didn't he inform him that he could get the

1 25 years, that he did not have to accept the
2 recommendation?

3 MS. GALLOWAY: He did, Your Honor.

4 THE COURT: Okay.

5 MS. GALLOWAY: All right. And the last or the next
6 one is failure of counsel to move to strike and/or object
7 to the Court allowing the State to make a second statement
8 of the same facts. In the transcript, Your Honor, there is
9 -- Judge Nicholson, evidently, got distracted and the State
10 had to give the statement of facts a second time. My
11 client's position is that when they gave the statement of
12 facts the second time, they left out details that were, he
13 considers, would have influenced the judge to give him less
14 time and he says that his attorney did not object to the
15 second statement of facts and that resulted in ineffective
16 assistance of counsel and the next one, Your Honor, is
17 failure of counsel to move and/or object to the State's
18 comments and/or the statement of facts.

19 THE COURT: That's the same thing?

20 MS. GALLOWAY: That, again, is repetitive. It's
21 repetitive, yes, sir. And the last one would be, he
22 alleges that there was an illegal wiretap and/or cell phone
23 conversation intercept and his attorney failed to gather
24 evidence that would have led to a suppression of the
25 telephone information that was gathered.

1 THE COURT: Okay. Very good. Let me just tell you
2 mainly, and I'm saying this to Mr. Gonzalez. First, Mr.
3 Gonzalez, can you hear and understand these proceedings
4 since you have that device?

5 MR. GONZALEZ: Yes, sir.

6 THE COURT: Okay. Allegations are one thing, proof is
7 another, and you have the burden of proving your
8 allegations in this case. I look at these matters, since
9 this was a plea, in a different light than I would if there
10 were a trial. Okay? That being said, if there are
11 allegations without an offer of proof to substantiate those
12 allegations, I will limit your attorney as to any testimony
13 regarding those. Okay? I would ask counsel if you have
14 matters that you don't intent to offer evidence or proof of
15 to let me know. With that being said, Mr. Whitmire,
16 anything from the State before we proceed?

17 MR. WHITMIRE: Just one thing. I know that Ms.
18 Galloway has subpoenaed various members of the Anderson
19 County Sheriff's office.

20 MS. GALLOWAY: Your Honor, we have Roger Kay Scoggins
21 from the Anderson County Sheriff's Department. We have Mr.
22 Kurt Tavernier who was the additional defense attorney.
23 The next witness would be my client and then Ms. White.
24 So, we have four. Mr. Tavernier and Mr. Scoggins,
25 hopefully, will be very, very short witnesses.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF ROGER SCOGGINS BY MS. GALLOWAY 10

1 THE COURT: Thank you. Call who you'd like.

2 MS. GALLOWAY: Roger Kay Scoggins, Your Honor.

3 (After being duly sworn by the Clerk of Court,

4 **ROGER SCOGGINS** testified as follows:)

5 CLERK OF COURT: If you would take the witness stand
6 and state your name for the record, please, sir.

7 MR. SCOGGINS: My name is ROGER KAY SCOGGINS or Rusty
8 Scoggins. I work for the Anderson County Sheriff's Office
9 in the narcotics division.

10 MS. GALLOWAY: Your Honor, if it's okay with you, I
11 would like to address him as Rusty.

12 THE COURT: Certainly, and you don't need to ask to
13 approach since we don't have a jury here.

14 MS. GALLOWAY: All right.

15 DIRECT EXAMINATION OF ROGER SCOGGINS

16 BY MS. GALLOWAY:

17 Q Mr. Scoggins, you are employed with the Anderson
18 County Sheriff's Department. Right?

19 A Yes, ma'am. That's right.

20 Q All right. And you are in the narcotics unit?

21 A Yes, ma'am.

22 Q All right. Were you involved in a bust of the home of
23 Mr. Reynaldo Gonzalez, the applicant in this case?

24 A Yes, ma'am.

25 Q And do you recall that being, I believe it was

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF ROGER SCOGGINS BY MS. GALLOWAY 11

1 November 3, 2006?

2 A That's correct.

3 Q All right. And tell the Judge what the circumstances
4 of that were. What was your involvement in terms of
5 being at the home?

6 A Okay. I was in assistance with Investigator Toby
7 Jordan. He was a case agent involved in this case and
8 we had a confidential source that was in contact with
9 Mr. Gonzalez in reference to purchasing five pounds of
10 methamphetamine from Mr. Gonzalez. Several phone
11 calls were made by myself and Investigator Jordan. We
12 made these phone calls with the confidential source to
13 Mr. Gonzalez in reference to the purchase of
14 methamphetamine. After a few days it ended up that
15 Mr. Gonzalez, his supplier, was going to be able to
16 offer three pounds of methamphetamine. We set up a
17 meeting location where Investigator Jordan, in an
18 undercover capacity along with the confidential
19 source, went to Mr. Gonzalez's house.

20 Q And was that house at [REDACTED] here in
21 Anderson?

22 A That's right. That was the incident location.

23 Q All right. And did the bust take place?

24 A There, yes, ma'am.

25 Q And did you collect any evidence as a result of that

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF ROGER SCOGGINS BY MS. GALLOWAY 12

1 bust?

2 A I did.

3 Q First of all, what time did you go to the residence?
4 Do you recall?

5 A I don't recall.

6 Q Was it morning, afternoon, night?

7 A I don't have the search warrant. The search warrant,
8 itself, would have the time or a consent or whatever
9 else Mr. Jordan had, Investigator Jordan, but I don't
10 have his specific case file because it's not my case,
11 so.

12 Q All right. If you recall or can you recall exactly
13 how much time you spent there?

14 A I do not recall how long we were there.

15 Q All right. What do you recall?

16 A We were there, we were there long enough to
17 effectively search the house and once everything was,
18 once we done the bust at the house and collected the
19 evidence from the location, which I done, I completed
20 all the evidence collection and then took it back to
21 the office where it was submitted into evidence.

22 Q How would you submit the evidence?

23 A In this specific case, as generally, pictures were
24 taken of everything in place, where it was found at
25 the house, and it was in this case, as well. I also

DIRECT EXAMINATION OF ROGER SCOGGINS BY MS. GALLOWAY 13

1 complete a log of where each item was located in the
2 house when we found it. I take possession of
3 everything. I took possession on this date of
4 everything that was located in the house that was of
5 evidentiary value. They were taken back by me to the
6 Sheriff's office where I set down and any controlled
7 substances were placed into a BEST kit. A BEST kit is
8 an analysis kit that is sent to our lab technician for
9 further analysis. The remaining evidence is stored in
10 our evidence locker at the Sheriff's office.

11 Q Now, the form that you are talking about, a Form "B",
12 Rule 6, which was attached to the -- Is that the form
13 that you are familiar with? Is that the form that you
14 are talking about?

15 A I'm not sure what "B" Rule 6 is.

16 MS. GALLOWAY: Your Honor, this was attached, a copy
17 of this was attached to my client's amended application.

18 (Hands document to the witness) And Mr. Whitmire has
19 indicated he has copies. You can keep that copy.

20 A Yes, ma'am. This is where, this is just the chain of
21 custody where I placed this into the evidence locker
22 at the Sheriff's office.

23 Q And again, you don't recall what time you got there?

24 A No, ma'am.

25 Q All right. You don't recall what time you left the

DIRECT EXAMINATION OF ROGER SCOGGINS BY MS. GALLOWAY 14

1 residence?

2 A No, ma'am. It was like seven, eight years ago.

3 Q All right. Do you recall whether or not Mr. Gonzalez
4 was still there at the residence while you were
5 collecting evidence or had he been taken away to ---

6 A He was ---

7 Q --- law enforcement or to ---

8 A --- still there.

9 Q --- the Detention Center?

10 A He was still there, I believe. I'm not going to say
11 that for sure, but I believe he was there. I remember
12 Mr. Gonzalez from that day.

13 Q Let's go back and look at this form. All right. You
14 fill out the form indicating what was taken, what you
15 took into evidence. You indicate that on 11/3/2006,
16 you took the substances or containers to the evidence
17 locker at the Anderson County Sheriff's Department in
18 the same condition, in substantially the same
19 condition as when you received it. You signed it and
20 there are blanks on that form. Is that correct?

21 A That's right.

22 Q Why are there blanks on the form?

23 A The bottom of the form is for a notary. We do not do
24 the notary, because we don't send it outside our
25 agency. The evidence is kept within the Anderson

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF ROGER SCOGGINS BY MS. GALLOWAY 15

County Sheriff's Department.

Q So, when you drop the evidence, where does it go? Is there anyone there to receive it?

A It goes into a lock box that no one but the evidence custodians that work for the Sheriff's office have access to.

Q All right. And you don't have any direct knowledge as to what happened to that evidence after you dropped it in that box?

A No, ma'am.

Q Do you have any direct knowledge as to when the next time it was touched?

A No, ma'am.

MS. GALLOWAY: Nothing further, Your Honor.

THE COURT: All right. Thank you.

MR. WHITMIRE: No cross examination, Your Honor.

THE COURT: May he be excused?

MS. GALLOWAY: Yes, sir.

THE COURT: All right. Thank you, sir.

MS. GALLOWAY: Kurt Tavernier, Your Honor.

(After being duly sworn by the Clerk of Court,

KURT TAVERNIER testified as follows:)

CLERK OF COURT: Have a seat in the witness chair and state your name for the record, please.

MR. TAVERNIER: Kurt Tavernier.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF KURT TAVERNIER BY MS. GALLOWAY

16

DIRECT EXAMINATION OF KURT TAVERNIERBY MS. GALLOWAY:

Q Mr. Tavernier, how long have you been a criminal attorney?

A Twenty-four years.

Q You initially represented Reynaldo Gonzalez in this case, didn't you?

A I did.

Q At some point he terminated your representation and he hired Ms. White. Is that right?

A That's correct.

Q Did you bring your file with you on this case?

A All except for there were some other documents pertaining to discovery, but I gave ---

Q All right. Indicate to the Court, if you have it there, when you started your representation of him and when Ms. White took over.

A I started, the file was opened on or about November 15, 2006 and to the best of my recollection, sometime in 2008, Ms. White took over.

Q All right. Was it March of 2008?

A That would probably be -- I'm not going to dispute that. It would probably be correct.

Q All right. Do you have a copy of any discovery requests in your file?

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF KURT TAVERNIER BY MS. GALLOWAY 17

1 A Yes.

2 Q All right. When did you file your discovery request?

3 A November 15, 2006.

4 Q And that was the same day that you were retained? Is
5 that correct?

6 A Yes.

7 Q Or appointed?

8 A That was my practice.

9 Q Did you get any discovery during the -- from November
10 15th of 2006 until 2008 or whenever it was that Ms.
11 White took over?

12 A Yes. I got the incident report, I reviewed, listened
13 to the tapes, statements. I can't tell you all at
14 this time.

15 Q Did you begin negotiating with law enforcement and/or
16 the solicitor who was assigned to this case?

17 A That occurred -- things started the first day I met
18 with Mr. Gonzalez, which would have been around the
19 16th, I think. Negotiations started that day
20 according to my notes.

21 Q Negotiations started with whom?

22 A Toby Jordan.

23 Q All right. And did you ever get involved in any
24 negotiations with the solicitor?

25 A Verbal discussions with Rame Campbell who was assigned

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF KURT TAVERNIER BY MS. GALLOWAY 18

1 the case. Yes.

2 Q And was there ever an offer made?

3 A A formal offer as in writing, no, but as Rame and I
4 handled probably 99% of all the drug cases and so we
5 discussed things and I would say that there was an
6 understanding that we were talking 12 years.

7 Q All right. Now, how do you say there was an
8 understanding?

9 A As I said, Rame and I handled most of the drug cases.
10 I had had previous cases where individuals had been
11 charged with trafficking in excess of a pound and were
12 looking at a mandatory minimum of 25 years and based
13 on the individuals who had no prior record, we usually
14 arrived somewhere between 10 to 15 years as the given
15 sentence and usually it ended up around 12 years and
16 so when this case came around we started talking in,
17 roughly, those same numbers based on, in part, on Mr.
18 Gonzalez's agreement to cooperate with law
19 enforcement.

20 Q All right. And did you communicate that to Mr.
21 Gonzalez?

22 A Oh, yes.

23 Q What exactly did you communicate to him?

24 A My notes say that he's looking at 25 years mandatory
25 minimum. He needs to work. I'm supposed to check on

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF KURT TAVERNIER BY MS. GALLOWAY 19

1 bond and needs 90 days for no contact so he can get
2 things together and that was pretty much it. He was
3 released on bond November 20th, four days later.

4 Q All right. Had he already signed up to become a
5 confidential informant when he was released on bond?

6 A It was my understanding that he would be, because he
7 had given a statement on November 3rd, the day he was
8 arrested and, basically, had given information
9 pertaining to what had transpired and acknowledged
10 what his negotiations were and so things as far as his
11 discussions with Toby Jordan had already started to
12 take place.

13 Q All right. And after you had that discussion with Mr.
14 Gonzalez, his bond then got reduced from 135,000 to, I
15 believe, 45,000.00. Is that correct?

16 A Yes. My notes reflect that it was, initially,
17 150,000.

18 Q One hundred fifty thousand down to, approximately,
19 forty-five thousand?

20 A That's correct.

21 Q Did Mr. Gonzalez, based upon what you know, begin, as
22 you call it, to work as a confidential informant?

23 A He was supposed to start. He had repeatedly come to
24 my office or called and that was where he started
25 having problems because he would call and say that

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF KURT TAVERNIER BY MS. GALLOWAY 20

1 Toby Jordan would refuse or fail to get back in touch
2 with him or contact him to allow him to do what he
3 needed to do to help himself.

4 Q Do you recall whether or not Mr. Gonzalez had any kind
5 of significant prior criminal record?

6 A I'm not aware that he had any prior record.

7 Q Any prior criminal record?

8 A Correct.

9 Q All right. And you said that he came to you because
10 he could not get in, to say that he could not get in
11 touch with the narc, Toby Jordan, in order to work.

12 A Correct.

13 Q And then you said you and he had some kind of problem
14 as a result of that?

15 A There were -- he would repeatedly come. I would call
16 Toby and tell him what the concerns were. Toby would
17 respond that he needed to get things set up, that Mr.
18 Gonzalez needed to get things set up and that nothing
19 that he was doing at the time was substantial and that
20 he would always have an excuse. Finally, I think what
21 probably got Mr. Gonzalez the maddest was after a
22 couple of, every couple of weeks he would contact me
23 and then I think one time, I think the final time, he
24 came to my office and was very frustrated, claiming
25 again that Toby would not respond or help him do

1 whatever needed to be done so he could help himself
2 and that he couldn't contact him and he wouldn't
3 respond. I told Rey at that point that it seemed to me
4 that if my future relied on dealing with Mr. Jordan
5 and tying him down and making contact, that I would
6 plant my butt over at the Sheriff's office and wait
7 until he showed up if that's what it took in order to
8 confront him and make sure that something was getting
9 done, because otherwise, if he didn't cooperate, he
10 wasn't getting a deal.

11 Q All right. But based upon his actions in coming to
12 your office, did you believe that he wanted to
13 cooperate?

14 A It would seem so, yes.

15 Q All right. And you had communicated to him that he
16 could possibly get 12 years if he cooperated. Is that
17 correct?

18 A That's correct.

19 Q All right. So, he was aware of that. Do you think
20 that was a good offer?

21 A Based on what he was facing, I thought it was pretty
22 fair, yes.

23 Q All right. Now, after Ms. White was retained to
24 represent him in this case, did you talk to her at
25 all?

DIRECT EXAMINATION OF KURT TAVERNIER BY MS. GALLOWAY 22

1 A Not that I recall.

2 Q All right. Did you receive any kind of written
3 communication from her?

4 A Not that I recall.

5 Q How did you end up on -- did you sign off on the order
6 substituting counsel?

7 A I don't have a copy in the file, but I'm not going to
8 say I didn't. I don't recall.

9 Q All right. So, you don't remember having any
10 conversation with Ms. White, at all, to let her know
11 that there had been an offer of 12 years on the table
12 as long as your client worked, your former client,
13 worked as a confidential informant?

14 A Not that I recall. I am aware that she was aware that
15 there was 12 on the table.

16 Q How do you know that?

17 A When you subpoenaed me, I started to check around and
18 I did talk to Rame, Rame Campbell, who was the
19 prosecutor.

20 Q All right. So, you think Ms. White was aware that
21 there was an offer of 12 years on the table?

22 A I feel confident that she probably was, yes.

23 Q All right.

24 MS. GALLOWAY: Nothing further from this witness, Your
25 Honor.

CROSS EXAMINATION OF KURT TAVERNIER BY MR. WHITMIRE 23

1 THE COURT: Cross examination?

2 MR. WHITMIRE: May it please the Court.

3 CROSS EXAMINATION OF KURT TAVERNIER

4 BY MR. WHITMIRE:

5 Q Mr. Tavernier.

6 A How are you doing.

7 Q And wasn't this a case of a C.I. and an undercover
8 narc, an officer, engaging in narcotic transactions
9 with Mr. Gonzalez?

10 A That's correct.

11 Q And he had what, 1200 grams of methamphetamine?

12 A Roughly three pounds, yes.

13 Q Didn't it field test positive for meth?

14 A Yes.

15 Q And he gave a statement in which he tried to implicate
16 his source. Is that correct?

17 A That is correct.

18 Q Sandival Hernandez? And he wanted to work these
19 charges off?

20 A Yes.

21 Q Now, specifically, in the plea negotiations, the 12
22 years, was that in hopes of getting a 12-year offer if
23 things worked out or was it 12 years on the spot, he
24 accepted?

25 A No, that was a -- that would be in consideration of

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

CROSS EXAMINATION OF KURT TAVERNIER BY MR. WHITMIRE 24

1 his cooperation with law enforcement.

2 Q So, it was intended that before he could accept the
3 offer, he had to do certain things first?

4 A Absolutely.

5 Q And I believe he spent two years attempting, for the
6 lack of better words, to work with the Sheriff's
7 Department, the police?

8 A Yes.

9 Q And in those two years, he gave them four, five, or
10 six leads, but nothing ever panned out?

11 A It's my understanding that there wasn't anything that
12 they considered substantial.

13 Q And wasn't his source out of pocket or arrested by
14 some point when he got arrested?

15 A At some point, either his source was arrested or was
16 no longer in the area.

17 Q Did you communicate to him or let him know that he
18 would have to do x, y, and z and produce as a C.I. to
19 get this offer? That it wasn't already there for the
20 taking?

21 A Correct.

22 Q I think you testified you do primarily a substantial
23 amount of drug work.

24 A Yes.

25 Q And have you had situations where you, well, tried to

CROSS EXAMINATION OF KURT TAVERNIER BY MR. WHITMIRE 25

1 get Your client a better deal by using them as a C.I.
2 or letting them work it off as a C.I. in the past?

3 A When any of my clients are facing significant time and
4 the case appears to be fairly substantial against
5 them, I always offer them an opportunity before I
6 approach law enforcement that if they are interested
7 in trying to help themselves, that that is a viable
8 option that they may want to consider.

9 Q You used to be a uniformed police officer. Is that
10 correct?

11 A That is correct.

12 MR. WHITMIRE: No further questions, Your Honor.
13 Thank you, Mr. Tavernier.

14 MS. GALLOWAY: Nothing on redirect, Your Honor.

15 THE COURT: May Mr. Tavernier be excused?

16 Ms. GALLOWAY: Yes, sir.

17 THE COURT: Thank you, sir.

18 MS. GALLOWAY: The next witness, Your Honor, will be
19 Reynaldo Gonzalez.

20 (After being duly sworn by the Clerk of Court,

21 **REYNALDO GONZALEZ** testified as follows:)

22 CLERK OF COURT: If you will take the witness stand
23 and state your name for the record, please.

24 MR. GONZALEZ: Reynaldo Gonzalez.

25 DIRECT EXAMINATION OF REYNALDO GONZALEZ

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 26

1 BY MS. GALLOWAY:

2 Q All right, Mr. Gonzalez, let's go directly into your
3 grounds. First of all, I want you to tell us why did
4 you leave Mr. Tavernier as your attorney?

5 A Why did I leave?

6 Q Yes.

7 A Because I had been promised, I had been promised
8 probation.

9 Q Promised probation by whom?

10 A By Brad Baxter.

11 Q And who is Brad Baxter?

12 A I have no idea. All I know is Brad Baxter and Kurt
13 Tavernier came to the Anderson County Sheriff's
14 Department, took me out of the cell, come back into a
15 room and asked me would I help the Anderson County
16 Sheriff's Department. At the time I told them, yes,
17 sure, I would do it. They said okay.

18 Q All right. Did you thereafter sign an ---

19 A No, ma'am. I didn't sign nothing there. Not at that
20 time at the Sheriff's Department when I talked to Brad
21 Baxter and Kurt Tavernier.

22 Q All right. And ---

23 A Now, I was told, I was told, that if they reduced my
24 bond could I make bond and they asked if it was
25 reduced from 150,000 to 45,000 and I said I could

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 27

1 possibly do that.

2 Q Did you tell them though, there, that you would agree
3 to work?

4 A Yes, ma'am.

5 Q All right. And did you believe that you were going to
6 be offered either probation or 12 years if you worked?

7 A Yes, ma'am.

8 Q All right. And was there any ---

9 A But they didn't...

10 Q Go ahead.

11 A I was just going to say, they did not offer me
12 probation right then. They asked me would I be
13 willing to work for the Anderson County Sheriff's
14 Department and that if I would they would reduce my
15 bond and I had to meet them the next day at Kurt
16 Tavernier's office.

17 Q All right. So, you got your bond reduced and you got
18 out, right?

19 A Yes, ma'am.

20 Q Then what happened?

21 A Then they, I had to meet Kurt Tavernier and Brad
22 Baxter at Kurt Tavernier's office the very next day.

23 Q All right. Was Brad Baxter with the Anderson County
24 Sheriff's Department then?

25 A I don't know, ma'am.

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 28

1 Q Don't know. All right. So, you are talking to a man
2 and you don't know who he was or what he had to do
3 with anything?

4 A Right.

5 Q All right. Go ahead.

6 A Okay. When we got to his office, Kurt Tavernier asked
7 Brad Baxter, "What are we looking at?" Brad Baxter
8 got on the cell phone and called somebody and Brad
9 Baxter told Mr. Tavernier that probation, that I was
10 looking at probation if I helped the Anderson County
11 Sheriff's Department and signed a confidential
12 informant agreement.

13 Q All right. Did you sign a confidential informant
14 agreement?

15 A At that time, no, ma'am.

16 Q When did you sign it?

17 A I had to go meet Toby Jordan the next day.

18 Q And what happened there?

19 A And Toby Jordan, Toby Jordan called me and told him to
20 meet me at Wal-Mart, for me to meet him at Wal-Mart.
21 I met him at Wal-mart, got in the back of his vehicle,
22 he handed me a document. The top of the document
23 said, "Confidential Informant Agreement". On that
24 agreement, it had things that I should do and I
25 couldn't do, such as carry a gun, carry knives, that I

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 29

1 had no arrest powers, that I couldn't go out of state,
2 things of that nature. After I signed that document,
3 I had to go and show them, I showed them things that I
4 would promise that I would show to the Anderson County
5 Sheriff's Department and that if I signed the
6 Confidential Informant Agreement and I did sign the
7 Confidential Informant Agreement. So, that day I had
8 to go show them or they asked me where could I sell or
9 where could I buy methamphetamine, drugs. Well, I
10 took them to three or four different restaurants that
11 I had knowledge of, prior knowledge of, that that had
12 happened and then they told me to take them and show
13 them where the house was that I had bought or I had
14 brought the three pounds of meth that I had at my
15 house and so I had to go show them where that
16 residence was because I didn't know where it was.

17 Q Now, you did sign a statement which says that you did
18 sell, set up a buy for drugs.

19 A Ma'am?

20 Q You did sign a statement after you were arrested that
21 said you did set up a buy for drugs. Is that correct?

22 A Set up a buy? No, ma'am. I don't understand the
23 question.

24 Q All right. Did you arrange to sell some drugs?

25 A When I was called by their confidential informant, he

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 30

1 called me and for three days this went on.

2 Q But you did arrange to sell some?

3 A Yes, ma'am.

4 Q So, you admit that?

5 A Yes, ma'am.

6 Q All right. Go ahead, in regard to your agreeing to
7 work.

8 A So, so I went and showed them where the house was,
9 because I didn't know how to get there, so after that,
10 Toby Jordan told me to go ahead and start working and
11 so what I would do is, I would go out to bars, strip
12 bars, nightclubs and talk to people. I told Brad
13 Baxter when we were in the Sheriff's Department before
14 the bond was set, I told him that I could not, I
15 didn't know anybody or couldn't buy anything from
16 anybody selling, because I was too well known in
17 Anderson. He said you can start small. So, after I
18 met Toby Jordan and after I become a confidential
19 informant, I called Toby Jordan one day and I told him
20 that I could buy \$50.00 worth of cocaine. He came to
21 my house, gave me \$50.00 and told me to go buy the
22 cocaine and I asked him if I had to do drugs could I
23 do them, because I was already in trouble. I didn't
24 want to mess up. So, he said you do what you have to
25 do to make this happen. I went ---

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 31

1 Q Was Mr. Tavernier aware as to this?

2 A He told me, Toby Jordan told me not to tell Kurt
3 Tavernier anything, not to tell Kurt Tavernier or my
4 wife anything, about any deals that went down. So, I
5 went to this motel on 85 South. I had to take my
6 shirt off, had to take my pants down and I bought
7 \$50.00 worth of cocaine. I brought it back, called
8 Toby Jordan, Toby Jordan came and picked it up.

9 Q All right. Let's talk about that. That was one of
10 the situations where you worked. Is that right?

11 A Yes, ma'am.

12 Q All right. What are the others?

13 A The other one, I sat there, I called Toby Jordan. I
14 told him that I could buy an ounce of cocaine. Toby
15 Jordan told me to meet him at the parking lot behind
16 the bus depot where the District Five keeps their
17 buses behind the soccer field back there. I had to
18 meet Toby Jordan back there. Toby Jordan, along with
19 two other officers, came back there. They gave me
20 \$1000.00. I had to sign for that \$1000.00 and I was
21 given it to buy about four inches, maybe a quarter-of-
22 an-inch thick. They were supposed to record
23 everything. I had to put it in my pocket and go make
24 the buy. I went to a restaurant to make this buy. At
25 the time, I thought the drugs were going to be there.

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 32

1 When I got there, the man told me he had to go get the
2 drugs. I had to give him the \$1000.00 to go get the
3 drugs. He told me to meet him at his house so he
4 could bring the drugs, but Toby Jordan called so many
5 times and I had to call the man so many times, because
6 it was getting late and Toby Jordan said hurry up and
7 the man at the restaurant told me to meet him at the
8 restaurant and when I went to the restaurant, the man
9 gave me back the \$1000.00, because ---

10 Q All right. Let's go on, and Mr. Gonzalez, what we
11 want to do is, I want to show how many times you
12 worked. We don't have to have all the details. I
13 want to show, I want you to say to the Court that you
14 worked and tell us how many times that you did.

15 A Well, those are the two actual times. The rest of the
16 times, like Kurt Tavernier said, I called Toby Jordan
17 and told him I could buy three ounces of meth. Toby
18 Jordan said, you know, you are going to get yourself
19 busted up and it's not going to be nothing.

20 Q All right. You were told or when you were asked to
21 work and you agreed to work, did anybody say to you
22 that you had to work for "x" number of months ---

23 A No, ma'am.

24 Q --- or you have to do "x" number of set ups for us or
25 anything like that?

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 33

1 A No, ma'am.

2 Q All right. When you went to Ms. White to represent
3 you, did you communicate to her that there had been an
4 offer of 12 years and possibly probation on the table?

5 A The first thing I told her, I told her everything
6 about what went down. The very first thing I told her
7 is that I was told I was promised probation by Brad
8 Baxter and Kurt Tavernier. That was the very first
9 thing I told her. That's what I did.

10 Q Did you ask her to talk to Kurt Tavernier?

11 A I didn't ask her to talk to Kurt Tavernier. I can't
12 say that I did.

13 Q All right. Go ahead.

14 A I told her everything that I had talked to Kurt
15 Tavernier about and I told her I would be willing to
16 take a polygraph. She said a polygraph was not
17 admissible in court and that she believed what I was
18 telling her.

19 Q All right. Did she, thereafter, set up any kind of
20 meeting with either the Solicitor or with Toby Jordan
21 or anybody from law enforcement regarding your
22 continuing to work?

23 A Yes, ma'am. I had already, I had told her I couldn't
24 get hold of Toby Jordan on several occasions and so
25 she said she was going to try to get in contact with

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 34

1 Toby Jordan. I don't know if she did or not, but
2 anyway, there was a meeting set up for September the
3 12th, 2008, to see if there was anything else I could
4 do and really ---

5 Q Who was at that meeting?

6 A Toby Jordan, Ms. White, Rame Campbell and another
7 officer.

8 Q All right. And you were also present?

9 A Yes, ma'am.

10 Q All right. And what was decided?

11 A Well, Ms. White told me not to say anything. As soon
12 as they got there, it was apparent right away that it
13 was not going to go well. Toby Jordan stated to Ms.
14 White or to everybody that was there that I had been
15 photographed, that they had photographs of me at
16 restaurants with individuals that had been caught with
17 drugs and that I had not helped them in those
18 situations. Immediately, to me, Rame Campbell said,
19 "I'm done with you. You bring drugs into my county,
20 sell drugs to my children and to other people's
21 children, I'm done with you." He stood up. The
22 meeting was abruptly over and they walked out.

23 Q All right. Were there any further attempts to set up
24 work for you?

25 A No, ma'am.

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 35

1 Q And what did Ms. White say to you?

2 A Ms. White, she said, "See what I'm facing?" And that
3 was the end of the conversation as far as ---

4 Q All right. Did Ms. White, based upon your knowledge,
5 at any time, say, "He has worked, he has fulfilled his
6 part of the agreement, let's do the probation or let's
7 do the 12 years."?

8 A No, ma'am. At that time, I still hadn't really,
9 honestly, I don't think that I knew about the 12
10 years. Twelve years was never offered to me at Kurt
11 Tavernier's office or in front of Kurt Tavernier. At
12 no time was I ever offered 12 years to be a
13 confidential informant in front of nobody.

14 THE COURT: Let me stop you and let me clarify
15 something in my mind. Are you saying, Mr. Gonzalez, the
16 only offer you ever received was probation?

17 MR. GONZALEZ: That was the very first offer, Your
18 Honor, that was ---

19 THE COURT: All right. I didn't mean to interrupt.

20 Q Mr. Gonzalez, you've got me confused now. Where did
21 the 12 years come in?

22 A Ms. White was offered 12 years. Those 12 years came
23 in on the, on October the 2nd or the 3rd when ---

24 Q You just said that when you went to Ms. White you told
25 her that Mr. Tavernier had had an offer of 12 years

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 36

1 and the ---

2 A No, ma'am. I said probation.

3 Q All right. So, who got the offer of 12 years?

4 A Ms. White got the offer of 12 years.

5 Q From whom?

6 A I don't know who. I guess Rame Campbell.

7 Q And she communicated that to you?

8 A Yes, ma'am. She communi -- what she did is, when we
9 sat there and listened to the tapes, when we listened
10 to the tapes, she said that 12 years had been taken
11 off the table. So, evidently, 12 years was taken off
12 the table and I didn't know about it. I didn't know
13 about the 12 years.

14 Q Was there ever an offer after that, Mr. Gonzalez?

15 A Yes, ma'am.

16 Q What was that offer.

17 A First, it was 12 years, verbally. It was 15 years,
18 and then it was 18 years.

19 Q All right. How did you get to the 15 years? What
20 were the conditions of that?

21 A Well, basically, Ms. White didn't have full discovery
22 and I kept telling Ms. White that I had already come
23 to the point that I had already dealt with the
24 Anderson County Sheriff's office and she said it would
25 be my word against theirs and they offered 15 years

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 37

1 and at that time we listened to the tapes and so she
2 decided to go talk to them about accepting the 15
3 years and then they told her that that was taken off
4 the table, so now ---

5 Q So, why didn't you take the 15 in the first place?

6 A Ms. White said because we didn't have full discovery.

7 Q And when did the 18 come in?

8 A It came after the 15 years was taken off the table.

9 Q All right. And why didn't you...

10 A I told her the minute she told me that -- we started
11 out at probation and it went from probation to 12 to
12 15 and now it was at 18 and I told her, just take me
13 to trial. The minute I told her to take me to trial,
14 she said, "No, no, no." She said, "You're going to
15 get 25 years. You're going to get found guilty." She
16 said, "I'll see if they will accept a cap of 18." And
17 so I asked her what a cap of 18 meant and she
18 explained that a cap of 18 meant there was no more.

19 Q Mr. Gonzalez, did you bring up your belief as to any
20 problems with the case that the Sheriff's Department
21 and the Solicitor had developed?

22 A Yes, ma'am.

23 Q All right. Let's go directly to the issues that
24 you've asked by way of your PCR application to present
25 to the Court. Number one, do you have Your Amended

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 38

1 Application there with you?

2 A Yes, ma'am.

3 Q All right. Number one, you indicated that Ms. White
4 was ineffective for failure to inform you that there
5 were defects in the chain of custody of the illegal
6 drugs in this case and that you could have moved for
7 suppression of that. Tell us about that.

8 A Well ---

9 Q Now, you've seen that form, I believe. You attached
10 it to your application that was presented to the, with
11 your application, the form that I asked Mr. Scott
12 about.

13 A Right. That's, that form...

14 Q Form 6.

15 A Form 6. I don't have it right here. I know I've got
16 it. (Looks through documents)

17 Q Form B, Rule 6.

18 A Yes, ma'am. On that document, the chain of custody,
19 Mr. Scoggins says that he took three or four items
20 from my residence and he says he took them and placed
21 them in the evidence locker. Okay. In the document,
22 in the document from the Anderson County Sheriff's
23 Department, it says that a BEST kit was taken from the
24 dropbox. There is no, there's nothing on here
25 whatsoever that states that these items were put in a

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 39

1 BEST kit. None, whatsoever.

2 Q Now, are you talking about on the form that was
3 submitted, that was signed off on by Mr. Scoggins?

4 A Right.

5 Q All right. Now, what form are you talking about in
6 regard to the BEST kit?

7 A It's right here. (Hands document to Ms. Galloway)

8 MS. GALLOWAY: Your Honor, what he's referring to,
9 which I believe also is a part of his application, is a
10 form from the Anderson County Sheriff's Office regarding
11 the BEST kit.

12 THE COURT: Are you talking about Scoggins, Exhibit
13 "B", Rule 6?

14 MS. GALLOWAY: No, sir. May I approach, Your Honor.

15 THE COURT: Yes, ma'am.

16 Ms. GALLOWAY: (Shows document to Judge McIntosh)
17 Your Honor, if you don't have it, I will let him testify
18 and then move to have that go into evidence.

19 Q Mr. Gonzalez, look at this form and tell us what you
20 are referring to. The form that you talked about, the
21 Form 6 that Rusty Scoggins signed off on.

22 A Yes, ma'am.

23 Q Now, you've moved to another form. What is the date
24 on Mr., the form that Mr. Scoggins signed off on?
25 November 3rd, is that correct?

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 40

1 A Yes, ma'am.

2 Q What about the form that you are talking about that
3 refers to the BEST kit?

4 A It was taken from the drop box on the 4th, the
5 following day.

6 Q All right. And what is the significance of that?

7 A Well, the significance is that Mr. Scoggins says he
8 deposited four different bags into the evidence
9 locker. He does not state anything on that document
10 that states that he dropped those items, put those
11 items in a BEST kit. There is no evidence,
12 whatsoever. There's no notes, there's nothing. He
13 just drops them in the drop box. There's no way to
14 sign for those bags, but yet when Mr. Clamp, the very
15 next day, takes, opens the drop box, he gets a BEST
16 kit out of there, out of the drop box. Now, how did
17 the items that were dropped, that he says that he
18 dropped in the evidence locker, how did those items
19 appear in the BEST kit?

20 Q All right. You mean, who put them there?

21 A Who put them there. And nobody signed for them.

22 Q And what's your argument in regards to that?

23 A My argument is the chain of custody has been broke.
24 There's no signature to the effect of who signed for
25 those items.

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 41

1 THE COURT: Any other evidence on chain of custody
2 other than that?

3 MS. GALLOWAY: No, sir.

4 THE COURT: All right. I'm denying the motion on
5 chain of custody. Let's move to another one.

6 Q All right, Mr. Gonzalez, let's move on. Your next
7 argument, you indicate that counsel was ineffective
8 for failing to advise you that if you had to go to
9 trial that you could move for suppression of the drugs
10 in the case due to the unlawful, warrant-less entry
11 and arrest of you in your home. All right, now,
12 testimony has already indicated, I believe, or the
13 transcript indicates that you had a confidential
14 informant and then you had an undercover officer, Toby
15 Jordan, who came into your home.

16 A They pulled up into the driveway at my home in their
17 car and the confidential informant said let's go
18 inside your house. The confidential informant said
19 let's go into your house.

20 Q All right. Did you say, "Okay, come on."?

21 A Yes, ma'am.

22 Q All right. How is that an unlawful, warrant-less
23 entry into your home?

24 A Because they didn't present themselves as police
25 officers. When I was there, they didn't present

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 42

1 themselves as police officers. They came as, to buy
2 drugs as drug dealers. So, if he had been a police
3 officer and said I'm a police officer and I need to
4 come into your house, naturally, and I let them in,
5 naturally, I can understand that. But they came as,
6 you now, to trick me they came as a drug buy.

7 Q Did you ask them if they were police officers ---

8 A Yes, ma'am.

9 Q --- or confidential informants?

10 A Yes, ma'am.

11 Q All right. What did they say to you?

12 A They said no.

13 Q But you proceeded to do the drug sale?

14 A Yes, ma'am.

15 Q All right, it's your position to this Court that
16 because you asked them if they were police officers or
17 a confidential informant and because they said no
18 we're not and then proceeded with the buy that they
19 were unlawfully in your home?

20 A That is my position.

21 Q All right. Let's go on to your next ---

22 A But -- excuse me.

23 Q Is there anything else you want to say on that?

24 A Well, on that issue, the police officers that entered
25 my home, that came as police officers, they did not

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 43

1 ask me to come in, they did not ask to come into my
2 home.

3 MR. WHITMIRE: Judge, objection. Asked and answered.

4 THE COURT: Overruled.

5 A He...

6 Q He overruled it. You can go ahead and finish your
7 answer.

8 A The police officers that entered my bedroom did not
9 state, we are police officers can we come in or we're
10 coming in or anything. They just opened the door and
11 came in. The confidential informant told them they
12 could come into my house. The confidential informant,
13 in Toby Jordan's own, in Toby Jordan's own statement
14 from the events of that day, Toby Jordan states
15 that... (looking through documents). Okay. Toby
16 Jordan states that an undercover operative gave the go
17 word for agents to enter into the residence. It's in
18 his own statement and officers entered my residence
19 and placed me in handcuffs. They placed handcuffs on
20 Toby Jordan and took Toby Jordan outside.

21 Q All right. Anything else on that issue?

22 A No, ma'am.

23 Q Let's go on to your next issue where you allege that
24 Ms. White was ineffective for advising you to take the
25 guilty plea when there was no factual basis, due to

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 44

1 the fact that the chemist who performed the drug
2 analysis in this case was not certified by SLED.

3 THE COURT: Do you have any evidence here today about
4 the chemist?

5 MS. GALLOWAY: No, sir.

6 THE COURT: All right. Let's move on.

7 MS. GALLOWAY: Other than through Ms. White's
8 testimony. We can address that with her. I'm asking him
9 at this point.

10 THE COURT: All right. I know that's his allegation.

11 MS. GALLOWAY: Yes, sir.

12 THE COURT: I don't need to hear testimony from him,
13 but I will leave that open for Ms. White.

14 MS. GALLOWAY: All right.

15 Q In regard to the issue of full discovery, you are
16 indicating in this case that Ms. White advised you to
17 go ahead and take the cap of 18 and that she had not
18 received full discovery.

19 A Yes, ma'am.

20 Q What information or do you have any evidence of that?

21 A Ma'am, Toby Jordan states in his statement, he says
22 that him and the undercover operative were both
23 wearing a wire. That would indicate that there is a
24 recording of the transaction that happened at my
25 residence. Yet, no, no recordings was ever presented

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 45

1 to me of that buy in my house. The only recordings
2 that were presented, that were given to me, were the
3 ten recordings that they say it was basically just
4 talking on the phone. That tape recording, I allege
5 would show several things: that I was not read my
6 rights, that I was coerced, that I was threatened,
7 that I asked police officers, I mean, I asked Toby
8 Jordan and the confidential informant the minute they
9 walked in the house if they were police officers and
10 they stated no. All that would be on that tape since
11 they were both buyers, that would be on that tape.

12 Q All right. And there is some evidence in regard to
13 the offers and the fact that Ms. White had not
14 received full discovery just prior to your taking the
15 guilty plea that you want to present later. Is that
16 right?

17 A Do what, now?

18 Q That you want to present later. There's evidence of
19 that that you want to present later when Ms. White
20 testifies. Is that correct?

21 A Uh-huh.

22 Q All right. Let's go on to the next issue regarding
23 the sentencing sheet. Now, the Court already has a
24 copy of the sentencing sheet. You indicate as one of
25 your allegations that Ms. White did not object or did

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 46

1 not raise the issue of your sentencing sheet being
2 marked that you were pleading to a lesser included
3 offense which you believe should have been PWID and
4 you indicate that that is a 15-year offense wherein
5 you might have gotten possible probation and parole.

6 A Yes, ma'am. Well, when Ms. White had me sign the
7 sentencing sheet before the proceedings ever began,
8 she asked me to sign the sheet. I signed it. I'm not
9 an expert. I don't know what all that paperwork
10 meant. I just signed it. It wasn't until later that
11 I discovered that not only I was there to plead to a
12 cap of 18, that was, that means that she said that I
13 would plead to a cap of 18, but yet on the sentencing
14 sheet, I mean, not on the sentencing sheet, but on the
15 transcript, Rame Campbell, the Solicitor states, for a
16 plea we are going to reduce it from 400 plus to 28 to
17 100. Now, that's two different things. That's two
18 distinctly different things. I was already pleading
19 to a cap of 18. Now, the Solicitor states that I'm
20 pleading to a reduction in the drugs from 400 to 28 to
21 100. Well, if you, but the sentencing sheet states
22 that the charge is a lesser included offense. A
23 lesser included offense of trafficking is a possession
24 with intent to distribute. Possession with intent to
25 distribute, 28 to 100 grams, carries a minimum of 15

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 47

1 years non-violent offense. So, I'm asked to sign, I'm
2 asked to sign, I mean, I'm asked to think something I
3 don't know. I'm asked to sign a document that she
4 knows is two different things. Really, three
5 different things because I'm signing a document for a
6 cap of 18, then trafficking, you can't get parole for
7 trafficking, but possession with intent to distribute,
8 a lesser included offense, you can get probation.

9 Q All right. Let's go on to the next issue. You
10 indicate that Ms. White was ineffective for failing to
11 move or to strike and make an objection to the Court
12 allowing the State to make a second statement of the
13 same facts. Do you have the transcript there with
14 you?

15 A Yes, ma'am.

16 Q Tell the Court what page to turn to. Tell the Court
17 what you are referring to. I believe you are
18 referring, initially, to page 16 of the transcript.
19 Is that right?

20 A Yes, ma'am.

21 Q Starting at which line?

22 A Ma'am?

23 Q Starting at which line?

24 A At the initial, really, it starts at page 15.

25 Q All right. Go back to page 15, at which line?

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 48

1 A Line 25.

2 Q All right.

3 A I can buy some meth. The confidential informant
4 called the Anderson County Sheriff's Department and
5 says I can buy some meth.

6 Q Is that a statement of Mr. Campbell to the Judge?

7 A Yes, ma'am. There is no statement anywhere. There's
8 no statement taken from him, no nothing about him
9 saying that I can buy some meth.

10 Q When you are talking about "him", who are you
11 referring to, the confidential informant?

12 A Yes.

13 Q All right. Did Ms. White ever get evidence as to who
14 the confidential informant was?

15 A Yes, ma'am.

16 Q All right. Go on with the transcript, though, to tell
17 the Judge how the two statements of facts differ or
18 whether they were different.

19 A Well, the Solicitor basically says, you know, he
20 really goes into detail about what was basically done;
21 the three pounds, a narcotics officer was present,
22 what we got. He says that I actually knew or worked
23 with the individual and that as a result, I was
24 arrested on the spot by law enforcement. He says that
25 as a result, after he was arrested, he actually did

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 49

1 cooperate with law enforcement. He did deliver on
2 Mr. Hernandez. He also cooperated in another
3 undercover buy for them, for the officers. Okay.

4 Q All right. Go to the next part of the transcript and
5 tell the Judge what the second statement differs, how
6 it differs.

7 A Okay. Page 21 ---

8 THE COURT: I'm going to stop you. I am going to deny
9 the motion on those grounds. That is without merit. Move
10 on to the next issue, please, ma'am.

11 Q All right. Let's talk about your allegation as to
12 illegal wiretaps and/or cell phone conversations being
13 intercepted.

14 A Yes, ma'am. The confidential informant, I met this
15 person at a bar. He began recording my conversations.
16 As a result of those conversations, the Anderson
17 County Sheriff's Department came to my house and
18 arrested me. I asked Ms. White about the electronic
19 surveillance, what they are getting for the electronic
20 surveillance to be taking place.

21 Q What did Ms. White tell you about that?

22 A Ms. White said that when law enforcement is involved
23 in the conversation and has agreed to have that
24 conversation recorded, Title 3 does not apply.

25 Q All right. What makes you believe that that advice

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 50

1 was not true?

2 A Well ---

3 Q Or not correct.

4 A --- because in the document, in a document by the
5 Solicitor, Ms. Chrissy Adams, pursuant to Rule 5, she
6 said that she disclosed who the confidential informant
7 is and she states, "Audio tapes of the recordings
8 between him and your client setting up the drug deal,
9 there is no assistance, substantial assistance,
10 agreement or statement from him as he was not working
11 any charges off. Ms. White stated to me that when law
12 enforcement is involved in the conversation, according
13 to this document, the confidential informant is not a
14 police officer. According to this document, he has not
15 signed a confidential informant agreement with them.
16 So, he was not acting as an entity of the police
17 department or as an officer of the law. He is not a
18 police officer. Therefore, Title 3 does apply. Title
19 3, electronic surveillance, specifically states that
20 they have to have cell phones or a part of electronic
21 surveillance.

22 Q All right. Did you express concerns to Ms. White
23 regarding any of these allegations that you just made
24 to the Judge prior to pleading before Judge Nicholson
25 with the cap of 18?

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 51

1 A Yes, ma'am.

2 Q And what were her responses to you?

3 A Every time I asked, every time I told her something it
4 was just like, for instance, if I sit there and I told
5 her that they came to my house, broke into my house
6 without a search warrant, she said, you know, you
7 invited them in and when I sit there and told them
8 that, when I told her that they didn't have a wiretap,
9 I mean, they didn't have reason to tape my
10 conversation, she said law enforcement was involved
11 and they didn't have to have it. Title 3 didn't
12 apply. At every turn, when I told her, when I asked
13 her about the missing phone calls whenever she said,
14 you know, it sounds like some text is missing, I said,
15 yeah, we don't have any text of the actual
16 conversation because of the actual buy because that
17 right there can help me. She said well, they just
18 said the case is ---

19 Q When did you hear the tapes?

20 A On October the 2nd, if I'm not mistaken. October the
21 2nd of 2008.

22 Q And you pled on what date?

23 A I think on October the 3rd is when the cap of 18, you
24 know.

25 Q All right. You agreed to allow Ms. White to tell the

DIRECT EXAMINATION OF REYNALDO GONZALEZ BY MS. GALLOWAY 52

1 Solicitor that you would agree to go and plea to a cap
2 of 18. Didn't you?

3 A Well, ma'am, yes, ma'am, I felt I had no choice.

4 Q Why did you feel you had no choice?

5 A Well, I felt I had no choice because, like I said, it
6 had already started at 12. I mean, it started at
7 probation and went to 12 and she went, she denied the
8 12 and it went to 15, then she ---

9 Q She denied the 12, why?

10 A Because she said we didn't have full discovery.

11 Q All right. She denied or advised you to not take the
12 15, why?

13 A Because we didn't have full discovery.

14 Q All right. And then you got to the cap of 18 and she
15 said what to you?

16 A To plead.

17 Q All right. How many times did you meet with Ms. White
18 face-to-face?

19 A Quite a few times.

20 Q How many times is quite a few times?

21 A Six or seven, maybe.

22 Q All right. For a total of about how much time? Eight
23 hours, seven hours, five hours.

24 A About six hours, total.

25 Q Six hours. All right.

CROSS EXAMINATION OF REYNALDO GONZALEZ BY MR. WHITMIRE 53

1 MS. GALLOWAY: Nothing further for Mr. Gonzalez, Your
2 Honor.

3 THE COURT: Cross examination?

4 MR. WHITMIRE: May it please the Court.

5 THE COURT: Please do not go into matters that I've
6 already ruled on.

7 MR. WHITMIRE: Your Honor?

8 THE COURT: Please do not go into matters that I've
9 already ruled on.

10 MR. WHITMIRE: I've marked them off.

11 CROSS EXAMINATION OF REYNALDO GONZALEZ

12 BY MR. WHITMIRE:

13 Q Mr. Gonzalez, if I remember correctly, didn't you
14 admit to taking part in a narcotics transaction in
15 your testimony earlier? Didn't you admit to taking
16 part in a narcotics transaction?

17 A Did I admit I was a part of a narcotics transaction?

18 Q Yes. You admitted that.

19 A Sir?

20 Q You just admitted that, didn't you?

21 A Yes, sir.

22 Q And didn't you make a statement after your arrest,
23 too? Is that correct?

24 A Do what, now?

25 Q You made a statement after your arrest. Isn't that

CROSS EXAMINATION OF REYNALDO GONZALEZ BY MR. WHITMIRE 54

1 correct?

2 A After the arrest? Without my rights being read, yes,
3 sir.

4 Q Do you recall after you hired Mr. Tavernier, you
5 signed a C.I. agreement?

6 A Do what, now?

7 Q A C.I. agreement?

8 A What's that?

9 Q A Confidential Informant Agreement.

10 A Yes, sir.

11 Q But you never signed a plea agreement. Did you?

12 A I never signed a plea agreement? No.

13 Q According to your testimony.

14 A I didn't sign a plea agreement, no, at that time.

15 Detrimental reliance, you can, you don't have to sign
16 an agreement. It can be a verbal detrimental
17 reliance. That's what I relied on.

18 Q But weren't you hoping to get this offer by working
19 off your charges?

20 A No, sir.

21 Q That's why they didn't have you sign ---

22 A There was no hope to it, sir. I was told that I was
23 going to get probation if I helped law enforcement and
24 I became a confidential informant, which I did.

25 Q And is Toby Jordan here today?

1 A No.

2 Q Do you have any evidence, at all, to submit to this
3 Court that you were promised, that you relied on a
4 specific promise, that you would get this deal if you
5 did x, y and z?

6 A No, sir. I didn't have anything on as far as, it was
7 a verbal agreement between Kurt Tavernier and Brad
8 Baxter. Toby Jordan was never in that process.

9 Q Is Brad Baxter here today?

10 A I asked my attorney to find Brad Baxter and Brad
11 Baxter was, I don't know.

12 Q And when Ms. White took over your case, you had spent
13 two years, two years, trying to get the State to lower
14 charges. Isn't that correct?

15 A Do what, now?

16 Q You had spent two years trying to work off your
17 charges as a C.I. when Ms. White took over your case.

18 A Trying to get -- I was working. I wasn't trying. I
19 was working.

20 Q Do you have any documentation or anything to prove the
21 work you did as a C.I., today?

22 A Sir, the only thing I got, the only thing I got is
23 that I needed, that I didn't get in full discovery,
24 was the \$1000.00 receipt and the tape recording of
25 that transaction that I did help with. The \$50.00,

CROSS EXAMINATION OF REYNALDO GONZALEZ BY MR. WHITMIRE 56

1 no.

2 MR. WHITMIRE: Just a few more questions, Your Honor.

3 Q I believe on September 6th, the year of your plea,
4 didn't Solicitor Campbell offer you a cap of 15 years
5 or a 15-year plea offer?

6 A No.

7 Q You don't recall receiving that?

8 A He didn't offer it to me.

9 Q Well, did he offer it to --

10 A He offered this plea to Ms. White.

11 Q Ms. White. And Ms. White reviewed this with you,
12 didn't she?

13 A Yes, sir.

14 Q And when she reviewed it with you, wasn't the plea
15 going to terminate by the 26th, ---

16 A I have no idea.

17 Q --- two weeks later. Ms. White reviewed that with you
18 also. But you said that Ms. White, in Your
19 allegations, that she told you not to take that plea
20 offer because she wanted to review those C.I. tapes
21 first. Is that correct?

22 A She wanted -- right. We weren't provided discovery
23 before then.

24 Q But didn't Ms. White give you your options instead of,
25 you can do this, that there is exposure, that this

CROSS EXAMINATION OF REYNALDO GONZALEZ BY MR. WHITMIRE 57

1 plea might not exist, because it's going to terminate?

2 A No, sir.

3 Q And you wanted to review those tapes first. Is that
4 correct?

5 A Do what, now?

6 Q You wanted to review those C.I. tapes first before you
7 pled guilty.

8 A That's a part of my discovery. That's my legal right.

9 Q In fact, aren't you still alleging today that you are
10 still wanting discovery for this?

11 A We didn't get full discovery, sir.

12 Q So, you told Ms. White, "I'm not taking a pleas offer
13 until I get to hear those confidential informant
14 tapes," although you already admitted your guilt?

15 A Say that again?

16 Q You admitted your guilt in your statement, but you
17 told Ms. White, "I want to hear those tapes before I
18 take that plea offer." Is that correct? You wanted
19 to ---

20 A Ms. White said that we needed to hear the tapes and
21 get all the information we needed to get, that we
22 could not make a valid decision without listening to
23 those tapes. Yes, sir. My attorney advised me not to
24 plead guilty unless we had those tapes.

25 Q It was your decision. She advised you of all the

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY

58

1 consequences. Is that correct?

2 A Advised me of the consequences?

3 Q Consequences. That this plea might not be around, the
4 Solicitor's office is free to revoke ---

5 A No, sir. She didn't tell me that.

6 Q Never once?

7 A No, sir.

8 Q And by pleading guilty, you still got the benefit of a
9 bargain. Is that correct?

10 A Sir?

11 Q You still got a good deal considering you were
12 indicted for 400 grams or more on trafficking.

13 A Sir, I didn't get my full discovery.

14 Q You didn't get Your full discovery?

15 A I didn't get my full discovery and, you know, you are
16 stating something that, you know, if full discovery
17 had been provided, who knows?

18 Q Last question. Did you tell the Judge, Judge
19 Nicholson, this when you pled guilty, when he asked
20 had Ms. White done everything that you asked her to do
21 and was there anything else? Did you tell him any of
22 these things at that moment?

23 A My attorney advised me to plead guilty.

24 Q But when he asked you directly, on the record, did you
25 tell him any of these things; that you wanted more

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 59

1 discovery, that you were uncertain? These charges had
2 been pending for two years now.

3 A No, I did not.

4 Q And you were under oath that day. Is that correct?

5 A Yes, sir.

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

7 MS. GALLOWAY: Nothing on redirect, Your Honor.

8 THE COURT: All right. Thank you. You may step down.

9 MS. GALLOWAY: The last witness, Your Honor, we call
10 Druanne White.

11 (After being duly sworn by the Clerk of Court,
12 **DRUANNE WHITE** testified as follows:)

13 CLERK OF COURT: Take the stand and state your name
14 for the record, please.

15 MS. WHITE: My name is Druanne White.

16 DIRECT EXAMINATION OF DRUANNE WHITE
17 BY MS. GALLOWAY:

18 Q All right, Ms. White, we'll go directly -- the Judge
19 has already denied our application on some of the
20 issues. Let us go to what I think is left. All
21 right. Let's talk about the discovery in this case.
22 First of all, let's go back to Mr. Gonzalez's
23 testimony regarding an alleged offer of 12 years
24 and/or probation that had been started back with Kurt
25 Tavernier. When did you start representing Mr.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 60

1 Gonzalez?

2 A I will refer to my time line. As you can see, my file
3 is pretty thick. It looks like I met with him for the
4 first time in late April, 2008, and the next day I
5 sent a discovery request to the prosecutor.

6 Q All right. Did you contact Mr. Tavernier at all?

7 A My office got a copy of his file and so that is the
8 contact, I got a copy of his file.

9 Q And do you recall whether or not your office got any
10 discovery information from his office or from his
11 file?

12 A I don't think we did, because I didn't see any. It
13 looked to me like he had filed discovery on 11/15/06,
14 but I had not seen any discovery in his file.

15 Q All right. You indicate that you immediately, or
16 within the next few days after you met with your
17 client, filed for discovery. Is that correct?

18 A Well, I sent an unfiled copy to the prosecutor the
19 next day and then, of course, the reason why was that
20 I was scared to death because it was such an old case.
21 I hate taking cases this old because, of course,
22 you're scrambling to get up to date and so normally, I
23 file and then I serve, but I went ahead and served and
24 then filed and sent a filed copy, as well, because I
25 was afraid of the time.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 61

1 Q When did you start getting discovery information?

2 A It looks like the order substituting counsel was
3 signed by the judge on 05/08/08, maybe, somewhere in
4 there and we start emailing to Rame's secretary. Of
5 course, we would have waited 30 days and then in late
6 June we start trying to actively call and email to get
7 it. And did you ask me when or when did we get it?
8 What did you ask me? I'm sorry.

9 Q When did you start getting it and then I want to ask
10 you when did you get it all.

11 A Okay. July 1st, we started getting some things.

12 Q Okay. And when did you start getting all of the
13 discovery that you asked for or thought you were
14 entitled to?

15 A Well, not until way later. I think it was, maybe,
16 October 2nd of 2008, when I got everything that I
17 requested.

18 Q All right. And when was the plea done?

19 A It was done on January 14th, 2009.

20 Q Now, do you have a copy of the transcript with you
21 there?

22 A I do.

23 Q I want you to go to page 18, line 11, where you are
24 talking to the judge.

25 A Okay.

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 62

1 Q All right. Read that for us, please.

2 A Okay. It says, "Your Honor, if you will just bear
3 with me, this will only take a minute, if it gets over
4 15, I need to lay this out, if you don't mind. He was
5 arrested on November 4, 2006. He had another attorney
6 who requested discovery pretty much immediately and no
7 discovery was provided for approximately a year-and-a-
8 half. I got hired in May of '08. I filed discovery.
9 We got the beginning of it and initial portions on
10 July 1st. At that point, on July 7th, I began
11 requesting to see physical evidence. I got additional
12 portions of discovery which is completely normal in
13 the case on September 9th and September 12th, 2008,
14 however, I still did not have 10 tape recordings, I
15 didn't have a chain of custody and one of the
16 narcotics officers involved in this died. I did not
17 have a drug report. On the -- That should have
18 actually said scale, not sale. I had not seen the
19 physical evidence. I made several other requests to
20 see that. Do you want me to keep reading?

21 Q Yes, ma'am.

22 A On September 5, my client was offered a 15-year plea
23 and it turned out, it was supposed to expire on
24 September 16th. But at that point, I still didn't
25 have any of those things, so I got the 10 tape

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 63

1 recordings and I went and reviewed the evidence on
2 October 2nd. I was allowed to do that on October 3rd
3 and I also got the drug report that day. Do you want
4 me to go on ---

5 Q You can stop there. So, after you got involved in the
6 case, it took you approximately a year-and-a-half to
7 get what you considered was the last of the evidence
8 that you needed?

9 A No. I was not -- I got the case in very late April,
10 early May, right in that time frame and we did our
11 plea in January of 2009 and so I only had the case,
12 altogether, what, seven months or something like that.

13 Q All right. Do you feel that you had adequate time to
14 discuss, after reviewing all of the evidence,
15 including the physical evidence, that you had enough
16 time to discuss it with Mr. Gonzalez?

17 A I don't think things were done completely the way I
18 would have done them in this case had I been on the
19 State's side and that affected it. The reason why I
20 say that, it's no secret, I did a motion and it's all
21 on the record, but you know, the ethical obligation of
22 a defense attorney is not to take a bunch of money and
23 then do nothing. The ethical obligation is to look at
24 the case, see if you can get your client the best deal
25 possibly or even not guilty if there's some kind of

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 64

1 technicality or if they didn't do it. I made a motion
2 on this and I got the plea offer on -- and let me tell
3 you. He came in and told me exactly the same thing at
4 our initial meeting. He told me the exact same thing
5 that he said up here; they offered probation if he
6 worked. I didn't know anything about 12 years. I
7 noticed a note when I went out to see the physical
8 evidence in September of '08, you showed me a note
9 from my file, actually, where I talked about Rame
10 saying something about 12 years.

11 Q Let's look at that note.

12 A Okay. And I think what happened in that is, I was
13 talking to Rame. When, finally, I got to see it, I
14 think that was October 2nd.

15 Q All right. Before you go on talking about it, I want
16 you to look at and I want you to read it for us.

17 A Okay. It says, "Talked to prosecutor -- this is dated
18 10/02/08. Talked to prosecutor. He agreed to
19 nothing, except 12-year offer. He said there were
20 only ten phone calls on tape. Some didn't record. We
21 probably won't go to court next week, because at least
22 two big cases before ours. Looked at all evidence.

23 Q All right. Now, that says he agreed to nothing except
24 the 12-year offer?

25 A I think what I was asking him, I probably had said

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 65

1 y'all agreed to -- Rame and I are looking at physical
2 evidence, so of course, I'm asking him, come on, let's
3 do something, what can we do, blah, blah, blah, so I
4 think what probably happened is, he said, "I gave a
5 12-year offer and that was the best I can do," because
6 until then, he never, when he stood up here, when Mr.
7 Gonzalez stood up here and said, "I never knew about a
8 12 offer," I think he was telling the truth, because
9 he never told me about the 12-year offer. I don't
10 think he did know.

11 Q But by way of this note, did, it's in your own
12 handwriting, dated 10/02/2008, you said that the
13 Solicitor said, "I agreed to nothing except."

14 A I think that's what he was saying. I was probably
15 saying, "You had agreed to probation," and I think the
16 Prosecutor in my notes was saying that he had said
17 that he had never agreed to that, all he had agreed to
18 was 12 years. Now, that ---

19 Q Did you pursue it, then? If he said I agreed to 12
20 years at some point ---

21 A He didn't say I agreed, I think he was saying in the
22 past he had when they first went to him, but ---

23 Q All right. Well, if he said it in the past, did you
24 pursue it at that time, "Can we get back to that?"

25 A Oh, yeah, that's what our conversation was. I was

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 66

1 trying to get him below 12. I was trying to get him
2 the best deal I could. I was probably telling him,
3 "Come on, at one point, y'all were talking probation."
4 And I think Rame was telling me there, "We never
5 talked probation, we talked 12 years." But I'm going
6 to tell you, he genuinely believed probation was on
7 the table. He came in the first day very upset that
8 they had taken it and never mentioned 12 years. So,
9 there was some mis-communication somewhere before.

10 Q Did Mr. Gonzalez want to work?

11 A In my opinion, yes.

12 Q Based upon what you know, did he do some work? Did
13 you confirm that?

14 A Well, I mean, he told me -- I hadn't, I in my office,
15 had meetings with Toby Jordan and some conversations
16 on the phone. I think it was a mis-communication with
17 the Sheriff's Department thinking -- you know, when
18 you sell three pounds, you can't come in and say,
19 "Okay, I'm going to give you this much meth and you're
20 going to drop my charges," so I think that Mr.
21 Gonzalez told me his supplier was arrested early on
22 and that's the one he could have bought more weight
23 from and the problem is, he had to go out and make
24 some contacts and build up, but the Sheriff's
25 Department, of course, doesn't want small fry when

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 67

1 they've got a big fry and so I think there was -- the
2 Sheriff's Department and the Prosecutor were very
3 frustrated with him thinking he was yanking their
4 chain and I think he was just as frustrated because he
5 was trying to work. He came to me because he
6 couldn't, he wanted to work and he wanted me to get a
7 meeting set up and get things started.

8 Q All right. And was that meeting cancelled?

9 A At one time it was continued. Somebody had a
10 conflict. I don't know who. Then we met about, it
11 looks like maybe two, let's see. In September, early
12 September, maybe.

13 Q Okay. I'm going to hand to you, this is a letter
14 dated September 5th, 2008, from Rame Campbell to you.
15 And you gave me complete access to your file, did you
16 not? And you also offered that same access to the
17 Attorney General. Is that right?

18 A Yes.

19 Q All right. That's a letter dated September 5th, 2008,
20 from Rame Campbell to you. Read that into the record,
21 please.

22 A "Dear Druanne -- and, of course, it's got all the
23 heading of Gonzalez -- I've reviewed your client's
24 file, discussed it over with law enforcement. I'm
25 willing to offer your client 15 years on plate. If

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 68

1 Your client wishes to enter a plea, he may do so the
2 week of September 16, 2008. This was dated September
3 5th. If your client wishes to have a trial, then his
4 case will be placed on the trial docket beginning the
5 week of October 6th, 2008. If we do not reach his
6 case during the term of court, it will carry over for
7 trial -- do you want me to keep reading? It's just
8 trial stuff.

9 Q No. You can stop there.

10 A And we would have, of course, given a copy to our
11 client of this.

12 Q And what was your response to that? Did you meet with
13 your client to discuss that?

14 A Oh, yeah.

15 Q And what was your response to it?

16 A As I recall, because again, I made an open motion in
17 court on it, too. As I recall, I picked up the phone
18 and called Rame and said, Rame, it's not just me, the
19 Supreme Court sent us a memo, all the solicitors, in
20 2004 and said you cannot make a plea conditional on
21 not getting discovery. It puts us in an ethical
22 violation, because we have to ethically do a thorough
23 job and if you say you accept a plea before you get
24 ten tapes, see the physical evidence, get the chain of
25 custody, then it sets me up for a PCR, which of

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 69

1 course, I'm doomed if I do and doomed if I don't on
2 this one. I haven't done any of my work and so I said
3 would you please extend the plea offer, I've been
4 calling for three months to try to see the physical
5 evidence. You get the chain of custody when you see
6 the physical evidence, that's when it gets handed to
7 you. And so the problem is, by the time I got the
8 chain of custody and saw the physical evidence and
9 listened to the tapes, the plea offer had expired.

10 Q All right. I'm going to hand you now a copy of that
11 memo that I believe you are talking about from the
12 Supreme Court.

13 A Yes.

14 MS. GALLOWAY: Your Honor, I handed a copy to Mr.
15 Whitmire and I'm going to move to enter that into evidence
16 after she reads it.

17 MS. WHITE: I was actually solicitor when this came to
18 all of us.

19 MS. GALLOWAY: All right. That memo is dated March 1,
20 2004, to all the solicitors.

21 Q Read that, please.

22 A It's from Chief Justice Toal and it says: Regarding
23 plea agreements and discovery. It is to all
24 solicitors. It has come to my attention that
25 solicitors in some circuits are offering plea

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 70

1 agreements to defendants on the condition that they
2 forego discovery. This practice is going to have
3 adverse consequences in the future with claims of
4 ineffective assistance of counsel based on a claim the
5 plea was not voluntary because the applicant did not
6 have access to the solicitor's file. Furthermore, I
7 believe it is unethical to preface a plea agreement on
8 the defendant relinquishing the right to discovery in
9 criminal cases and she cites the ethical rules. I ask
10 that any solicitors who are currently pursuing this
11 practice to stop immediately.

12 MS. GALLOWAY: Your Honor, I move to enter this into
13 evidence for the Court's consideration.

14 THE COURT: It's admitted and I take judicial notice.

15 (Whereupon, a memo from Chief Justice Toal is entered
16 into evidence as Applicant's Exhibit #1, without objection)

17 Q All right. So, you had that conversation with Mr.
18 Campbell regarding; I need the discovery, I don't have
19 enough time to properly advise my client on the
20 15-year deal.

21 A It just put me into an ethical bind, because
22 ethically, I have to do a thorough job, but how do I
23 respond to a plea offer when I haven't gotten all the
24 material things in the case?

25 Q All right. So, you did not advise your client to take

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

1 that 15 years, did you?

2 A Let me just say, I never tell a client to take a plea
3 or not to. I go over the pros, the cons, I say --
4 now, he is, and his perception may be exactly what he
5 said, because I would have said, you know, we don't
6 know if they still have the evidence, we don't know if
7 it's intact, we don't know the chain of custody, who
8 was in the chain of custody, if they are even alive
9 anymore and you know, if you can knock something out,
10 then, of course, you might have a chance of walking.
11 Now, I wouldn't have gone that far in telling him
12 that, but I would have said, "We are missing some
13 significant things," but he had a copy and he knew the
14 plea offer expired. I would never ever tell a client
15 to either take a plea or not.

16 Q Okay. But he didn't take it, right?

17 A No, he didn't.

18 Q Okay. But you did meet with him and talk with him
19 about it?

20 A Yes.

21 Q All right. Ms. White, I'm going to hand to you now,
22 and this also came from access to your file, and I
23 believe that Mr. Whitmire also has a copy of this.
24 This is what you titled in your file as the Reynaldo
25 Gonzalez time line. I want you to take this and look

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 72

1 at it for me. All right, and we don't have to look at
2 all of it. You don't have to talk about all of it,
3 but I want you to go through and indicate dates that
4 relate to your request for discovery and/or your
5 receipt of discovery and/or you are indicating there
6 is a problem with discovery.

7 A Let me just tell y'all, this time line, I just went
8 through the file and picked out a few things. I went
9 back last week and put a few more in. It's not
10 everything in the file, but it's some stuff. Do you
11 want me to use the old one or the one that I've kind
12 of updated that's going to -- I gave you a copy of it
13 and I've got a copy if the Judge wants to follow
14 along, too.

15 Q Now, you let me look at the new one, but you didn't
16 give me a copy of it.

17 A Oh, I thought I handed you one.

18 THE COURT: Did you get a chance to look at it?

19 MS. GALLOWAY: Sir?

20 THE COURT: Do you need to look at it?

21 MS. GALLOWAY: Yes, sir. Does Mr. Whitmire have a
22 copy of the new one?

23 MR. WHITMIRE: I have a copy.

24 MS. GALLOWAY: You do?

25 THE COURT: Let's do this: Let's take about a five

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 73

1 minute break anyway. We'll look at it when we get back.

2 Ms. White, you know the rules.

3 MS. WHITE: Yes, sir.

4 BRIEF BREAK

5 THE COURT: Ms. Galloway, did you have an opportunity
6 to look at that time line?

7 MS. GALLOWAY: I did, Your Honor.

8 THE COURT: And you are free to use either one you
9 want, obviously. I just wanted you to have the opportunity
10 to look at it if you needed to.

11 MS. GALLOWAY: All right.

12 RESUME DIRECT EXAMINATION OF MS. WHITE

13 BY MS. GALLOWAY:

14 Q All right. Ms. White, that letter that we just talked
15 about that came from Mr. Campbell was dated what date?

16 A I don't think I have it up here. I think it was
17 September 5th, but I don't think it's up here anymore.

18 Q September 5th, 2008?

19 A Yeah.

20 Q All right. Your time line that you provided to me and
21 to Mr. Whitmire, let's go to around that time.

22 A Okay.

23 Q Let's go back to September 23rd, 2008, and I did not
24 see this in your file. It indicates that you sent a
25 letter to the Solicitor by fax and mail, that you

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 74

1 still had not been able to review the evidence, or to
2 review the tapes.

3 A Uh-huh.

4 Q All right. Going forward from September 23, 2008, up
5 until the time that you got the offer of a cap of 18,
6 how many times or how much evidence did you get? Did
7 you get all of it during that time before the offer of
8 18 came?

9 A Okay. I'm sorry. You've totally lost me on that.

10 Q Okay. From September 23, 2008, on your time line.

11 A All right.

12 Q Up to the time that you sent him the letter, the
13 Solicitor the letter dated October 13, 2008.

14 A Well, that was the same day. September 23rd and we
15 had prior conversations and emails and stuff, but you
16 are saying on September 23rd, 2008.

17 Q You sent him a letter saying, "I still have not been
18 able to review all of the evidence."

19 A Right.

20 Q All right. That's when he sent you the offer of 15, in
21 September?

22 A I thought you told me he had sent it on September the
23 5th. Am I mistaken on that?

24 Q I'm sorry. September 5th, 2008.

25 A That's why it's confusing. Okay.

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 75

1 Q Okay. After that, how many letters did you send and
2 how much of the discovery did you get before you had
3 to respond or before you got the offer of the 18, the
4 cap of 18?

5 A I see what you are saying now. It says I received the
6 plea offer on 9/5, I met with Defendant, my paralegal
7 talked with Defendant another day, we received, it
8 does say received supplemental discovery from
9 Solicitor's office with Anderson County Sheriff's
10 office property report and then 9/12/08, it says, got
11 supplemental discovery from Solicitor's office with
12 officer notes, advice of rights form for Defendant,
13 investigator follow-up, copies of photographs and then
14 I have, I was still missing the ten tapes, the chain
15 of custody, the drug report on the scales and I had
16 not been able to view the evidence yet.

17 Q All right. Go down to 10/2 and 10/3.

18 A Okay.

19 Q On 10/2 you say you talked to Rame. All right. On
20 10/3 you say you met to review the latest discovery
21 with your client and you called the prosecutor to
22 accept the offer, but then down on 10/10 you say you
23 met with the prosecutor and was offered 18 years.
24 What were you meeting him with to accept or to call
25 him to agree to or to accept the offer on 10/10?

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 76

1 A On 10/3 it says met to review latest discovery with
2 client, called prosecutor to accept offer, offer
3 withdrawn.

4 Q All right. Was that the 15 years?

5 A Yeah. Uh-huh.

6 Q All right. And why was it withdrawn?

7 A Because the plea offer had expired.

8 Q All right. And you had not accepted it or talked with
9 your client and you indicated that you did not advise,
10 but your client had decided not to accept it. He says
11 it was because you told him you still had not reviewed
12 all the discovery. Is that right?

13 A I definitely would have told him. He still wants to
14 see all the discovery now and I don't blame him. He
15 has a right to it, so I told him we still don't have
16 these things.

17 Q So, you could not advise, if I want to call it that,
18 you could not say to your client, "I've seen all of
19 the discovery, the 15 years is there and, you know,
20 there's nothing else for us to see." You could not
21 say that before it was withdrawn. Is that right?

22 A I'm not sure I get that, but I had given him a copy of
23 the letter and he knew when it expired, but we also
24 knew we were missing some critical pieces.

25 Q All the discovery had not been received.

1 A Yeah. That's what you are asking?

2 Q That's what I'm asking. Yes. All right. And then on
3 10/10/2008, you indicated that you met with the
4 prosecutor and he offered you 18 years at that time.

5 A And then we went back and forth and got it changed to
6 a cap of 18.

7 Q And you met with Mr. Gonzalez. How did you explain to
8 him what a cap of 18 meant?

9 A I would have said we don't want 18, we'll try to talk
10 him into a cap of 18 and a cap of 18 would be the max
11 they would recommend that you would get and you could
12 try to beat it.

13 Q Try to?

14 A You could try to beat it. You could try to get less.
15 You know, there's a recommendation of 18, you could
16 argue for less.

17 Q Did you say to him that it could go anywhere from zero
18 or one to eighteen in terms of years?

19 A Well, I mean, that's technically what it could be, but
20 I probably realistically would have said it's probably
21 going to be somewhere between 15 and 18. I mean, I
22 doubt I would have told him anything about probation
23 or something less than that.

24 Q Let's go to a letter that you wrote to Mr. Campbell on
25 October 13, 2008.

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 78

1 A That's not on my time line. Like I said, I didn't put
2 everything on there. Could you hand me that?

3 Q Yes, ma'am. (Hands document to Ms. White) Read that
4 into the record, please.

5 A It says: October 13, 2008, Dear Mr. Campbell. I have
6 discussed your offer of 18 years with my client. He
7 will agree to a recommended cap, and that's in
8 italics, of 18 years. I will agree to plead Mr.
9 Gonzalez in front of Judge Nicholson who knows that
10 the State has never agreed to go below 15 years.

11 Q Now, what does that mean?

12 A That means he wasn't inclined to do a cap. He was
13 inclined to do just 18 years and so this was my way of
14 saying ---

15 Q When you are saying, he, who are you talking about?

16 A Judge Nicholson. We don't have all of the
17 transcripts. I had made another motion to bring up
18 all this stuff about, I didn't think it was right that
19 we were getting a plea offer that had then expired. I
20 swear to you, I think we went a different date in
21 front of Judge Nicholson. I don't think we have
22 everything.

23 THE COURT: I will say this. There is some indication
24 in the record where he indicates when this was before him,
25 "when you came before me for a continuance".

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 79

1 A We had a motion and I brought up all this and I said,
2 you know, that I think I should have a fair chance to
3 look at everything and then respond and I put ethical
4 rules in and all that and so I don't think we have a
5 transcript of that. So, what Rame was saying was, no,
6 I want 18 years and what I was saying is, well, we'll
7 go ahead if you'll give me a cap, then I will agree to
8 go in front of Judge Nicholson because he's already
9 heard all this stuff anyway about, you know, what we
10 were missing and dates and discovery and ethical rules
11 and all that, so I think that's what we are talking
12 about here.

13 THE COURT: Do your notes indicate when that hearing
14 would have been held?

15 MS. WHITE: I don't remember, Judge.

16 THE COURT: I tell you what. Let me just stop you, I
17 hate to interrupt, but Ms. Galloway.

18 MS. GALLOWAY: Yes, sir.

19 THE COURT: Do you feel that you need to get a copy of
20 that transcript?

21 MS. GALLOWAY: I do.

22 THE COURT: Okay. We will proceed here today. I will
23 ask you, Ms. White, after this hearing, to look and give
24 the information to Ms. Galloway or to Mr. Whitmire so we
25 can request that transcript, okay? If necessary, we can

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 80

1 reconvene for further testimony. Okay?

2 MS. GALLOWAY: All right.

3 MS. WHITE: I can go ahead and answer questions and at
4 the same time, I may be able to give you a date today,
5 unless you don't want me to.

6 MR. WHITMIRE: It was October 9th.

7 MS. GALLOWAY: October 9th of that same year?

8 MR. WHITMIRE: October 9th.

9 MS. GALLOWAY: 2008?

10 MR. WHITMIRE: Yes.

11 Q All right. Now, I ---

12 THE COURT: Do you normally request the transcripts?

13 MR. WHITMIRE: Your Honor, this has never come up
14 where I had a motions transcript request in general
15 sessions.

16 THE COURT: Let me ask you this: Normally, how do you
17 get a transcript from the AG's office?

18 MR. WHITMIRE: Once it's put on a merit's track, we
19 get the plea transcript or the trial transcript along with
20 the ---

21 THE COURT: I'm going to put it on you to go ahead and
22 ask for the transcript.

23 MR. WHITMIRE: Yes, sir.

24 Q All right. Do you want us to continue at this point,
25 Your Honor, or do I need to make a motion?

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 81

1 THE COURT: No, I'd like to proceed with the
2 testimony. It may be unnecessary depending on what you
3 have. If you then feel like you need to reconvene, I know
4 Ms. White would love to come back and give some more
5 testimony.

6 MS. GALLOWAY: All right.

7 Q Ms. White, after you told Mr. Gonzalez about the cap
8 of 18, the offer of the cap of 18, he testified that
9 he told you that he wanted to go to trial. Do you
10 recall that?

11 A If he had told me to go to trial, I would have gone to
12 trial. I can tell you that right now. I always tell
13 a client I'm their employee. I don't tell them what
14 to do. They tell me what to do. I give them the law.
15 I tell them what we found. I go over discovery with
16 them. I let them know how strong their case is. I
17 don't tell them what to do. They tell me what to do
18 when it comes to going to trial. Huh-uh, I don't make
19 that decision.

20 Q All right. Talk about the sentencing sheet. The
21 issue that is in front of, and I don't think the Judge
22 has denied our request for review of that yet. He
23 indicated that on the sentencing sheet, I believe, for
24 the trafficking, it was marked, lesser included
25 offense.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 82

1 A They dropped the weights.

2 Q All right. Give us your explanation as to that.

3 A PWID never was on the table. I would have loved it if
4 it was, but it wasn't. You know, they dropped, it was
5 a higher weight and they dropped it down to a lower
6 weight.

7 Q Okay. So, you are saying instead of the 400 grams
8 that he was initially charged with, it was marked
9 lesser included because they dropped the weight down
10 to 28 to 100?

11 A I assume that's why. I mean, that's all ---

12 Q Okay. So, you're saying you assume, but you don't
13 know?

14 A PWID was never discussed.

15 Q Okay. Would that have been something that you would
16 have looked at had you noticed it that day? Do you
17 recall whether or not ---

18 A No, because it was very clear that wasn't the offer.
19 We knew exactly what the plea was and it was not to
20 PWID. When I say it was never discussed, I mean Rame
21 never discussed that. You've got to understand, law
22 enforcement was extremely frustrated. Rame and I deal
23 together on cases all the time and he is, I think
24 everybody is going to say, a very rational, reasonable
25 prosecutor. It was very obvious at our first meeting

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 83

1 that law enforcement was extremely perturbed with this
2 Defendant. I can safely say that Rame has never -- he
3 always discusses cases and it's fine. He was
4 perturbed with Mr. Gonzalez and again, I think from
5 law enforcement's side, they thought he had been
6 yanking them around. From his side he thought that
7 they had not been cooperating to allow him to do this.
8 I don't know if one side was right and one side was
9 wrong or it was just mis-communication, but that's how
10 I got the case.

11 Q All right. Would it be correct to say that you had a
12 major problem in getting the discovery in this case or
13 you had a problem in getting the discovery in the
14 manner that you would have liked to get it to properly
15 advise your client?

16 A No. I think it's completely normal to get discovery
17 very late in the game. I did that as a prosecutor all
18 the time, because it flows in when it does. My
19 problem was not timing in the discovery. My problem
20 was the expiration of the plea offer. I had no
21 problem with getting discovery way up until the end,
22 just don't expire my plea offer before I get it.

23 Q All right. So, that was a concern of yours.

24 A Yes.

25 Q Do you recall or did you have any problems with the

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF DRUANNE WHITE BY MS. GALLOWAY 84

1 timeliness of getting the information regarding the
2 C.I. in this case?

3 A We knew who the C.I. was because he was there. I
4 mean, the C.I. and the -- on the tapes, yeah, but the
5 C.I. and the officer were right there. There was no
6 question who the C.I. was.

7 Q All right. But you didn't get that until near the
8 very end or the time that the, near the time that you
9 took the cap of 18 offer?

10 A The tapes, you're talking about?

11 Q Yes.

12 A Yes.

13 Q All right. And your client, did Mr. Gonzalez ask you
14 to do anything further or request any further
15 information in regard to the C.I. prior to agreeing to
16 accept the offer of 18, the cap of 18?

17 A No. You've got to understand the C.I. wasn't that
18 important in this case. We had an officer who was a
19 witness to the whole thing. This isn't somebody that
20 goes in on a buy and nobody sees anything. The
21 officer was the witness, so the C.I. in this case just
22 wasn't, it wasn't that important. We knew who he was
23 from the beginning.

24 Q So, there was no concern, whatsoever, regarding
25 probable cause from the beginning?

CROSS EXAMINATION OF DRUANNE WHITE BY MR. WHITMIRE

85

1 A Probable cause for the case, you are talking about?

2 Q Yeah, to set it up, to bust him, or to bring him in,
3 initially, regarding buys.

4 A The tapes were all setting up the buy and that's
5 completely legal. I didn't say law enforcement
6 involvement and I'm not saying he's lying. What I
7 said is, if one person is consenting to let law
8 enforcement listen and that part is a conversation,
9 per the conversation, then of course, it's not a
10 wiretap violation, because it's the expectation. Like
11 I said, that's no wiretap violation. He invited them
12 both into his house, which of course, is consent and
13 then you have, you know, plain view, and so we did
14 quite a bit of research. A lot of this file is
15 research on these things and ---

16 Q Thank you, ma'am.

17 MS. GALLOWAY: Nothing further, Your Honor.

18 THE COURT: Cross examination?

19 MR. WHITMIRE: May it please the Court.

20 CROSS EXAMINATION OF DRUANNE WHITE

21 BY MR. WHITMIRE:

22 Q I just want a quick time line of the discovery you
23 received. There are several different charts. Now,
24 you received your first round of discovery on
25 06/30/08. Is that correct?

CROSS EXAMINATION OF DRUANNE WHITE BY MR. WHITMIRE

86

1 A No, I emailed asking, and when I say "I", I mean my
2 office, because I don't do this. My paralegal handles
3 all this, but we emailed asking, you know, when we are
4 going to get discovery.

5 Q And you emailed on 4/29/08, and I believe you received
6 the warrants, indictments, bond order, criminal
7 history, drug analysis report, driving record,
8 incident report and investigative follow-up, Detective
9 Jordan's log, chain of custody, mug shots,
10 photographs, DMV records, Defendant's statement, BEST
11 kit envelope, copy of, ACSO property sheets and notes
12 from Detective Jordan. I just want to get the record
13 straight.

14 A We got that on 07/01/08.

15 Q Seven one of oh eight.

16 A I think you said, chain of custody. I don't -- we
17 didn't get chain of custody. Did I misunderstand what
18 you said?

19 Q No, no. The chain of custody report on the 1200 grams
20 of methamphetamine.

21 A Okay. I don't know.

22 Q And then I believe after that, going down, then
23 September 5th of '08 is when Solicitor Campbell offers
24 you the 15-year deal with the two week expiration on
25 it. Is that correct?

1 A Yes.

2 Q Then on September 8th, 2008, you received supplemental
3 discovery.

4 A Yes, it was either the 8th or somewhere in there. I
5 got the Sheriff's department's property report, the
6 list of the property that they had confiscated, in
7 other words.

8 Q On September 12th of '08, I believe you met with your
9 client, Toby Jordan and Mr. Campbell. Is that
10 correct?

11 A Right. We were trying to meet before the expiration
12 of that date. I, what I was, frankly, trying to do
13 was to get whatever had happened moved out and let
14 everybody work and let my client start working and
15 kind of get a fresh start, but I think the bridges
16 were kind of burned by then and that was not very
17 effective.

18 Q And I think there were two more discovery reports.
19 Please bear with me. Thank you for your patience,
20 today. September 12th of '08, more supplemental
21 discovery: Officer notes, supplemental case report,
22 advice of rights form signed by Mr. Gonzalez,
23 investigative follow-up report by Detective Jordan and
24 a copy of photographs.

25 A Yes.

CROSS EXAMINATION OF DRUANNE WHITE BY MR. WHITMIRE

88

1 Q So, at this point, I believe we are five days out from
2 the expiration date on the plea.

3 A I thought the expiration -- was the expiration date
4 the 15th or the 18th? I thought it was the 15th.

5 Q Yeah, I believe it was the 15th. This was the 12th.

6 A Yeah.

7 Q And you had been representing Mr. Gonzalez for a few
8 months at this point. Is that correct?

9 A It was around the first of May or the last day or so
10 of April, so it's right in that time period.

11 Q So, you reviewed all this with him and explained to
12 him that as much as you wished or hoped that the State
13 would extend the offer, there was no guarantee. Is
14 that correct?

15 A Yeah. He had a copy of the letter. We had met with
16 them. You know, we had met with them, but...

17 Q And it was his decision not to take the plea, the
18 15-year offer until you had reviewed the C.I. tapes,
19 the ten tapes. Is that correct?

20 A Yeah. And again, I can't blame him for it, because
21 there might have been some critical things in there.

22 Q And I believe after the expiration date, the C.I.
23 tapes are really what's left in discovery. Correct?
24 Everything else, you've gotten?

25 A No. After what date?

1 Q After the 15th.

2 A No. I'm still missing the ten tapes, the chain of
3 custody, the direct report on the scales and I'd not
4 viewed any of the physical evidence. I was missing
5 all those.

6 Q So.

7 MR. WHITMIRE: Those are all the questions I have.
8 Thank you.

9 THE COURT: Redirect?

10 MS. GALLOWAY: Nothing on redirect, Your Honor.

11 THE COURT: Thank you, Ms. White. Before you leave,
12 do you want to try to find that date? Do you have any more
13 witnesses to call?

14 MS. GALLOWAY: I'm finished, Your Honor.

15 THE COURT: You rest? Okay. Are you going to call
16 Mr. Campbell?

17 MR. WHITMIRE: Yes, sir, Your Honor.

18 THE COURT: Okay. Just for the record, let me make
19 sure we are clear as to my rulings during this hearing.
20 There seems to be some question about it. I went back and
21 looked.

22 Number 5 on your amended statement, Ms. Galloway,
23 failure of counsel to move or strike or object to allowing
24 the State to make the second statement of facts. Number 6,
25 essentially the same thing. Chain of custody and the non-

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE

90

1 certification of the chemist.

2 Now, I'm going to go back through my notes. Those are
3 the ones that I know that I've ruled out already. Are
4 there any other ones that you feel that I have that I
5 didn't go over?

6 MS. GALLOWAY: No, sir.

7 THE COURT: All right. Mr. Campbell, would you come
8 around, please, sir.

9 MS. WHITE: Your Honor, it's October 9th, 2008.

10 THE COURT: All right. October 9th, 2008. Is there
11 any reason that Ms. White, at this point, cannot be
12 excused?

13 MS. GALLOWAY: No, sir, because we are not going to
14 have that transcript today and so there's no need for her
15 to stay.

16 MR. WHITMIRE: No, sir, Your Honor.

17 MS. WHITE: Thank you, Judge.

18 THE COURT: Yes, ma'am.

19 (After being duly sworn by the Clerk of Court,
20 **RAME CAMPBELL** testified as follows:)

21 CLERK OF COURT: If you will take the witness stand
22 and state your name, please.

23 MR. CAMPBELL: Rame Campbell. R-A-M-E C-A-M-P-B-E-L-L.

24 DIRECT EXAMINATION OF RAME CAMPBELL

25 BY MR. WHITMIRE:

1 Q Mr. Campbell, how long have you been a solicitor here
2 in Anderson County?

3 A In Anderson County, since 2005.

4 Q And have you primarily prosecuted drug offenses?

5 A At that time, I was mainly the drug prosecutor in
6 drugs and homicides.

7 Q And if I'm correct, at that time, wasn't Kurt
8 Tavernier mainly the contract attorney for drug
9 crimes?

10 A Kurt did all the drugs for the Public Defender's
11 office as a contract attorney and I, at the time, was
12 the main prosecutor in our office who handled the
13 majority of the drug cases.

14 Q And do you recall when Mr. Gonzalez was arrested and
15 you came into contact with Mr. Tavernier about
16 possible plea negotiations?

17 A It would have been -- I received a Rule 5 and
18 discovery request from Mr. Tavernier on November 16th,
19 2006, so it would have been sometime, a couple weeks
20 prior to that. At that time, he and myself, we went
21 over and met with narcotic officers and reviewed the
22 case file with him.

23 Q Okay. And you've worked with Mr. Tavernier on similar
24 cases to this one, right?

25 A Numerous cases. We've tried cases. For several

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE

92

1 years, we did all the drug cases together.

2 Q Now, did you ever make a 12-year offer to Mr. Gonzalez
3 during Mr. Tavernier's representation?

4 A Officially, no. What was going on during that time,
5 since he and I worked together, we worked on a
6 consistent basis with one another, we basically had a,
7 in this case, a gentleman's agreement. He had talked
8 to Toby Jordan, who was the case officer on Mr.
9 Gonzalez's case and looking at, he was looking at a
10 minimum of three pounds of meth at 25 years. Kurt, in
11 other cases that we had similar to this, we had worked
12 some anywhere in a range of 10 to 15 years. He
13 approached me -- he had actually talked to narcotics
14 officers and approached me and said, "Hey, if my guy
15 works and tries to go up the chain -- meaning, we can
16 get his supplier because he's bringing the dope in
17 through Anderson County and getting it distributed
18 here in our county, we want this person that was
19 bringing it in to him -- and Mr. Tavernier asked me
20 would it be okay to talk to Toby Jordan and if he was
21 okay with it and if he would agree to it, would I
22 agree to it and, of course, I told him, yes. If
23 narcotics officers are fine with it, case officers,
24 it's their case, I'll go with it. PWID was never in
25 the picture, nor was probation ever mentioned. This

1 amount, three pounds of meth, it would never even
2 cross my mind that it would be a probationary
3 sentence.

4 Q Mr. Gonzalez's decision to work as a C.I., that was a
5 goodwill gesture on his part in hopes of a good plea
6 deal?

7 A Yes. In order for him to get a reduction from the
8 mandatory 25 years, he had to give us something, too,
9 and he basically, for the lack of a better term, he
10 jerked us around for over a year. It wasn't until
11 April of '08 when he retained Ms. White. And Mr.
12 Tavernier had been working with him. I had kept in
13 constant contact with the narcotics officers, Officer
14 Scoggins or Jordan, and constantly wanting to know if
15 this guy was working, was he doing what he said he was
16 going to do, is he living up to his end of the
17 agreement and the answer was always, no. And then
18 when he finally did something, when he was finally
19 pressured, he did some little minor dope deals less
20 than, you know, one of these little grams type deals.
21 And so, he was constantly, basically, giving us the
22 run-a-round and finally, it got to the point where
23 Tavernier would call, tried to get him in to try to do
24 things and I told him, finally, we're going to trial.
25 I'm tired of dealing with this. He's going to plead

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE

94

1 or we're going to trial, he's not lived up to his end
2 of the agreement and it was at that point that he went
3 and retained Ms. White.

4 Q We've had a lot of discussion from multiple people
5 today regarding a 12-year offer that was offered
6 during Mr. Tavernier's representation. That was just
7 a custom that you two had done in cases, there wasn't
8 any actual offer, that was just how things usually
9 worked out?

10 A There was never anything official, nothing in writing.
11 Kurt and I worked off of, for the lack of a better
12 word, a gentleman's agreement. If he gave me his word
13 or I gave my word, then that was it. I didn't need to
14 have it reduced to writing and in this case, because
15 of the amount of weight, and if you read his
16 statement, he just got caught on this one. He was
17 moving some serious weight through our county and, you
18 know, I was not going to just give him a pat on the
19 back and say, "Here's probation or a minor sentence,"
20 without him cooperating and giving us something and
21 only through the agreement of law enforcement would we
22 have done that. And Mr. Tavernier was in on it from
23 the get-go in participating with this and he was
24 having a hard time getting him to cooperate.

25 Q A few questions about September the 6th, a 15-year

1 offer to Ms. White. What is your office policy on
2 C.I. agreements or evidence relating to confidential
3 informants and disclosure?

4 A We don't turn over C.I. information until there is
5 definitely going to be a trail, approximately 10 days
6 prior to trial and the reason being is that as you
7 probably well know, drugs and violence go hand-in-hand
8 and there's numerous cases where C.I.'s or
9 confidential informants come up missing prior to trial
10 and we don't do that. But in this case, he knew who
11 the C.I. was and it wasn't a question about who he was
12 or what he was doing. In fact, if I recall correctly,
13 the C.I. wasn't even working off charges. He was in a
14 bar, he was approached by Mr. Gonzalez trying to sell
15 his dope that he's bringing in through the county
16 through his source and he called law enforcement, he
17 called Tony Jordan and they set it up through him and
18 Toby Jordan, the narcotics officer in the county,
19 posed as the, basically, the meth dealer in the area
20 who was going to go move his product for him and Toby
21 looked the part. He was definitely undercover. He
22 had the hair, the goatee, I mean, he looked like a
23 meth dealer and he went in with the C.I. They
24 exchanged money and after the money was exchanged, the
25 signal was given and they busted him right then.

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE

96

1 There was three pounds of meth, they photographed
2 everything, he was arrested right then, took him down
3 that day and he gave a complete statement and
4 confession.

5 Q I went over the time line with Ms. White regarding the
6 discovery that she obtained, she had gotten everything
7 except those ten tapes to listen to them at that
8 point. Was there anything else that you had not
9 provided?

10 A June 30th of '08, what I did, and I actually did a
11 time line of my own, because this case was becoming
12 such a problem. I sent out the warrants, the
13 indictments, the bond order, his criminal history, the
14 drug analysis report, the driving record, the incident
15 report, investigative follow-ups ---

16 Q And that's what I was going over with Ms. White. I
17 was comparing your time line to hers.

18 A I sent the chain of custody, the mug shot profile,
19 copy of the photographs, there were twenty-eight of
20 those, the DMV registration sheet, his statement, a
21 copy of the investigative envelope, the property
22 evidence sheets from the Anderson County Sheriff's
23 office showing what items were taken into custody
24 regarding this case, investigative notes and a
25 supplemental report. After that, I later sent, on

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE

97

1 September 8th of '08, a follow-up of the Anderson
2 County Sheriff's office report just putting it in a
3 different format and sent that out. The, having done
4 many cases with Ms. White and been to trial with her,
5 I knew exactly what she was going to look for and ask
6 for, so I also sent, had the drug scales tested for
7 methamphetamines, because scales were recovered. As a
8 part of a drug dealer's use, they will weigh the dope
9 out when they sell it, and so I had that tested, too.
10 I sent out more discovery after figuring this case was
11 going to trial on September 12th, I sat back down and
12 reviewed the case file again with the case file of
13 Officer Jordan and realized somehow I was missing some
14 of the stuff, initially, that wasn't provided and I
15 provided her officer's notes, there were four pages of
16 those, supplemental case report, one page. It was the
17 same I sent earlier, however, we actually put in the
18 name of the supplier, his supplier, the advice of
19 rights form that had been left out, another
20 investigative follow-up, it was exactly what was sent
21 earlier, however, one page, the last page had been cut
22 off with the copier and copies of some more
23 photographs. Then, after that, you know, once we were
24 dealing with a deadline, I never heard back so when I
25 didn't hear back from her office by 09/19/08, we put

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE

98

1 it on the trial docket and then on 09/24/08, I sent
2 supplemental discovery. I did a new indictment, I did
3 a drug classification of cocaine instead of crack,
4 because that was based on a sheet that was my mistake,
5 initially. I sent the C.I. rap sheet, C.I. audio
6 tape, the C.I. phone calls, also informed her by
7 letter the C.I. name and there was no substantial
8 assistance agreement dealing with the C.I. Two days
9 later, after we made a better copy of those audio
10 tapes in preparation for trial, we had those audio
11 tapes put onto a CD and I had them hand-delivered to
12 her office again. Later on, on October 2nd, I got the
13 analysis from the digital scales, and the digital
14 scales only came about when I was preparing for trial
15 and I knew she was going to ask for it and I sent it
16 off. It's minor dealing with three pounds of meth,
17 but the question is going to be raised and I received
18 the scales back, they tested positive for meth and I
19 sent her, again, the copy of that as I received it.
20 That was October 2nd.

21 Q Just a few more questions. I really appreciate your
22 coming here today, Mr. Campbell. The motions hearing
23 on October 9th, 2008, I believe Solicitor Adams was
24 involved in that, too. Is that correct?

25 A Yes, sir.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

1 Q Do you have any recollection of that hearing now?

2 A Yeah, we initially tried to meet with Ms. White and
3 her client and she wanted -- and I have to give you a
4 little background before we get there, okay?

5 Q I appreciate it.

6 A But she wanted to talk to law enforcement and so we
7 set up a meeting that was for July 23rd of '08. The
8 meeting had to be cancelled. That was with Tony
9 Jordan, myself, and her client, but Mr. Jordan was
10 involved in a federal drug case that day and could not
11 make it and so it was continued. She was not
12 available to meet with us again until September 12th,
13 based on her office sending us notice that she was
14 booked up and I remember, at that time, she had just
15 gone out in private practice and she was booked. So,
16 it wasn't until September 12th that we were able to
17 meet. We met on September 12th in her office with
18 myself, Toby Jordan and an individual who was working,
19 he was in the National Guard. He was working with
20 narcotics officers. We met and, basically, the only
21 thing I wanted to know at the meeting was, was it
22 going to be a plea or a trial. She wanted to have
23 this, she wanted to continue to work him, but I just
24 told her the time for working is long gone. I just
25 need an answer. This is the oldest case on my docket.

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE 100

1 Jean Toal has that order that says you've got to move
2 them. I need an answer, because we had been playing
3 this game, we were going on three years, two-and-a-
4 half years, of whether he's going to help, work, plead
5 or not. So, at this point, I want to know, are we
6 going to trial or not. I don't care about working.
7 She wanted to try to work him and that was her whole
8 point and I told her no, we're not doing it. We sent
9 an offer out and did not hear back and as a result of
10 not hearing back, I placed it on the trial docket. I
11 assumed, having dealt with her, she can be prepared
12 for trial and later, the next week, she sent a letter
13 saying she was not ready because she had not listened
14 to C.I. tapes. Because it had already been published
15 on the trial docket and indicated to her, well, we
16 will have to have a continuance hearing and we will
17 set it up. Between that time on October 2nd, we went
18 out and reviewed the evidence at the Sheriff's office,
19 what property that was in custody, which essentially
20 was some scales, some dope. There wasn't a whole lot
21 of evidence taken. Then, as a result of that, I
22 coordinated it, she filed a motion of continuance, she
23 still wanted me to go back, she still kept asking, can
24 you do 12 years, which she was talking about. That's
25 true, she kept trying to get me down. At this point,

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE 101

1 we know it's on the trial docket. My boss's policy
2 is, once it hits the trial docket, we either go to
3 trial or it pleads. At that point, my boss, Solicitor
4 Adams was involved in this case. We had a meeting
5 with Judge Nicholson. Well, first, Ms. White came to
6 our office. She spoke with me and Solicitor Adams and
7 at that point, Solicitor Adams is actually the person
8 that put the 18 years on the table. That was her
9 deal. We did a motions hearing on October 9th in
10 front of Judge Nicholson. Judge Nicholson took
11 Solicitor Adams, Druanne, Kurt Tavernier and me back
12 in chambers and we talked about the case. At that
13 point, the case was continued. At that point,
14 Solicitor Adams spoke with, the next day was 10/10.
15 Solicitor Adams spoke with Ms. White and myself in her
16 office regarding, she made the offer of an 18-year, I
17 think it was a cap, and it wasn't until, basically, it
18 was two months later, January 14th of '09 that he pled
19 guilty and Judge Nicholson gave him a sentence of 16
20 years. And basically, I asked her to file a motion of
21 continuance, that you know, go ahead, put something in
22 writing, go ahead and put something on there so we can
23 go ahead and get it scheduled and, you know, that's
24 when Judge Nicholson was able to hear it.

25 Q Thank you, Mr. Campbell.

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

CROSS EXAMINATION OF RAME CAMPBELL BY MS. GALLOWAY 102

1 MR. WHITMIRE: I have no further questions, Your
2 Honor.

3 MS. GALLOWAY: Just a couple on redirect (verbatim),
4 Your Honor.

CROSS EXAMINATION OF RAME CAMPBELLBY MS. GALLOWAY:

7 Q Mr. Campbell, you said that you know Druanne real well
8 and you know the way that she prepared her cases, then
9 you would know that she would not want to advise her
10 client without having all the discovery information?

11 A Let me explain what I'm talking about. I know how she
12 is when she prepares for a trial, the questions she's
13 going to ask, what angle she's going at. That's why I
14 had the digital scales tested, because I knew she was
15 going to ask questions about that. She already had
16 the information. She had already talked to Toby
17 Jordan and the case officers involved. She already
18 had his statement. The only thing that she was
19 missing was the C.I. tapes and we don't give those
20 C.I. tapes out until ten days before trial.

21 Q All right. Well, was that offer of 15 made 15 days
22 prior to trial?

23 A It was made, it was made on 09/05/08.

24 Q All right. When was trial supposed to held?

25 A The week of trial was October the 6th.

CROSS EXAMINATION OF RAME CAMPBELL BY MS. GALLOWAY 103

1 Q So, she wouldn't have had the information regarding
2 the C.I., right?

3 A No, not at that point in time. And also, trying to
4 schedule her at that time was hard and she, her office
5 called and said she wasn't even available until
6 September the 12th, initially.

7 Q You mean, she didn't have them.

8 A Have what? The C.I. tapes?

9 Q Yes.

10 A No, ma'am.

11 Q Okay. All right. And your policy is to get it out ---

12 A Ten days prior to trial.

13 Q Okay. You recall having a telephone conversation with
14 me on May 1st of this year? And let me just tell you
15 this to see if you recall. What I have written in my
16 notes is that you said that you can't say definitely
17 whether 12 was definitely on the table, but if Kurt
18 said it, then you don't disagree.

19 A No. Because we, as I explained earlier on direct, we
20 did a gentleman's agreement. He talked to Tony Jordan
21 and if he talked to Tony Jordan and Jordan said he was
22 okay with 12, then I was okay with 12. I never
23 officially sent out a written offer of 12 years.

24 Q All right. But you refused to talk to Druanne about
25 the 12 at all?

CROSS EXAMINATION OF RAME CAMPBELL BY MS. GALLOWAY 104

1 A It was off the table. I mean ---

2 Q Off the table even before she got all the discovery
3 information?

4 A Well, first of all, he didn't deserve the 12 years
5 because he never lived up to his bargain, the part of
6 the bargain of helping out.

7 Q Where was it written down what he was supposed to do?
8 How much work was supposed to be done?

9 A It was between him, the officers, and Kurt Tavernier.
10 That was the deal.

11 Q All right. Well, what if the officer decided that he
12 had to work for 10 years?

13 A They don't work that way and furthermore ---

14 Q Where was it written?

15 A It was not written down with what exactly he had to
16 do. You would have to ask Toby Jordan, which he
17 should have been subpoenaed today. He could tell you.
18 I let them handle that part. All Kurt did was
19 approach me with would I go with 12 years if he
20 cooperated and tried to go up the chain with his
21 narcotics dealer and if he were to cooperate and work
22 and try to get them and he kept basically playing us
23 and he would not ever cooperate.

24 Q All right. Do you recall Toby Jordan's statement, his
25 supplemental report?

CROSS EXAMINATION OF RAME CAMPBELL BY MS. GALLOWAY 105

1 A I don't have it in front of me. You'll have to show
2 it to me.

3 Q Let me ask you, were there any tapes ever submitted to
4 Druanne from the actual buy? Were there any?

5 A That, I don't know. I know she was given tapes of the
6 C.I. audio tapes. That's all I had and the Defendant
7 and C.I. phone calls.

8 Q All right.

9 MS. GALLOWAY: Your Honor, this is a follow-up report
10 of Toby Jordan's and it's a part of my client's Amended PCR
11 Application. It's a three-page document.

12 Q I would like you to go down ---

13 THE COURT: Is it captioned, Exhibit "A"?

14 MS. GALLOWAY: Yes, sir.

15 Q All right. Go down to, approximately, the middle of
16 the page.

17 THE COURT: Which page, page 17?

18 MS. GALLOWAY: Let me see, Your Honor. (Looks at
19 document) Yes, sir.

20 Q All right. And I'm going to count the lines from the
21 bottom: 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16. And
22 the word right before the beginning of that is
23 Reynaldo on the last line of the sentence prior to.

24 A Where he checked both of us for a wire?

25 Q Yes. Reynaldo checked. Read that, please.

CROSS EXAMINATION OF RAME CAMPBELL BY MS. GALLOWAY 106

1 A Reynaldo checked both of us for a wire by rubbing on
2 our chests and back.

3 Q Okay. Keep going.

4 Q Both myself and the U.O. were wearing a wire, but they
5 were not located by Reynaldo.

6 Q All right. They were wearing a wire. Were there any,
7 where are the recordings?

8 A Well, they would have had them, if they had them. I'm
9 not saying -- this was in '08. I don't remember all
10 the details. I just remember what I have,
11 specifically, written down, but ---

12 Q But if there's a wire, we assume there's some
13 recording. Is that correct?

14 A That's correct. However, it was a buy bust in which
15 the officer was there and immediately arrested him
16 after the transaction occurred.

17 Q If there was a recording, it should have been
18 submitted to the defense attorney along with
19 discovery. Is that right?

20 A It would have been. Yes, it should have been.

21 Q All right. But based upon what you remember, none
22 was. Is that right?

23 A I can't tell you if the recording was good or not. I
24 can't recall that. That's just being straight. I
25 just don't know. But he was arrested, immediately,

REDIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE 107

1 right then by Toby Jordan.

2 Q Now, you talked about Justice Jean Toal and her memo
3 that said you've got to get your cases, this was one
4 of your oldest cases, but you also saw a memo that
5 said you can't force these attorneys into pleas
6 without making sure they have all their discovery.

7 A The only thing she didn't have was the C.I. tapes.

8 Q And the tapes from the buy, if there were any?

9 A That's correct.

10 MS. GALLOWAY: Nothing further, Your Honor.

11 THE COURT: All right. Redirect?

12 MR. WHITMIRE: Three quick questions.

13 REDIRECT EXAMINATION OF RAME CAMPBELL

14 BY MR. WHITMIRE:

15 Q As a solicitor, you keep up with current case law,
16 don't you?

17 A For the most part. I try to.

18 Q Are you familiar with State v. Hymen?

19 A I'm familiar with that case, but I might not remember
20 all the facts.

21 Q There's a balancing test for disclosure of C.I.
22 discovery.

23 A I believe that's correct. We have to look at it.
24 When you're dealing with drugs, you don't just give
25 out the C.I. information because of the hazzards it

REDIRECT EXAMINATION OF RAME CAMPBELL BY MR. WHITMIRE 108

1 could pose for the individuals cooperating.

2 MR. WHITMIRE: And this memo that was submitted into
3 evidence -- never mind. Strike that. No further questions.
4 Thank you.

5 THE COURT: May Mr. Campbell be excused?

6 MR. WHITMIRE: Yes, Your Honor.

7 MS. GALLOWAY: Yes, sir.

8 THE COURT: Thank you, sir. All right. Let me
9 clarify for the record where we are, please, or attempt to.
10 I'm going to keep this matter open only, only so far as the
11 record from the October 9th, 2008 hearing that had issues
12 that would be relevant to the issues raised by the
13 Applicant thus far. He will not be allowed to raise new
14 issues. Well, I tell you what, if you feel like you need
15 to based on something that you have not received, then
16 would you give the State advanced notice?

17 MS. GALLOWAY: Yes, sir.

18 THE COURT: Okay. Let me kind of go over with you
19 where I am at this point: Accepting the plea without full
20 disclosure, failure of counsel to accept a 12-year verbal
21 offer when the Defendant is facing 25, defect in the
22 sentencing sheet, Defendant not knowing the plea, the
23 details of the plea, failure to strike or object to the
24 second statement of facts, number six on the Defendant's
25 amended bases and the wiretap. I'm going to do that in

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA

1 reverse.

2 Thus far, without making a ruling, thus far, my
3 thoughts are to this point is that the only testimony is
4 that on the illegal wiretap, there was no requirement there
5 for law enforcement. The permission of the cover of the
6 C.I. allowed them to listen in which would not require a
7 wiretap so therefore, unless you come up with something
8 else, Ms. Galloway, I'm going to deny the motion on that,
9 but I'm not forestalling your ability to do.

10 I've already ruled on failure to object, to allow the
11 State to make two comments on the facts. That's just
12 totally without merit.

13 Numbers one and four are very close together and
14 that's accepting the plea without full discovery and not
15 knowing the full the details of the plea. I think those
16 are very close together, or that's the way I'm looking at
17 them.

18 MS. GALLOWAY: Do you mean without the discovery and
19 without knowing the full details of his plea?

20 THE COURT: Yes, numbers one and number four on your
21 sheet. If they are different, I'll get you to tell me what
22 the difference is.

23 MS. GALLOWAY: Okay.

24 THE COURT: What is the difference?

25 MS. GALLOWAY: Well, in regard to the details of the

110

1 plea, what my client said to me and I think what he set out
2 in the PCR application, or the amended one, is that he did
3 not fully understand, that Ms. White did not fully explain
4 to him what up to a cap of 18 years meant. He said his
5 understanding was that he could have gotten two years or he
6 could have gotten 10 years. He didn't understand, fully,
7 what that meant.

8 THE COURT: Okay. I wasn't too impressed with Mr.
9 Gonzalez's answer when he said the ceiling was eighteen.
10 Basically, the same thing Ms. White said and that probation
11 was not realistic and she doubted very seriously that she
12 would have said probation. I think he did understand, from
13 his testimony, but regardless, the colloquy with Judge
14 Nicholson fully goes through all the necessary
15 constitutional rights. He advised him that there was a cap
16 of 18 years. He said he understood it, clearly. And so my
17 thoughts at this stage is that he's not proven anything and
18 what the prejudice is, since he actually received a
19 sentence of less than 18, I don't know what prejudice there
20 could be. And that would be number four.

21 The sentencing sheet on page 14 of the transcript in
22 the colloquy, clearly shows this is going from 400 grams
23 down to 28 to 100 grams. That's what the lesser included
24 is. PWID was not on any indictment. It is never anywhere
25 in the record and certainly nothing to support it in the

1 evidence in this case.

2 Failure of Defense Attorney to accept 12-year verbal
3 offer when Defendant is facing 25. I take that to mean, on
4 the cooperation issue with the State. Right now, the case
5 of The State versus Thrift, any plea arrangements need to
6 be in writing. That's why you have these arguments in the
7 first place. Even if it's probation, I find that it is
8 very doubtful whether probation would ever be considered
9 based on the weight that was found in this case, but even
10 so, it's incumbent to have some evidence as to what was
11 required of the Defendant before you can have this deal of
12 12 years, 15 years or probation or whatever it was, that's
13 totally lacking in this case. There's no evidence. In
14 fact, the only evidence that I've seen so far is that Ms.
15 White indicates she doesn't understand why he thought this.
16 She said there was clearly frustration on the part of law
17 enforcement. The only things he apparently obtained for
18 them through his cooperation were small deals, nothing to
19 go up the ladder to convict, so I'm left to consider with
20 speculation of what it could ever be, so that being said,
21 that would be his burden of proof. From what it was, I
22 think it was an impossible burden because I think that's
23 why it should be in writing in the first place.

24 Accepting the plea without full discovery under number
25 one. Essentially, what I've heard is, he had some

112

1 information about scales, he had some information about the
2 C.I. Clearly at the time the C.I. was known, but in this
3 case, under the facts, under the case you just mentioned,
4 Mr. Whitmire, my understanding is the test of disclosure of
5 the C.I. is whether it's material to the transaction, to
6 the defense of this matter, something along those lines,
7 and the officer was right there at the time, he was there
8 with the Defendant, so he knew exactly who it was and so I
9 don't know that that reaches his burden anywhere in this
10 case. So far, my feeling is that Mr. Gonzalez has not
11 proven his case although Ms. Galloway, that's no reflection
12 on what you've done, it's just those are the facts of the
13 case. With that being said, have I overlooked any issues
14 except those that may be in the October 9th, 2008, hearing?

15 MS. GALLOWAY: Your Honor, did you address the
16 warrant-less entry issue?

17 THE COURT: No, I didn't. Thank you. The warrant-
18 less entry, clearly again, that was with the C.I. and the
19 undercover officer. Based on the field notes, that I
20 received, from Mr. Jordan attached to the Amended
21 Application, the Defendant or the Applicant invited them
22 into his house and I have not received anything that says
23 that law enforcement has to announce, "We are law
24 enforcement," or even ask, under the circumstances. Now,
25 if there is some kind of requirement in that regard, would

1 you please give it to me and I'll rethink that,, but if he
2 asked to come into the house, there was no need for a
3 requirement. And as Ms. White said in her testimony, once
4 they were there, then you started having plain view
5 doctrine and things you are seeing in the location when
6 these things occurred, et cetera, et cetera, and so I don't
7 think that would be grounds or has not been. I don't think
8 there is more required.

9 Chain of custody, I've ruled on. Chemist, I've ruled
10 on. If, since I kind of caught you flatfooted and didn't
11 let you get into those things, which would be numbers five
12 and six on your May 7th, 2013 additional grounds, chain of
13 custody, the chemist, if you think that I was premature in
14 doing that for some reason, I'm going to let you have leave
15 to present additional testimony, just let me know and let
16 the State know.

17 MS. GALLOWAY: Yes, sir.

18 THE COURT: Have I covered everything that is before
19 me?

20 MS. GALLOWAY: Yes, sir.

21 THE COURT: Okay. Mr. Whitmire, you are going to
22 obtain the record from October 9, 2008, I believe it is,
23 from that motion hearing. Is that correct?

24 MR. WHITMIRE: Yes, Your Honor.

25 THE COURT: And you will make that available to Ms.

1 Galloway?

2 MR. WHITMIRE: Yes, Your Honor.

3 THE COURT: Okay. And once y'all do that, then we'll
4 reschedule when there's a time that's convenient and you
5 have a chance to prepare your case. If you would
6 coordinate with Mr. Whitmire if he's still there. If not,
7 we'll still go forward with any person who may be in his
8 place, okay? That is just my thoughts. It's without
9 prejudice and it's not a ruling, okay? Anything further I
10 need to cover, Ms. Galloway?

11 MS. GALLOWAY: No, sir.

12 THE COURT: Mr. Whitmire?

13 MR. WHITMIRE: Your Honor, I will prepare the Order of
14 Continuance reflecting in the order my office is obtaining
15 the transcript. If any complications come up with
16 obtaining the transcript, I'll let everyone know
17 immediately.

18 THE COURT: Please. Thank you.

19 MR. WHITMIRE: Thank you, Your Honor.

20

21 (WHEREUPON, THE HEARING IN THE ABOVE-ENTITLED MATTER
22 WAS CONCLUDED.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

CERTIFICATE

Be it known that I, the undersigned Jo Rice, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of this hearing before the Circuit Court for Anderson County, South Carolina, so given on May 8, 2013 to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand and seal this 20th day of February, 2014.



Jo Rice
Official Court Reporter

REYNALDO GONZALEZ VERSUS THE STATE OF SOUTH CAROLINA



The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE

POST OFFICE DRAWER 12456
COLUMBIA, SOUTH CAROLINA 29211
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SEE
TTPD 18-4
1113 2025
INS 1-9

MEMORANDUM

All Solicitors

FROM: Chief Justice Jean Hoefer Toal

Plea Agreements and Discovery

DATE: March 1, 2004

It has come to my attention that solicitors in some circuits are offering plea agreements to defendants on the condition that they forgo discovery. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on a claim that the plea was not voluntary because the applicant did not have access to the solicitor's file.

Furthermore, I believe it is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. See Rule 3.4, RLDE, Rule 407, SCACR. I ask that any solicitors who are currently pursuing this practice to stop immediately.

On a separate issue, apparently some magistrates are setting bonds after *ex parte* meetings with alleged victims. This is also unethical and, although I will be communicating directly with the magistrates regarding the issue, I ask for any assistance you might be able to provide if you are aware that this is happening in magistrates courts in your area.

State of South Carolina

County of Anderson

In the Court of Common Pleas

Reynaldo Gonzalez,

Applicant,

-vs-

State of South Carolina,

Respondent.

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2011-CP-04-0395

September 18, 2013

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Hugh Welborn, Esquire
Attorney for the Applicant

John W. Whitmire, Esquire
Attorney the State

Renee H. Tollison
Circuit Court Reporter

INDEX

WITNESSES	PAGE
PCR Hearing	3
Certificate of Reporter	6

EXHIBITS

No	DESCRIPTION	ID	EV
A-1	<i>No exhibits were presented during the hearing.</i>		
A-2			
A-3			

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 9:44 a.m.)

4 THE COURT: All right. This is Gonzalez?

5 MR. WHITMIRE: Yes, sir. I'm just giving him a
6 chance to get his hearing aid in first.

7 THE COURT: Okay. All right.

8 MR. WHITMIRE: Your Honor, the first matter
9 before the Court today is Reynaldo Gonzalez v. State of
10 South Carolina, 2011-CP-04-305. Your Honor, this hearing
11 is a continuation from a hearing from our May term. You
12 ordered the State to get a transcript. The State has
13 gotten it, provided it to Ms. Galloway. Briefly, we have
14 the previous hearing, Your Honor. Mr. Gonzalez was
15 charged with trafficking methamphetamine.

16 THE COURT: Yeah, I've read my notes. And I
17 think we had -- when we broke last time, you were going
18 to get a transcript of a motion hearing, a discovery
19 hearing or something along those lines. And we had a
20 phone conference prior to today concerning whether or not
21 further testimony would be taken. I told the attorneys I
22 didn't care for any further testimony at this point
23 unless, Ms. Galloway, based on what you read you saw
24 something that brought up new issues.

25 MS. GALLOWAY: Your Honor, I did go back

1 through my notes as well and did see that you had denied
2 basically all of the issues unless something new came up
3 as a result of reviewing the transcript.

4 THE COURT: Yes, ma'am.

5 MS. GALLOWAY: I've discussed it with my
6 client, Your Honor. And he does -- he insists, at least
7 insists to me ---

8 THE COURT: He can insist all he wants to, but
9 that's a whole 'nother story.

10 MS. GALLOWAY: All right. He insists to me on
11 being heard, but I do believe that there is at least one
12 that came as a result of reviewing the transcript.

13 THE COURT: And let me ask you as an officer of
14 the court, what would that issue be?

15 MS. GALLOWAY: All right. That issue would be
16 the issue of accepting a plea without benefit of full
17 discovery.

18 THE COURT: We already had that, and that's in
19 my notes. I am denying his claim in full. Okay? I
20 appreciate your hard work on the case, Ms. Galloway. You
21 did a fine job. I do not care to hear from Mr. Gonzalez
22 any further. And as far as I'm concerned, this matter is
23 resolved.

24 Mr. Whitmire, would you draw me an order consistent
25 with my order instructions from the prior hearing,

1 please?

2 MR. WHITMIRE: Yes, Your Honor, I will draw ---

3 THE COURT: Would you specifically put in there

4 ---

5 THE APPLICANT: Your Honor ---

6 THE COURT: No, sir. You will sit down and not
7 say anything.

8 You -- if you will also place in there that we

9 convened a second hearing and that there were no new

10 issues raised that were viable based on review of the

11 transcript. So the claim is denied.

12 MS. GALLOWAY: All I can do at this point, Your

13 Honor, is indicated that my client vehemently insists

14 that I take exception to your ruling.

15 THE COURT: That's fine.

16 Thirty days to appeal my ruling, Mr. Gonzalez.

17 MS. GALLOWAY: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (WHEREUPON, the hearing ended at approximately 9:46

20 a.m.)

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

Reynaldo Gonzalez v. State of South Carolina 2011-CP-04-0395
PCR Hearing September 18, 2013

6

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 18th day of September 2013.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

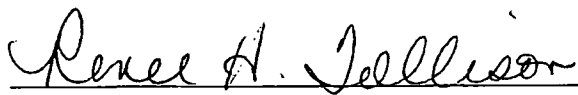
12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 February 5, 2014

15

16

17



Circuit Court Reporter

STATE OF SOUTH CAROLINA
 COUNTY OF ANDERSON

Reynaldo Gonzalez,
 S.C.D.C. No. 332772,

Applicant,

v.

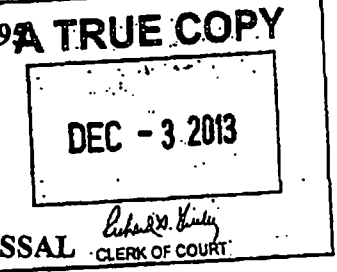
State of South Carolina,

Respondent.

CLERK OF COURT
 ANDERSON SC
 2013 DEC -3 A 9:33
 COMMON PLEAS AND
 GENERAL SESSIONS

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2011-CP-04-039



ORDER OF DISMISSAL

This Matter comes to the Court by way of an Application for Post-Conviction Relief (PCR) filed February 2, 2011. Respondent filed its return on March 15, 2012. An evidentiary hearing was convened at the Anderson County Courthouse on May 8, 2013. Counsel was present and was represented by Carolyn Galloway, Esq. The Respondent was present and was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Roger Scroggins, Kurt Tavernier, Druanne White, Applicant, and Rame Campbell testified. At the conclusion of the hearing, this Court held the record open and ordered Respondent obtain the October 9, 2008 motion hearing transcript in State v. Gonzalez before the Honorable J. Cordell Maddox., Jr. The transcript was provided to Applicant and this Court in August of 2013. A limited evidentiary hearing was convened by this Court on September 18, 2013. This Court declined to take additional testimony and denied and dismissed the action.

PROCEDURAL HISTORY

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

methamphetamine (2007-GS-04-168) and trafficking methamphetamine (2007-GS-04-169). Applicant was subsequently indicted for possession of cocaine (2008-GS-04-2208). He was represented by Druanne D. White, Esq. On January 14, 2009, the Applicant pled guilty to the charges. The Honorable J.C. Nicholson, Jr., sentenced the Applicant to confinement for concurrent periods of ten (10) years for conspiracy to traffic methamphetamine, one-hundred and ninety-eight (198) months for trafficking methamphetamine, and three (3) years for possession of cocaine. The sentences were to be served concurrently. A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Reynaldo Gonzalez, 2010-UP-405 S.C. Ct. App. filed September 16, 2010).

Applicant proceeded on the following allegations that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - i. failure to move to suppress the narcotics as because an illegal wiretap;
 - ii. failure to move to suppress the narcotics because of an unlawful search and seizure;
 - iii. failure to move to suppress the narcotics because of an a search incident to arrest absent probable cause for the arrest;
 - iv. failure to move to suppress the narcotics because of defective chain of custody and mishandling;
 - v. failure to ensure the solicitor honor the terms of the alleged 2006 plea offer;
 - vi. failure to advise Applicant on the terms of the September 2008 plea offer;
 - vii. failure to object to discrepancies in the sentencing sheet;
2. Prosecutorial Misconduct:
 - i. withdrawing the September 2008 plea offer prior to providing Applicant the opportunity to listen to the wire tapes;

SUMMARY OF TESTIMONY

At the PCR hearing, Officer Roger Scroggins of the Anderson County Sheriff's Department, Narcotics Unit, testified to his role in Applicant's arrest. Scroggins testified

Applicant was arrested pursuant to a controlled buy with an informant and Investigator Jordan, who remained undercover. The controlled buy occurred at Applicant's residence. Scroggins took part in the search incident to arrest. Scroggins collected and processed the evidence as follows: he took pictures of each item of evidence; logged the location of each item; transported the evidence to the sheriff's office; placed the controlled substances in a best kit and stored the remaining evidence in the evidence locker. Scroggins testified he did not notarize the evidence forms because the evidence never left the office when in his control and custody.

At the PCR-hearing, Kurt Tavernier, former counsel, testified to his course of conduct in representing Applicant. Former counsel testified he has practiced law for twenty-four years and was a formerly a police officer. Former counsel testified he primarily handles drug cases in Anderson County. Through his years of practice, former counsel has developed a working relationship with the solicitor's office for narcotics cases. Former counsel was retained by Applicant on November 15, 2006 and immediately filed for discovery. Former counsel obtained the incident report, Applicant's statement to police, and listened to tapes from the informant's wire. Former counsel testified he discussed the above with Applicant. In the face of overwhelming evidence of guilt, former counsel testified he advised Applicant work as an informant for police to get the solicitor to come down off of the mandatory minimum twenty-five year prison sentence for the underlying charges. Applicant desired to mitigate his exposure to incarceration by aiding police as an informant. Former counsel made the arrangements and Applicant entered an informant agreement with police. Applicant was advised the solicitor would most likely make a favorable offer if Applicant's efforts proved successful. Former counsel testified "favorable" equated to a probable twelve year offer based upon his prior experience. Former counsel further testified the informant agreement with police was a goodwill gesture and

not a plea agreement. After two years of little success, the police expressed agitation with Applicant's efforts. Communications between Applicant and police broke down. Subsequently, Applicant relieved former counsel and retained counsel.

At the PCR hearing, counsel testified she represented Applicant for seven months prior to the disposition of his charges. Counsel obtained former counsel's file and independently filed for discovery. Applicant told counsel he desired to continue working for police in return for hopes of getting a lighter prison sentence. Counsel discussed the matter with the solicitor and learned that a probationary sentence was never a consideration although Applicant told her otherwise. The solicitor apprised counsel of his prior plea negotiations. In September of 2008, the solicitor made his first offer, of fifteen years, to counsel. It was conveyed in writing and included a two week expiration date. Counsel advised Applicant of the offer and Applicant decided to postpone a decision until he listened to the wire tapes. Counsel obtained the tapes and Applicant accepted the offer in October of 2008. Counsel was told the offer had expired and would not be revived. A subsequent second offer with a recommendation to exceed fifteen years was conveyed to counsel. Counsel made a motion to compel the revival of the first offer that resulted in a hearing being convened on the matter. The motion hearing judge found no basis to compel the solicitor to revive the first plea offer. Applicant accepted the second plea offer and pled guilty to trafficking. Counsel advised Applicant that there was no viable suppression defense. Counsel testified the indictments, offers, and guilty plea were for trafficking and not possession with intent to distribute.

At the PCR hearing, Applicant testified to his consultations with former counsel, counsel, and the police regarding his stint as an informant. Applicant raised numerous allegations of ineffective assistance of counsel. Applicant alleged counsel was ineffective for not pursuing any

and almost every conceivable suppression related defense. Applicant also alleged ineffective assistance of counsel for failure to ensure the solicitor honored the terms of the alleged 2006 plea offer and enforce the September 2008 plea offer after its expiration. Applicant admitted his guilt and testified he entered a confidential informant agreement with police because he was told by Officer Baxter that would receive a probationary sentence if he provided substantial assistance in major narcotics cases. Applicant testified he successfully completed a controlled buy for fifty

~~dollars of cocaine and then botched a subsequent controlled buy for a thousand dollars of~~

~~cocaine.~~ Applicant testified he told former counsel he was upset the police were not providing him with enough work. Applicant subsequently relieved former counsel and retained counsel. Applicant was apprised of the September 2008 plea offer by counsel. Applicant testified he decided he wanted to hear the wire tapes first because he believed the tapes would show he was lied to and not read his rights at the time of arrest. Applicant listened to the tapes and accepted the offer in October of 2008. Applicant testified counsel failed to advise him the offer would expire by the middle of September of 2008. As a result, Applicant testified he accepted a second, more punitive, offer because counsel advised him the deals would only get worse.

At the PCR hearing, the solicitor testified to his involvement in Applicant's case. The solicitor was assigned to prosecute Applicant for 2006 offenses. The solicitor testified he developed a close working relationship with former counsel. The solicitor complied with former counsel's discovery motion and coordinated his actions with the police. The solicitor testified Applicant was exposed to a minimum mandatory twenty-five year sentence on the trafficking, more than 400 grams, charge and would have to "give something up" for the solicitor to make an offer to a lesser-included offense. The solicitor testified he and former counsel came to an understanding if Applicant's informant work proved liable. Applicant "jerked" the police around

for a year and completed a minor controlled buy. The potential plea bargain was "off the table" when Applicant failed to conform with the terms of his confidential informant agreement with police. The solicitor provided counsel all applicable discovery except for the wire tapes because it was an office policy to only disclose discovery from a confidential informant until ten days prior to trial. The September 2008 offer terminated after its expiration. The solicitor testified that counsel made a motion to compel the revival of the offer that was rejected.

APPLICABLE LAW

~~In a post-conviction relief action, the Applicant bears the burden of proving the~~ allegations in their 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, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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. at 668, 104 S.Ct. at 2064. 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, *supra*. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

I.

As a matter of general impression, this Court finds Applicant's testimony not credible. The State's evidence against Applicant was substantial. This Court finds Applicant's ineffective assistance of counsel allegations that related to suppression defenses were without merit. Applicant was arrested as a result of controlled buy with an informant. The informant and Applicant engaged in lengthy negotiations for a substantial narcotics transaction that occurred in Applicant's residence. The State's evidence of Applicant's involvement in the transaction was supported by the informant's account and wire recording along with the undercover officer's observations. Applicant was arrested and confessed. This Court finds former counsel diligently advised Applicant to enter an informant agreement with police in hopes of it leading to a reduced sentence. Applicant failed to meet expectations and was discharged from the informant agreement. Applicant failed to prove the solicitor's good faith willingness to take into account Applicant's decision to work for the police constituted a formal plea offer. Applicant also failed

to prove he would have accepted the September 2008 plea offer had counsel advised him to forgo obtaining the wire tapes. Applicant failed to prove the solicitor's discovery policy for confidential informant related evidence was improper. Additionally there was no prejudice when former counsel listened to the wire tapes and advised Applicant accordingly.

This Court originally continued this matter to allow Applicant to investigate and bring forth any issues related to the 2008 preliminary motion hearing. This Court has examined the transcript and finds no additional issues of merit. Furthermore, this Court finds the testimony and evidence already before this Court regarding the allegations related to discovery to be substantially thorough. Therefore, this Court closed the record at the September 2013 hearing over Applicant's objection to present additional testimony and/or testimony.

A.

This Court finds Applicant did not meet his burden to prove counsel was ineffective for failing to make motions to suppress. "The Fourth Amendment prohibits unreasonable search and seizure, and requires that evidence seized in violation of the Amendment be excluded from trial. State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (citing Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961)). "Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement." State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). Applicant alleged the trial counsel should have moved to suppress the methamphetamine as the fruit of an illegal search because the police failed to obtain a warrant for the wire. Trial Counsel testified she declined to make this motion because it lacked merit. This Court agrees with trial counsel and finds Applicant lacked standing because he had no expectation of privacy here. State v. Andrews, 324 S.C. 516, 479 S.E.2d 808, 811 (Ct. App. 1996) (defendant's Fourth Amendment rights were not violated by introduction of tape

recordings made by police of telephone conversations between informant and defendant, even if informant was acting at behest of police in making telephone calls). Therefore, this allegation is denied and dismissed.

Second, Applicant alleged counsel was ineffective to make a suppression motion based upon the informant and undercover officer's warrantless entry into his home. Similarly, trial counsel testified the motion based on these grounds lacked merit. This Court agrees with trial

~~counsel and finds Applicant consented to the entry of the informant and undercover officer in his~~

~~home when he took the initiative to invite them in the residence to complete the narcotics~~

transaction. This Court finds the undercover officer was under no duty to disclose his identity

and obtain informed consent. State v. Forrester, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001)

(referencing Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)

("like the federal standard, our state standard does not require a law enforcement officer

conducting a search to inform the defendant of his right to refuse consent.")); see also Hoffa v.

United States, 385 U.S. 293, 302-303, 87 S.Ct. 408 (1966) ("Consent provides a constitutionally

valid basis for entry even when it is obtained through misrepresentations about the officer's

identity or purpose, as when an undercover operative poses as a fellow participant in criminal

activity."). Therefore, this allegation is denied and dismissed.

Third, Applicant alleged the search incident to arrest was illegal because the police lacked the requisite probable cause for the arrest. Again, trial counsel testified the motion lacked merit. This Court agrees with trial counsel and finds the undercover officer's role and observations from the controlled buy more than supported the probable cause for Applicant's arrest for Trafficking. State v. Moultrie, 316 S.C. 547, 552, 451 S.E.2d 34, 37 (Ct. App. 1994)

"Turning to the question of probable cause, probable cause for a warrantless arrest generally exists where the facts and circumstances within the arresting officer's knowledge are sufficient for a reasonable person to believe that a crime has been or is being committed by the person to be arrested."). Therefore, this allegation is denied and dismissed.

Last, this Court find's Applicant's allegations that counsel was ineffective for not making a suppression motion based upon chain of custody or upon the SLED expert's identification of the methamphetamine is without merit. South Carolina case law provides that the chain of custody need be established only as far as is reasonably practicable. State v. Hatcher, 392 S.C. 86, 92, 708 S.E.2d 750, 753 (2011). South Carolina courts have consistently held that all persons in the chain of custody must be identified and the manner of handling the evidence must be demonstrated. Id. Applicant alleged the police failed to produce separate forms for the best kit when the evidence was placed in the drop box. Scroggins testified this was not necessary because the evidence never left the building. This Court finds Scroggins testimony sufficiently thwarted any speculative allegation from Applicant that his actions resulted in a break in the chain of custody. Therefore this allegation is denied and dismissed.

B.

This Court finds Applicant did not meet his burden to prove counsel was infective for failing to enforce a twelve year plea agreement. A defense attorney has the duty to ensure the Stated honors its plea agreement. Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009) "A defendant has no constitutional right to plea bargain. State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997). "A plea bargain rests on contractual principles, and that each party should receive the benefit of the bargain." State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994). "Absent an actual plea of guilty, a defendant may enforce an oral plea agreement only

upon a showing of detrimental reliance on a prosecutorial promise in plea bargaining.” Custodio v. State, 373 S.C. 4, 10, 644 S.E.2d 36, 39 (2007). This Court finds the solicitor and former counsel’s testimonies credible while finding Applicant’s testimony not credible. Former counsel reasonably advised Applicant that if he was successful in helping the officer’s build cases major narcotics distributors, then he would likely receive a favorable plea offer in the range of a twelve year recommendation. This Court finds Applicant failed to prove the solicitor made a twelve year plea offer. This Court finds Applicant did not detrimentally rely on the promise of a twelve year plea agreement when he entered an agreement with police to become an informant.

Therefore, this allegation is denied and dismissed.

This Court also finds Applicant failed to prove counsel was ineffective for failing to advise him to accept the solicitor’s September 5, 2008 plea offer that included a fifteen year recommendation. “Defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” Missouri v. Frye, 132 S. Ct. 1399, 1405, 182 L. Ed. 2d 379 (2012). This Court finds the solicitor testimony credible. This Court also finds counsel’s testimony more credible than Applicant’s testimony. This Court finds counsel adequately advised Applicant of the terms and expiration date of the offer along with the all the benefits and detriments at issue. Applicant knowingly and intelligently made the decision to let the offer expire in order for counsel to obtain the informant’s wire tapes despite the fact that former counsel had already listened to the tapes and discussed the matter with him. This Court finds Applicant failed to prove he would have accepted the September 5, 2008 offer but for counsel’s performance on the matter. Applicant’s posture to prolong the disposition of his charges resulted from his unreasonable desire of obtaining another informant agreement with the police in hope to avoid a prison sentence.

Applicant provided erroneous advice to counsel when he told her he would have received a probationary sentence had he fulfilled his expectation while working as an informant. Thus, this Court finds Applicant's decision on the matter was a result of wishful thinking despite counsel's advice on the matter. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). Counsel met her duty in explaining the consequences of the offer, exposure of the charges, and credibility of State's evidence. Therefore, this allegation is denied and dismissed.

C.

--- -- This Court finds Applicant's allegation that counsel was ineffective for failing to make a motion to quash a defective indictment is without merit. Applicant alleged counsel should have objected to Applicant's plea to trafficking where he pled to the lesser included offense of possession with the intent to distribute. Counsel testified the reduced charge was based upon weight and not classification of offense. This Court agrees with counsel. This Court finds Applicant pled guilty to trafficking, more than 28 grams but less than 100 grams when he was indicted for trafficking, more than 400 grams. See State v. Raffaldt, 318 S.C. 110, 456 S.E.2d 390 (1995) (It is the amount of cocaine, rather than the criminal act, which triggers the trafficking statute, and distinguishes trafficking from distribution and simple possession. If the amount of cocaine, or any mixture containing cocaine, is ten grams or more, the trafficking statute is applied.). Therefore, this allegation is denied and dismissed.

D.

This Court finds Applicant failed to prove prosecutorial misconduct rendered his plea invalid. "Rule 5 permits inspection of evidence in the State's possession which [is] material to the preparation of his defense or [is] intended for use by the prosecution as evidence in chief at

the trial, or were obtained from or belong to the defendant upon request by the defendant.”

Hyman v. State, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012) (citing Rule 5(a)(1)(C), SCRCP).

The Hyman Court determined the State “struck the appropriate balance by allowing defense counsel to view the videotape and providing Petitioner with stills during negotiations.” Id. This Court finds Applicant failed to prove the Solicitor’s actions here were inappropriate. Former counsel met with the solicitor to listen to the wire tapes and subsequently advised Applicant on the matter. Furthermore, the solicitor provided counsel a copy of the tapes in a reasonable

manner. This Court finds Applicant failed to prove the alleged misconduct resulted in prejudice.

An undercover officer along was present during the controlled buy. Furthermore, Applicant gave a confession. Therefore, this allegation is denied and dismissed.

This Court also finds Applicant failed to meet his burden the solicitor presented an inconsistent factual basis for the offense at the plea hearing. This Court finds the solicitor’s chronology and basis for Applicant’s arrest and conviction was consistent with the record. (Guilty Plea Tr. pp.15-7). Upon the plea judge’s inquiry, Applicant agreed with the Solicitor’s facts notwithstanding one minor deviation.). Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975)

(“Statements made during a guilty plea should be considered conclusively, unless an [applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”).

Therefore, this allegation is denied and dismissed.

II.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or

implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable."

Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

~~Based on all the forgoing, 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 for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.~~

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

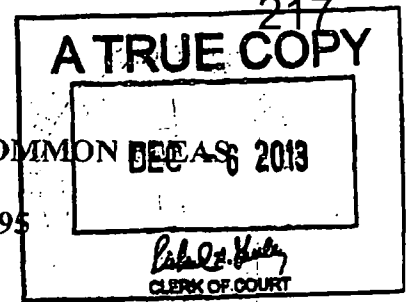
AND IT IS SO ORDERED this 26 day of Nov, 2013.



R. LAWTON MCINTOSH
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

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MEETINGS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-04-0395

Reynaldo Gonzalez,)
S.C.D.C. No. 332772,)
)
Applicant,)
)
Vs.)
)
State of South Carolina,)
)
Respondent.)

**MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO RULES 52
AND 59 OF THE SOUTH CAROLINA
RULES OF CIVIL PROCEDURE**

**TO: HONORABLE R. LAWTON McINTOSH, PRESIDING JUDGE AND JOHN
WALTER WHITMIRE, ATTORNEY FOR THE RESPONDENT**

YOU WILL PLEASE TAKE NOTICE that the undersigned Attorney for the Applicant in this Post Conviction Relief matter hereby moves for an Order pursuant to Rules 52 and 59 SCRPC altering and/or amending its Order of Dismissal dated November 26, 2013 and filed in the Office of the Clerk of Court for Anderson County, South Carolina, on December 3, 2013. The undersigned received a copy of this Order on December 4, 2013, in her file at the Anderson County Clerk of Court's Office.

This Motion is based on the following grounds.

1. South Carolina Code Annotated Section 12-27-80 and McCroy vs. State 40 S.E. 2d 241(1991), require that the PCR Court must make specific findings of fact and state expressly its conclusions regarding each issue presented.

The Applicant asserted the following grounds:

1. Ineffective Assistance of Counsel:

- i. failure to move to suppress the narcotics because of an illegal wiretap;
- ii. failure to move to suppress the narcotics because of an unlawful search and seizure;
- iii. failure to move to suppress the narcotics because of a search incident to arrest absent probable cause for the arrest;
- iv. failure to move to suppress the narcotics because of defective chain of custody and mishandling;
- v. failure to ensure the solicitor honor the terms of the alleged 2006 plea offer;
- vi. failure to advise Applicant on the terms of the September, 2008 plea offer;
- vii. failure to object to discrepancies in the sentencing sheet;

- viii. Advising the Applicant to accept a plea offer before receiving full discovery;¹
- ix. Failure to object to a second and inconsistent statement of facts;²

2. Prosecutorial Misconduct:

- i. withdrawing the September, 2008 plea offer prior to providing Applicant the opportunity to listen to the wire taps;

The initial PCR hearing was held on May 8, 2013. The Presiding Judge basically summarily denied all of the Applicant's arguments. The hearing was continued and the record was left open for argument on a Transcript from an October 9, 2008 hearing that had not been provided by the Respondent. The Presiding Judge's Order dated May 17, 2013 provided, "Record remains open on issues discussed at Applicant's PCR hearing held on May 8, 2013."

After the above-referenced Transcript was received, a hearing to conclude the case was convened on September 18, 2013. However, the Court summarily declined to take additional testimony and dismissed the action over the undersigned attorney's objection.

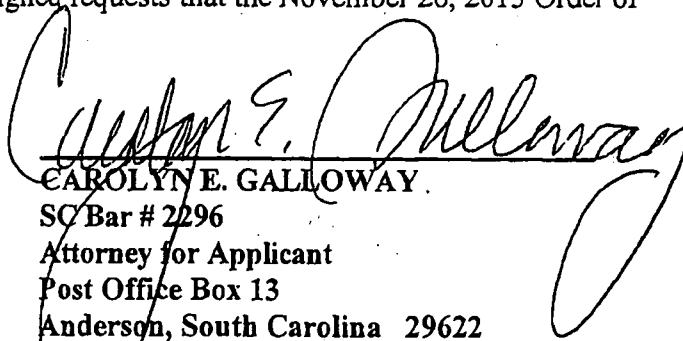
The Judge's Order addressed some of the Applicant's grounds for PCR, but indicates at II on Pages 13 and 14 of 15, "*that this Court finds that the Applicant affirmatively abandons the remaining allegations set forth at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right... The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.*"

As previously indicated, the Judge's May 17, 2013 Order provided that the record would remain open on all issues discussed at the May 8, 2013 PCR hearing; however, he was denied that right and his PCR was summarily dismissed despite counsel's objection, at the September 18, 2013 hearing, effectively denying the Applicant's right to be heard (due process) on his PCR issues. This Order must be vacated as it is unconstitutional.

Based upon the above, the undersigned requests that the November 26, 2013 Order of Dismissal be vacated in its entirety.

December 5, 2013

Anderson, South Carolina


 CAROLYN E. GALLOWAY
 SC Bar # 2296
 Attorney for Applicant
 Post Office Box 13
 Anderson, South Carolina 29622
 (864) 226-7227 Phone
 (864) 226-1179 Fax

¹ Not included in the Order.

² Not included in the Order.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF ANDERSON)TENTH JUDICIAL CIRCUIT)Reynaldo Gonzalez,)CASE NO.: 2011-CP-04-0395)

Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

State of South Carolina,)

Defendant.)

Plaintiff's Attorney:Carolyn E. Galloway, Bar No. 2296**Address:**Post Office Box 13, Anderson, South Carolina 29622Phone: 864-226-7227 Fax 864-226-1179E-mail: _____ Other: _____**Defendant's Attorney:**John Walter Whitmire, Bar No. _____**Address:**Post Office Box 11549, Columbia, SC 29211Phone: _____ Fax: _____E-mail: _____ Other: _____☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information****Nature of Motion:** _____**Estimated Time Needed:** _____ **Court Reporter Needed:** ☐ YES/☐ NO**SECTION II: Motion/Order Type**☒ **Written motion attached**☐ **Form Motion/Order**

I hereby move for relief or action by the court as set forth in the attached proposed order.

Carolyn E. Galloway
Signature of Attorney for ☒ Plaintiff / ☐ DefendantDecember 5, 2013

Date submitted

SECTION III: Motion Fee☐ **PAID - AMOUNT:** \$ _____☒ **EXEMPT:**

(check reason)

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

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____**JUDGE CODE** _____

Date: _____

CLERK'S VERIFICATIONCollected by: N/A Date Filed: _____☐ **MOTION FEE COLLECTED:** \$ _____☐ **CONTESTED - AMOUNT DUE:** \$ _____**A TRUE COPY****DEC - 6 2013**R. L. H. H. H.
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)

Reynaldo Gonzalez,
 S.C.D.C. No. 332772,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2011-CP-04-0395

ORDER

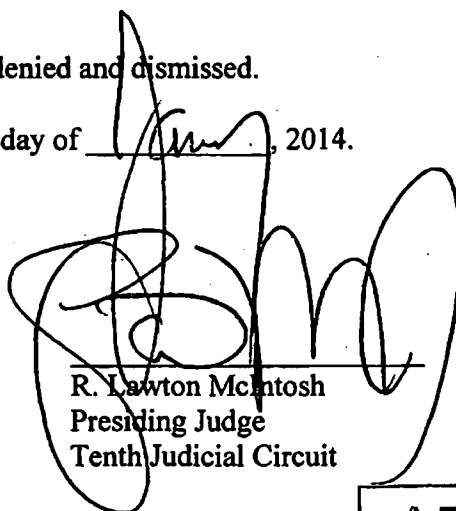
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 COMMON PLEAS AND
 GENERAL SESSIONS

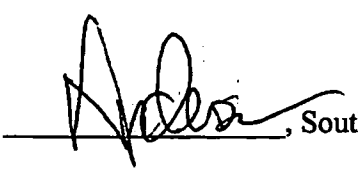
This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59, SCRCP. The Final Order of Dismissal in this matter was signed by me on December 3, 2013. Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment. The previous order fully comports with the requirements of Rule 52(a) SCRCP.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion is denied and dismissed.

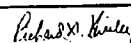
AND IT IS SO ORDERED this 7 day of January, 2014.


 R. Lawton McIntosh
 Presiding Judge
 Tenth Judicial Circuit


 South Carolina

A TRUE COPY

JAN - 9 2014


 CLERK OF COURT

WITNESSES

AGSO, T. JORDAN

DOCKET NO. 2007-G-5-04-168

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

JAN 23 2007 TERM

THE STATE

RLC

vs.

REYNALDO GONZALEZ

ARREST WARRANT NO. J-410144

ACTION OF GRAND JURY

TRUE BILL

JAN 23 2007

Foreman of Grand Jury *John Smith*

E. Ebersohn

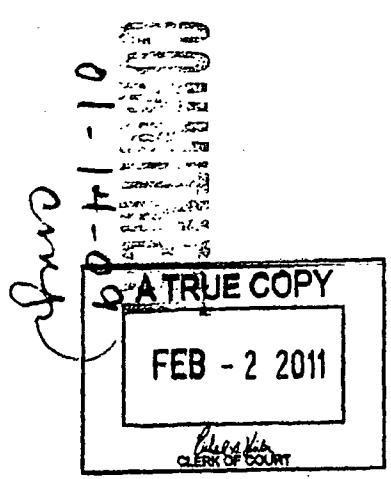
VERDICT

Indictment for

CONSPIRACY TO TRAFFIC
METHAMPHETAMINE
44-53-0375(C)(5) [0370]

Foreman of Petit Jury

Date:



STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)

INDICTMENT FOR
CONSPIRACY TO TRAFFIC
METHAMPHETAMINE
44-53-0375(C)(5) [0370]

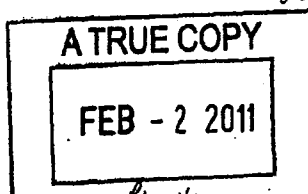
At a Court of General Sessions, convened on JAN 23 2007,
the Grand Jurors of ANDERSON County present upon their oath:

CONSPIRACY TO TRAFFIC METHAMPHETAMINE

That Reynaldo Gonzales did in Anderson County, South Carolina, on or about November 3, 2006, conspire with another to distribute more than 400 grams of methamphetamine.

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

Ramel Campbell
asst. SOLICITOR



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSION ²²³COUNTY OF Anderson
STATE VS.Reynaldo Gonzalez

AKA:

Race: W Sex: M Age: 50 1/2DOB: [REDACTED] SS#: [REDACTED]Address: ANDERSON, SC 29626DL#: [REDACTED] SID#: [REDACTED]INDICTMENT/CASE#: 2007-65-04-168A/W#: J410144Date of Offense: 11/3/2006S.C. Code §: 44-53-0420CDR Code #: 0027

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Drugs / Attempt and conspiracy, general provisions of the dr (w/ 12 1/2)in violation of § 44-53-0420 of the S.C. Code of Laws, bearing CDR Code # 0027☒ 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. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Rene L. Campbell
Solicitor:[Signature]
Defendant[Signature]
Attorney for Defendant5991
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 169 + 2208☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

PTUP _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED _____

☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

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: _____

*Fine:

§ 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)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL Cathy M. Phillips 236.00

Clerk of Court/ Deputy Clerk

FEB - 2 2011

PRESIDING JUDGE [Signature]Judge Code 0117Sentence Date: 11/14/09Court Reporter: D. Braden

SCCA 017-107-0009

ARREST WARRANT

J-410144

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSON

 THE STATE
against

GONZALEZ, REYNALDO

 Address:
ANDERSON, SC 29622-0000
Phone: SSN: Sex: M Race: W Height: 5 Weight: 196DL State: SC DL# Agency ORI#: 0400DOB: Sheriff DEPT.Prosecuting Officer: JORDAN, TOffense: CONSPIRACY TO TRAFFICK METHAMPHETAMINES Offense Code: 415Code/Ordinance Sec. 44-53-375This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused

 is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
defendant, GONZALEZ, REYNALDO
on NOVEMBER 04, 2006

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
ANDERSON

** CASE NUMBER 2006-40532

AFFIDAVIT

 Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

INV. T. JORDAN/ACSO

GONZALEZ, REYNALDO

who

 Personally appeared before me the affiant
being duly sworn deposes and says that defendant,
did within this county and state on or about 11/03/2006
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
in the following particulars: violate the criminal laws of the

 DESCRIPTION OF OFFENSE: CONSPIRACY TO TRAFFICK METHAMPHETAMINES

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT THE DEFENDANT, ALONG WITH A CO-DEFENDANT DID CONSPIRE TO
TRAFFIC AND DISTRIBUTE APPROXIMATELY THREE POUNDS OF
METHAMPHETAMINE. THE DEFENDANT DID FURTHER CONSPIRACY BY
OBTAINING THE THREE POUNDS OF METHAMPHETAMINE TO ATTEMPT TO
DISTRIBUTE. THIS INCIDENT OCCURRED IN ANDERSON COUNTY.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSON

Affiant's Address

306 CAMSUN

ANDERSON, SC 29622

Affiant's telephone

684 260-4400

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

 on 11/03/2006 defendant GONZALEZ, REYNALDO

 did violate the criminal laws of the State of South Carolina (or ordinance of)

☐ County/ ☐ Municipality of as set forth below:
DESCRIPTION OF OFFENSE: CONSPIRACY TO TRAFFICK METHAMPHETAMINES
 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be
delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/04/2006

(L.S.)

Signature of Issuing Judge

Judge Code: 940Judge's Address 1009 COUNTY HOME ROAD

ANDERSON SC 29622-0000

Judge's Telephone

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

WITNESSES

AGSO, T. JORDAN

DOCKET NO. 2007-GS-04-169

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

JAN 23 2007 TERM

THE STATE

RLC

vs.

REYNALDO GONZALEZ

ARREST WARRANT NO. 1-410143

ACTION OF GRAND JURY

TRUE BILL

JAN 23 2007

Foreman of Grand Jury

Edgar B. B. B.

VERDICT

Indictment for

TRAFFICKING METHAMPHETAMINE
44-53-0375(C)(5) [0370]

Foreman of Petit Jury

Dure

A TRUE COPY

FEB - 2 2011

Chloe K.
CLERK OF COURT

61-14-09

copy

STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE
44-53-0375(C)(5) [0370]

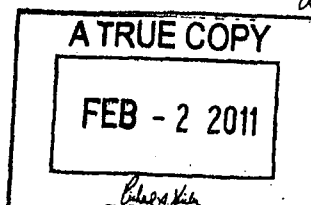
At a Court of General Sessions, convened on JAN 23 2007
ANDERSON
the Grand Jurors of _____ County present upon their oath:

TRAFFICKING METHAMPHETAMINE

That Reynaldo Gonzalez did in Anderson County, South Carolina, on or about November 3, 2006, knowingly and unlawfully have in his possession more than 400 grams of methamphetamine.

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

Ramel Campbell
asst. SOLICITOR



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson

VS.
Reynaldo Gonzalez

INDICTMENT/CASE#: 2007-GS-04-169

A/W#: J410143

Date of Offense: 11/3/2006

S.C. Code § : 44-53-0375(C)(5)

CDR Code #: 0370

AKA:

Race: W Sex: M Age: 50-52

DOB: [REDACTED] SS#: [REDACTED]

Address: ANDERSON, SC 29626

DL#: SID#: [REDACTED]

SENTENCE SHEET

RT

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Drugs / Trafficking in ice, crank or crack - 28 g or more, but less than 100 g - (7.25 + 150k)

in violation of § 44-53-0375(C)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0392

☐ 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. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Donna Campbell
Campbell, Rame Lambert

[Signature]
Defendant

[Signature]
Attorney for Defendant

[Signature]
5991
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 198 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: Obtain GED

☐ set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: \$ _____ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 35.13 (Public Def/Prob) \$500 \$ _____ Other: _____

§ 73.3, IB TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, IB TP (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 230.00

Cathy M. Phillips
Clerk of Court/ Deputy Clerk

FEB - 2 2011

PRESIDING JUDGE

Judge Code: 011711
Sentence Date: 1/14/09

Court Reporter: D. Braden

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

ARREST WARRANT

J-410143

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSON

 THE STATE
against

GONZALEZ, REYNALDO

 Address:
ANDERSON, SC 29626-0000
Phone: SSN: Sex: M Race: W Height: 5 Weight: 196DL State: SC DL#: Agency ORI#: 0400Prosecuting Agency: SHERIFF DEPT.Prosecuting Officer: JORDAN, T
 Offense: TRAFFICKING METHAMPHETAMINE
NES
Code/Ordinance Sec: 44-53-375 Offense Code: 345

 This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

 is to be arrested and brought before me to be
dealt with according to law. The accused

Signature of Judge

(L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
defendant GONZALEZ, REYNALDO
on 11/04/2006

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
ANDERSON

 CASE NUMBER 2006-40532
AFFIDAVIT

 **
Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

 Personally appeared before me the affiant INV. T. JORDAN/ACSO who
being duly sworn deposes and says that defendant GONZALEZ, REYNALDO
did within this county and state on or about 11/03/2006 violate the criminal laws of th
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
in the following particulars:

 DESCRIPTION OF OFFENSE: TRAFFICKING METHAMPHETAMINES
GS

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

 THAT THE DEFENDANT DID HAVE IN HIS POSSESSION APPROXIMATELY
THREE POUNDS OF AN OFF-WHITE CRYSTAL TYPE SUBSTANCE WHICH DID
FIELD TEST POSITIVE FOR METHAMPHETAMINE. THIS INCIDENT DID OCCUR
AT WHICH IS LOCATED IN ANDERSON COUNTY.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSON

Affiant's Address

ANDERSON, SC 29625

Affiant's telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 11/03/2006 defendant GONZALEZ, REYNALDO

did violate the criminal laws of the State of South Carolina (or ordinance of) as set forth below:

☐ County/ ☐ Municipality of

DESCRIPTION OF OFFENSE:

 TRAFFICKING METHAMPHETAMINES
GS

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be
delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/04/2006

Signature of Issuing Judge (L.S.)

Judge's Address 1009 COUNTY HOME ROAD

ANDERSON SC 29622-0000

Judge's Telephone

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

A TRUE COPY

FEB - 2 2011

CLERK OF COURT

ORIGINAL

62
22

WITNESSES

T. JORDAN, ACSD

DOCKET NO. 2008GS04 - 2208

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

SEP 23 2008

Term

ARREST WARRANT NUMBER

REF: JA10145

THE STATE

VS.

Reynaldo Gonzalez

ACTION OF GRAND JURY
TRUE BILL

SEP 23 2008

Foreperson of Grand Jury
Date: *T. Jordan*

VERDICT

RLC

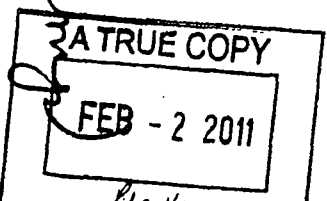
Indictment for

POSSESSION OF COCAINE

SC Code: 44-53-0370(d)(3)
CDR Code: 3011

Foreperson of Petit Jury
Date:

01-14-09/2



STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

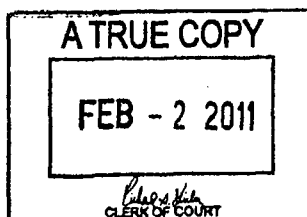
INDICTMENT

At a Court of General Sessions, convened SEP 23 2008, the Grand Jurors of Anderson County present upon their oath:

POSSESSION OF COCAINE

That on or about November 3, 2006, in Anderson County, South Carolina, the Defendant, Reynaldo Gonzalez, did knowingly or intentionally possess or otherwise aid, abet, attempt, or conspire to possess a quantity of Cocaine, a schedule II controlled substance under provisions of Section 44-53-110, *et seq.*, *Code of Laws of South Carolina (1976)*, as amended, such possession not having been authorized by law, all in violation of Section 44-53-370, *Code of Laws of South Carolina (1976)*, as amended.

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



Pamela Campbell
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSION ²³¹

COUNTY OF Anderson

STATE

VS.

Reynaldo Gonzalez

INDICTMENT/CASE#: 2008-65-04-²²⁰⁸

A/W#: J410145(Ref.)

Date of Offense: 11/3/2006

S.C. Code § : 44-53-0370 (d)(3)

CDR Code #: 3011

AKA:

Race: W Sex: M Age: 50

DOB: [REDACTED] SS#: [REDACTED]

Address: ANDERSON, SC 29626

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET RTIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Drugs/ possession of cocaine. 1st offense (max 3yr)

in violation of § 44-53-0370 (d)(3) of the S.C. Code of Laws, bearing CDR Code # 3011

☒ 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. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Daniel Campbell
Solicitor:Reynaldo Gonzalez
Defendant:[Signature]
Attorney for Defendant2007-169
5991
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 169 & 168☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL Cathy M. Phillips 231.00

Clerk of Court/ Deputy Clerk

FEB - 2 2011

Court Reporter: D. Braden

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: _____

☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]Judge Code: 2117Sentence Date: 1/14/09