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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

TYRONE BERNARD PATRICK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002701

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 TYRONE BERNARD PATRICK,)
)
 DEFENDANT.)
 _____)

2009-GS-39-01593-1595

APRIL 13, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

SAM TOOKER, ESQUIRE
ATTORNEY FOR THE STATE

FRANK EPPES, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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EXHIBITS

(NONE)

1

April 13, 2011

2

(WHEREUPON, court convened with all parties present

3

and the following proceedings were had.)

4

MR. EPPES: Your Honor, Mr. Patrick has

5

indicated a willingness to plead guilty to these charges

6

under *Alford v. North Carolina*. And we would ask that you

7

allow his mother to stand with him while he does that.

8

THE COURT: Well, if he wishes to enter a plea,

9

certainly I'll not refuse him the right to enter his plea,

10

as he's certainly got a right to do that.

11

Bring your client forward, Mr. Eppes. You may step

12

down, Officer Hamby.

13

(WHEREUPON, Mr. Tooker, Mr. Eppes and the Defendant

14

approached the bar.)

15

MR. TOOKER: Judge, it seems that the Defendant

16

does not want to ---

17

MR. EPPES: I'm sorry, Judge, we thought we had

18

this worked out. Let's go ahead.

19

THE COURT: Officer Hamby, if you'll come back

20

around, we'll proceed with the -- we'll have a proffer

21

hearing at lunch time or sometime later. We'll get on

22

with that.

23

All right, Officer Hamby, I'll remind you, you're

24

still under oath.

25

Mr. Teal, if ...

1 MR. EPPES: Are you willing to plead guilty now
2 or no? Say yes.

3 THE DEFENDANT: I'll plead.

4 THE COURT: Hang on just a minute, Mr. Teal.

5 THE CLERK: 2009-GS-39-1593, the State versus
6 Tyrone Bernard Patrick, indicted for trafficking cocaine
7 base.

8 2009-GS-39-1594, indicated for possession of cocaine
9 base with intent to distribute one-half mile from school.

10 2009-GS-39-1595, indicted for possession of a weapon
11 during the commission of a crime.

12 Raise your right hand, please. Do you solemnly swear
13 or affirm that the testimony you're about to give is the
14 truth, the whole truth and nothing but the truth, so help
15 you God?

16 MS. PATRICK: I do. I do. Say it.

17 THE DEFENDANT: If I plead, it's because of my
18 mother.

19 MR. EPPES: You told me you were going to tell
20 the truth.

21 THE DEFENDANT: I'm going to tell the truth.

22 THE COURT: Okay. You're taking the oath then?
23 You're telling me the truth now, sir?

24 THE DEFENDANT: Yes, sir, I will tell you the
25 truth.

1 THE COURT: All right, sir. I understand from
2 your attorney that you've decided you want to enter a
3 plea. Obviously the jury has already been sworn. They're
4 hearing the case now. They won't get to decide it,
5 however, if you enter this plea, Mr. Patrick. You have
6 every right to allow this case to go on to the jury; let
7 it complete hearing the evidence; let the jury hear my
8 instruction on the law; let that jury make the decision as
9 to you guilt or not.

10 I'm going to tell the jury when I instruct them that
11 all twelve of them are going to have to find you guilty or
12 they can't convict you of any of these; that all twelve of
13 them are going to have to find you guilty beyond any
14 reasonable doubt. I'm going to tell them that you don't
15 have any burden to prove yourself innocent. I'm going to
16 tell them that if you choose not to testify in this case,
17 that they can't hold that against you; that you have a
18 right to remain silent. You have a right to confront the
19 witnesses. We've heard some witnesses already. Your
20 attorney has had an opportunity to examine them outside
21 the presence of the jury. That he's about to start
22 examining the first witness under cross examination now.
23 You will have a right, if we continue this trial, sir, to
24 confront all the witnesses, to let your lawyer ask them
25 question. You'll have a right to put up a defense. If

1 you want to testify, you can. If you want to put up other
2 witnesses, you'll have a right to do that. But those
3 rights that you enjoy that I've just explained to you, the
4 right to remain silent and confront those witnesses and
5 present witnesses, your right to be presumed innocent and
6 make the State meet its burden of proof beyond a
7 reasonable doubt, all those rights you're giving up by
8 entering this plea. Do you understand that, Mr. Patrick?

9 THE DEFENDANT: (No verbal response.)

10 THE COURT: Do you understand those rights that
11 you have?

12 THE DEFENDANT: I understand that, sir. The
13 only thing I want to ask you, Judge, would it make --
14 under mere presence, is that alone -- and prior bad acts,
15 is that alone enough to find me guilty of a crime; my
16 prior bad acts and my mere presence at the scene of a
17 crime?

18 THE COURT: We haven't even ruled on prior bad
19 acts yet. I don't know if there will be any prior bad
20 acts. But I'll instruct the jury the law of possession,
21 of constructive possession, that two or more people can
22 have possession of a substance.

23 THE DEFENDANT: A substance that's being claimed
24 and it's being claimed by another individual.

25 THE COURT: Maybe we ought to just have the

1 trial. If you don't want to enter your plea, I'll be glad
2 to ---

3 THE DEFENDANT: I just want to hear the law.

4 MR. EPPES: Judge, I've explained to Mr. Patrick
5 that if two people are in a position where they both have
6 potential access to property and they both could
7 potentially have dominion and control over it, even if one
8 of them says it's all theirs, the jury can have the facts
9 presented to them and can find the person guilty who does
10 not claim the contraband or the drugs. I've explained to
11 him what the law is, it's a fact question for the jury and
12 that the jury will be allowed to decide that, regardless
13 of the fact that someone was there but another person
14 claims the drugs. I believe -- I probably have not stated
15 it as artfully as you would, but I believe I have
16 explained that correctly to him. And he's asking for
17 validation of that explanation.

18 THE COURT: Well, I certainly -- among the
19 information that I give them as far as the law, Mr.
20 Patrick, is that knowledge and possession of an illegal
21 substance, or drugs in this case, can be inferred when
22 that drug is found on the property under a person's
23 control, under -- if they determine that the property is
24 under your control, then there can be an inference.

25 Of course, they're going to decide the facts on all

1 the law, not just pieces of it. I'm going to give them
2 the full and complete law as I see it. And that will be
3 up to the jury to decide that, based on the full law that
4 I give them.

5 THE DEFENDANT: (Speaking to his mother) This
6 man is giving me a fair change, to weigh these options.
7 He's going to let these people analyze this evidence.

8 THE COURT: Well, if you need to analyze the
9 evidence, Mr. Patrick, I need you to analyze the evidence
10 while ---

11 THE DEFENDANT: The jury is, Mama.

12 THE COURT: You'll have a chance during the
13 breaks and all to do that. But if you're not ready to
14 enter your plea, you don't need to enter your plea. But
15 if you are ready to enter your plea, I'll be glad to take
16 it. But we need to move on with the trial if you're not
17 going to -- if you don't want to plead.

18 THE DEFENDANT: (Speaking to mother) I feel like
19 he's going to instruct the jury the right way to go about
20 it. I have a chance, because this ain't right. It's been
21 claimed by another person. That don't make me guilty of
22 something I don't have no right to.

23 THE COURT: All right, sir.

24 (WHEREUPON, the Defendant stepped down from the
25 guilty plea at approximately 11:30 a.m.)

1 (WHEREUPON, the Defendant stepped back up for
2 guilty plea at approximately 12:04 p.m.)

3 THE COURT: Mr. Patrick, you've been
4 administered an oath, and we've had some discussions
5 already. I want to -- I understand through your attorney
6 that you now want to enter a plea of guilty; is that
7 correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, I'm going to state again to you,
10 you realize that we have a jury out in their room right
11 now. That jury has -- you have a right to let that jury
12 continue to hear the case. You have a right to continue to
13 examine the witnesses that have testified so far, the
14 witnesses that will be called upon to testify further by
15 the State. You have a right to bring your own witnesses.
16 Mr. Patrick, you have a right to remain silent. You don't
17 have to say anything. The State of South Carolina has got
18 a full burden of proof. They've got to meet that burden of
19 proof beyond a reasonable doubt. They're going to have to
20 convince all twelve jurors of your guilt before any guilty
21 verdict can come forth. If you exercise your right to
22 remain silent, I'm going to tell the jury that they can't
23 hold that against you in anyway. If you want to testify,
24 then certainly you will have a right to do that, as well.

25 All these rights that you enjoy, you're going to give

1 up if you go forward with this plea. I want you to make
2 sure you understand that; that the process of a trial, of
3 putting in evidence and examining witnesses and making
4 motions and so forth, that ends. The plea stops this
5 process and you will give up all those rights that you
6 enjoy under our Constitution. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you want to give those rights up
9 and enter this plea?

10 THE DEFENDANT: Yes, sir.

11 THE DEFENDANT: Now, Mr. Patrick, are you
12 satisfied with the representation your attorney has given
13 you in this case?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has he done everything to defend you
16 that you've asked him to do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there any other matters you need
19 to talk with him about? Have you met with him as often and
20 as long as you feel necessary; and have you understood the
21 discussions you've had with him?

22 THE DEFENDANT: I've understood everything, sir.

23 THE COURT: All right, sir.

24 THE DEFENDANT: Judge, if a witness that's -- I'm
25 pleading, mama, but I just want to ask -- if a witness that

1 has fled or absconded and this information is relevant to
2 like helping me out in my situation as far as -- because
3 the officers even stated, there's numerous people coming
4 into this dwelling purchasing or buying drugs. Also, I
5 would visit this dwelling on occasion and numerous times
6 myself. But when the prosecution presented evidence that
7 was not credible or unreliable, it was allowed in.

8 THE COURT: Mr. Patrick, do you want to enter
9 your plea or not?

10 THE DEFENDANT: I'm pleading, I'm pleading, I'm
11 pleading. I just wanted to ask you this.

12 THE COURT: Well, you can -- any legal questions
13 you've got, I'll be glad to hear from your attorney. We've
14 gone over that. But if you don't want to plea, we're going
15 to have a trial. We've got a jury waiting. We can proceed
16 on. I don't want to force you in anyway to plead, but if
17 you're ready to plea, I want to make sure you understand
18 the rights you're giving up. You understand those rights
19 that we've gone over; correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. Now, is there a
22 recommendation or any negotiations?

23 MR. TOOKER: I think it's a negotiated plea of
24 twenty years, Your Honor.

25 MR. EPPES: Yes, sir, that's our understanding.

1 THE COURT: Now, Mr. Patrick, you just heard the
2 Solicitor and acknowledgment by your attorney that the plea
3 was going to be a negotiated one in which you would be
4 sentenced to twenty years in prison. Except for that
5 negotiation that's taken place this morning, a good part of
6 the morning, is there anybody else promised you anything to
7 get you to plead guilty, other than that plea -- other than
8 that negotiation?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. Are you entering this plea
11 then of your own free will because you believe that the
12 State could produce sufficient evidence to prove your guilt
13 beyond a reasonable doubt if we continued with this trial
14 and that you would most probably be found guilty? Is that
15 the basis -- I understood that your lawyer wanted you to
16 enter this plea under the *Alford* case. Is that why you're
17 entering it voluntarily and under the understanding that
18 the proof would be there, in your opinion?

19 THE DEFENDANT: I'm entering this plea of guilty,
20 sir, because it is led to me that if I'm found guilty that
21 I will get way more time than this twenty-year offer.

22 THE COURT: Well, you understand that will be up
23 to me as to whether to -- if we proceed with the trial and
24 you are found guilty, it will be up to me to determine the
25 sentence. That's part of my role. You understand that?

1 THE DEFENDANT: So it's not up to the
2 prosecution?

3 THE COURT: And you could -- it's not up to the
4 prosecution. They can make a recommendation. I'm going
5 to, I'm going to decide the sentence. You could be
6 sentenced up to thirty years in jail for this charge. Plus
7 you could be sentenced up to fifteen years in jail for the
8 proximity charge. Plus you could be sentenced up to five
9 years in jail on the weapons charge. You understand that
10 would be fifty years maximum that you could receive from me
11 if you are found guilty? I'm not saying that's what I
12 would sentence you to. I just want you to be aware of what
13 you could be sentenced to if they're consecutive one with
14 another. You understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And the sentence that is
17 being recommended through negotiations, I'm not going to
18 accept your plea if I don't feel like I can go along with
19 that. I'll certainly allow you to step down if I make a
20 determination based on everything I hear that I feel like I
21 -- believe that you should receive more than that, then
22 I'll certainly allow you to step down and we'll continue
23 with the trial. You understand that; don't you, that if I
24 don't agree with the negotiations, that we'll have a trial
25 that we'll continue with. You understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Now, these indictments
3 that we're here on today, you've heard them read to the
4 jury announcing this case. You're fully familiar with the
5 content of these indictments, I'm confident, but I just
6 want to make sure that you're pleading to the trafficking
7 of crack cocaine on or about July the 30th, 2009; and that
8 you knowingly did manufacture, deliver, bring into the
9 state, aid and abet or sell to someone, conspire to sell or
10 manufacture, that being more than twenty-eight grams.
11 You're pleading guilty to that charge. You're also
12 pleading guilty to the same date, the charge of possession
13 of that crack cocaine within half mile of Simpson Academy.
14 And also at that time having in your possession a weapon
15 while committing a violent crime, that being the
16 trafficking of the cocaine. Those are the offenses to
17 which you're pleading; that's what we're here on today; is
18 that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you understood the questions
21 I've asked you, Mr. Patrick?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you been truthful in your
24 answers to me?

25 THE DEFENDANT: I've been truthful, Your Honor.

1 I just ---

2 THE COURT: Now, I want you to understand that if
3 you meet our Appellate Court rules, our Appellate Court
4 allows you to appeal this proceeding within ten days; and
5 if you can't afford an attorney, one can be appointed for
6 you. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Well, I find there is a substantial
9 factual basis for the plea, that it has been freely,
10 voluntarily, knowingly and intelligently made by Mr.
11 Patrick, with the advice of competent legal counsel with
12 whom he has expressed his satisfaction. I will accept your
13 plea, sir. I certainly would like to, before I agree to
14 the negotiated sentence, I'd like to find out a little bit
15 more about your background. I'd like to know a little bit
16 about your education, your age. I'll be glad to hear from
17 you, your attorney, your mother, anyone else.

18 Is there anything else the State would have? And then
19 I'll be glad to hear from the Defense?

20 MR. TOOKER: If you would like his prior record,
21 Your Honor, we'd be happy to read it to you. If you're
22 content to go on without it ---

23 THE COURT: What is the prior record?

24 MR. TOOKER: '95, burg first, three counts of use
25 of incendiary device, three counts of armed robbery, three

1 counts of ABWIK, for which he received three years. And in
2 2005, possession of cocaine, prox, trafficking and another
3 prox charge for which he received six years.

4 THE COURT: Mr. Patrick, how old are you, sir?

5 THE DEFENDANT: I'm thirty-two years old, sir.

6 THE COURT: Okay. Are you married?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you have any children?

9 THE DEFENDANT: No, sir.

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

11 THE DEFENDANT: Eleventh grade, sir.

12 THE COURT: Where did you attend school?

13 THE DEFENDANT: Easley Junior High and Easley
14 High School.

15 THE COURT: Have you ever gotten your GED?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You have obtained it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you always lived in the Easley
20 area, or have you lived anywhere else?

21 THE DEFENDANT: Easley area.

22 THE COURT: All right, sir. What kind of work
23 have you done -- since you dropped out of school what kind
24 of work have you done? Have you learned any skills or you

25 ---

1 THE DEFENDANT: Just laborer. Sometimes I worked
2 at a used car shop detailing. Basically just laborer.

3 THE COURT: Okay. Have you ever had any sort of
4 treatment? Have you ever had any drug or alcohol addiction
5 problems for which you've received treatment?

6 THE DEFENDANT: Sir, every time I came up here
7 they wanted me to go to prison. I ain't never had no
8 really medication. I ain't never had no type of help.
9 Nothing.

10 THE COURT: When did you start using drugs, Mr.
11 Patrick? How old were you?

12 THE DEFENDANT: Probably fourteen.

13 THE COURT: Marijuana or ...

14 THE DEFENDANT: Marijuana and coke.

15 THE COURT: Did you get it from friends or family
16 members or who?

17 THE DEFENDANT: Judge, I grew up in, I would say,
18 a very abusive home with a stepdad that was dysfunctional.
19 So he took a lot of anger out on us. It led me to stay
20 away from the house. From staying away from the house, I
21 stayed into the streets. I had a good mother. She wasn't
22 the best, but she's told me to stay away from drugs. But
23 in the age of adolescence, at that particular time, I
24 didn't get the proper foundation from a father figure that
25 could show me a better way. So through trial and error, I

1 had to learn on my own, besides my mother. My mother, she
2 worked two jobs all her life. I always wanted ...

3 THE COURT: Just take your time, sir.

4 THE DEFENDANT: I always wanted to help her, to
5 watch over her. And it hurt to watch her work all the
6 time, there was no way I ... So I took it upon myself. My
7 brothers, they ain't like me. They're leaving. So when I
8 ain't there, there's nobody that's going to take care of
9 her, so that became my responsibility.

10 My whole neighborhood, you know, it ain't never really
11 did nothing bad. I ain't never really hurt nobody.
12 Everything I ever done, I supported my mama. I pay her
13 bills. I help her with her medications. And I'd do
14 anything for her. In the midst of this, it let me get in
15 trouble. Sometimes it came up into petty stealing, things
16 that turned into barter and trading, hustling, that's what
17 we call hustling. The neighborhood I come from, if you're
18 poor, you survive. It doesn't justify selling drugs. It
19 doesn't justify bartering, trading. But they paint a
20 picture of you like I'm nothing, that I don't deserve a
21 chance. That I deserve to be locked up in prison for
22 twenty, thirty years. And I wanted a chance. That's all I
23 wanted. An opportunity, a chance. I asked them for that.
24 They wouldn't give me a chance. Just a chance. Drug
25 program. Anything. Yet I never got that. When I come out

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19

1 of prison -- I went to jail when I was sixteen years old
2 for accomplice in a robbery. This denied me having a high
3 school education or being able to get a trade, because I
4 went to prison. At sixteen years old, I was a juvenile.
5 This same Court tried me as an adult without even in -- I
6 didn't know this at the time, it was illegal. But they
7 didn't care. They sent me to prison intentionally. They
8 didn't weigh me up. They tried me as an adult. I stayed
9 in this, this condition. I came home with nothing. So I
10 had a job. It fell through. I got back into the streets.
11 I caught a pistol charge, riding in the car with an
12 individual. They charged me with this charge, knowing that
13 I didn't have nothing to do with this gun charge. So later
14 on, I had to go to the streets, and I hustled to defeat
15 this charge. They later on dropped this gun charge, but I
16 was charged with trafficking. This sent me into prison.
17 Now, I came home this time, I got all this piled up against
18 me. My mother's sick with asthma. She don't have no
19 medicine. I told my mother -- and she told me, she said,
20 get a job. Leave the drugs. Put in an application. She's
21 telling me she don't need no money. She'll go without.
22 She'll play a role like ain't nothing going on. But she's
23 backed up, she don't get to buy nothing. She don't get to
24 go nowhere. She works constantly. So I couldn't get no
25 job. I started bartering and trading. Things like mopeds,

1 like goods, I would trade them, I would get out there and
2 steal them. But if it came to me I would barter tickets.
3 I bought tickets, things of this nature. Sometimes if the
4 money wasn't right, I would flip my money, like I told
5 Chase. And at the end of the month sometimes I would take
6 this money and flip it, just buy a bag of stuff like
7 cocaine, reefer and crack and I would flip it. I told them
8 I didn't want to use anymore. Did they give me an
9 opportunity? No. Did I -- was I committing a wrong? Yes.
10 This same house they was talking about, this whole street
11 is a drug street. Everybody down there barter and trades
12 and making a living as far as surviving. By a person
13 coming in this area, it doesn't mean that he's controlling
14 that area. It doesn't mean that this is my house. But
15 this is the area in that neighborhood to where this goes
16 on. And when it's -- I'm in this area, I'm basically
17 bartering and trading, trying to survive. Yes, I went to
18 this house. Yes, I sold drugs before. That doesn't mean
19 the drugs in that house were mine. But by law, I can't
20 prove no other kind of way anyhow. If I'm guilty of it,
21 I'm guilty of it. But the reason why I wanted to go to
22 trial and the reason why I wanted to finish it up, because
23 I wanted to be given just a chance to make it right.
24 That's all.

25 THE COURT: Thank you, Mr. Patrick.

1 Mr. Eppes, anything you want to add?

2 MR. EPPES: Your Honor, Mr. Patrick summed it up
3 better than I could have. Your Honor, as you've seen from
4 the two days we've been here, he's a very intelligent
5 person who has a lot of potential. I think he's made the
6 right decision today. It is my belief that he would have
7 been convicted of all three charges. And I'd ask that you
8 go along with this recommendation, because by everybody's
9 understanding, he'll be out before he's fifty years old. I
10 believe he'll have a chance to accomplish something if he
11 wants to. And I believe that is a chance that he should be
12 given in this situation.

13 THE COURT: Thank you, Mr. Eppes.

14 THE DEFENDANT: But Judge, can I ask you, just
15 you, if I'd been found guilty of these charges, and you
16 being aware of the circumstances, would you gave me another
17 chance, if I asked you and told you, please, anything you
18 wanted, anything, put me on any type probation you wanted.
19 Anything. But just give me one chance to show you, to show
20 this Court, to show everybody that I can make a better
21 person of myself, would you give me another chance?

22 THE COURT: Well, I can't answer that for you.
23 But I can tell you this, Mr. Patrick, you're going to make
24 it. I'm confident you're going to make it. You've got a
25 good mother. That's what you need to make it. But, you

1 know, you talk about going to prison. You've really been
2 in prison twenty years already when you started using those
3 drugs. You didn't have bars in front of you, but you were,
4 you were imprisoned by drugs. There might have been other
5 parts of the prison, too, with your home environment and
6 all. But you've been in prison. It's just whether or not
7 you're behind bars, or not. Those drugs, they create a lot
8 of problems with folks getting into prison. I don't know
9 Mr. Stewart or Mr. Toole or Mr. Leslie or any of them, but
10 they're probably in prison, too, just because they're using
11 drugs; and all the other names I've heard. Even though you
12 might be behind bars, you can be free even there. I'm
13 going to recommend a drug rehabilitation for you. And
14 there's things you can do while in prison that can help
15 your fellow man. You can be the mentor to the young kids,
16 not in Easley, wherever you are. There's going to be
17 younger folks there than you. You can be the one to tell
18 them when they get out, you can make a difference in
19 someone's life. While you may be there a while, they're
20 going to be coming in and out, and you can make a
21 difference in our world by the influence you can have on
22 them. And I'm confident it's going to be a positive
23 influence. I think you're going -- when you get out, and
24 your mom is going to be welcoming you, and you're going to
25 have an opportunity to be a positive influence on a lot of

1 people.

2 THE DEFENDANT: Judge, all I wanted today was to
3 show that -- I know it's time-consuming for y'all to be
4 here because this is a job, but it's my life. And I did
5 enough, but I do not want to go in for my decision to be
6 weighed by the prosecution that's not looking into these
7 circumstances and not even including none of my history,
8 background, who I am or what I am, you know. This is what
9 the Judge asked me, Mama, he asked me to give him a preview
10 of who I am. They don't know who I am.

11 THE COURT: Well, I believe you're a man that's
12 going to make a difference. And I think you've got the
13 potential to -- you're a bright young man. You've got the
14 potential to make a big positive difference in a lot of
15 lives and I'm confident you're going to accomplish that
16 task.

17 THE DEFENDANT: And you believe that twenty years
18 is worth that, my actions of being in the mere presence of
19 a house? But that's the truth of the matter, Mama.

20 THE COURT: I understand that there are charges
21 being dropped, as well, Solicitor; is that correct?

22 MR. TOOKER: Yes, sir, Your Honor, after he
23 pleads to these, we're going to dismiss those.

24 THE COURT: I find that the negotiations are
25 appropriate.

1 This is case 2009-GS-39-1593, the sentence of the
2 Court is the Defendant be committed to the State Department
3 of Corrections for a period of twenty years.

4 Case 2009-1594, the sentence is five years, to be
5 concurrent.

6 Case 2009-1595, five year concurrent sentence, as
7 well.

8 Thank you.

9 MR. EPPES: Thank you, Your Honor.

10 MR. TOOKER: Thank you, Your Honor.

11

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

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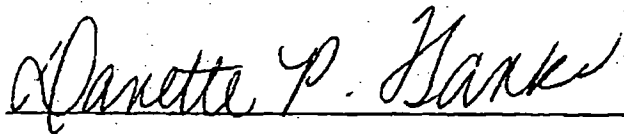
19

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth 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 Pickens County, South Carolina, on the 13th day of April, 2011.

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

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

April 18, 2012



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of PICKENS COUNTY

20 P 2:51

2012-CP-39-81

TYDNE BERNARD PATRICK #233697
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE COUNTY CORR. INST. 990 WISACKY HWY.
GREENVILLE, S.C. 29610
2. Name and location of Court which imposed sentence PICKENS COUNTY COURT OF
GENERAL SESSIONS THIRTEENTH CIRCUIT
3. Name(s) of co-defendant(s) (if any) STEPHANIE NICHOLE FOSTER
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) TRAFICKING COCAINE: 2009-GS-39-01593
 - (b) POSS OF COCAINE BASE W/1/2 TO DESTROY 1/2 MILE FROM SCHOOL

(c) LOSS OF A WEAPON DURING THE COMMISSION OF A CRIME

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

(a) APRIL 13, 2011: SENTENCED

(b) TRAFFICKING 28-100 GRAMS: 20 YEARS. TRAFFICKING SCHOOL ZONE: 5 YEARS

(c) LOSS OF FIREARM IN COMMISSION OF VIOLENT CRIME: 5 YEARS (CURRENT)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓ FORCE TO PLEAD OUT OF TRIAL!

(c) after a plea of nolo contendere _____

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

APPLICANT DID APPEAL FROM JUDGMENT AND SENTENCE TO THE S.C. SUPREME COURT

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

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

i. APPLICANT APPEAL WAS DISMISSED BECAUSE APPLICANT COUNSEL ABANDONED APPEAL.

ii. APPLICANT HAD NO KNOWLEDGE OF THE PROCESSING OR HOW TO GO ABOUT FILING A DIRECT

iii. APPEAL

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

i. APPLICANT APPEAL WAS DISMISSED 6/3/11

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) ATTACHMENT ON BACK (A) THROUGH (K) 89 PAGES : OF P.C.R.
 - (b) EXHIBITS TO SUPPORTING MOTIONS FILED TO COURT AND COUNSEL : 87 PAGES
 - (c) MOTION FOR DISCOVERY :
- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) _____
 - (b) _____
 - (c) _____
- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 - (d) any other petitions, motions or applications in this or any other Court? _____
- 13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. DIRECT APPEAL
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. THE S.C. SUPREME COURT
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. 6/13/11
- ii. _____
- iii. _____
- iv. _____

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

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

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

THE GROUNDS SET FORTH IN (10) HAVE NOT BEEN PREVIOUSLY PRESENTED TO THIS OR ANY OTHER COURT, STATE OR FEDERAL, IN ANY PETITION, MOTION OR APPLICATION WHICH APPLICANT HAS FILED.

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

(a) which grounds have been presented:

- i. NOT APPLICABLE
- ii. _____
- iii. _____

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

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

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

- (a) HAVE NOT BEEN PREVIOUSLY PRESENTED BECAUSE COUNSEL WAS MERELY TELLING THE TRUTH
- (b) THE TRIAL AND AFTER TRIAL
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. FRANK L. PARR, 1225 SOUTH CHURCH STREET, 291603
P.O. BOX 108160 GREENVILLE, S.C. 291603
 - ii. _____
 - iii. TEAL SOWARDS, PUBLIC DEFENDER, 214 E. MARKET ST. SUITE 13 294
PECKENS, S.C. 291671
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL AND PEA HEARING
 - ii. _____
 - iii. _____

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

APPLICANT SEEKS RELIEF FROM HIS UNCONSTITUTIONAL CONVICTION, APPLICANT RESPECTFULLY ASK THIS COURT TO REVERSE/VACATE HIS CONVICTION AND REMAND FOR A NEW TRIAL.

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

NO

STATE OF SOUTH CAROLINA)
County of BECKHAM COUNTY)

VERIFICATION

I, TYRONE B. PATRICK, 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.

TYRONE B. PATRICK #233697
TYRONE B. PATRICK 233697

SWORN to and subscribed before me this 19 day of Jan. 2008
[Signature] (L.S.)
Notary Public

My Commission Expires: 5-18-17

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

I, Tyrone Patrick #233697, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Tyrone B. Patrick #233697
Applicant
Tyrone Patrick

SWORN or affirmed to and subscribed before me this
19 day of Jan, 2004.

[Signature]
Notary Public

My Commission Expires: 5-16-04

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Tyrone Bernard Patrick,)
 S.C.D.C. No. 233697,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-39-0081

RETURN

2012 JUN 14 P 3:43
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

In response to the post-conviction relief application filed January 20, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Applicant was indicted at the 2009 term of the Pickens County Grand Jury for trafficking cocaine base (2009-GS-39-1593), possession with intent to distribute (PWID) cocaine base within proximity of a school (2009-GS-39-1594), and possession of a weapon during the commission of a violent crime (2009-GS-39-1595). Frank Eppes, Esquire represented the Applicant.

On April 13, 2011, the Applicant pled guilty pursuant to a negotiated sentence.¹ The Honorable G. Edward Welmaker sentenced the Applicant pursuant to concurrent terms of twenty (20) years for trafficking cocaine base, second offense, five (5) years for PWID cocaine base within proximity of a school, and five (5) years for possession of a weapon during the commission of a violent crime.

¹ The Applicant chose to plead guilty after the jury trial in this case began.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. By order dated June 3, 2011, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel.
 - a. Failed to object to improper jury instruction.
 - b. "Silently surrendering competent representation in the presence of the trial courts' improper 'browbeating' of Applicant with incomplete sentencing declarations."
 - c. Failed to timely "move the court to subpoena witnesses."
 - d. Failed to move for a continuance.
 - e. Failed to thoroughly cross-examine the State witness about consent to search.
 - f. Failed to investigate and failed to object to admission of evidence "seized in the residence where Applicant occupied 'mere presence.'"
 - g. Failed to request a specific reasonable doubt charge.
 - h. Failed to properly object to the pre-trial identification and hearsay statements used in support of the search warrant affidavit.
 - i. Failed to properly cross-examine witnesses.
 - j. Failed to object to the admission of hearsay.
 - k. Failed to object to the admission of statements.
 - l. Failed to file a proper motion to compel discovery.
 - m. Failed to challenge subject matter jurisdiction of the Applicant's prior conviction.
 - n. Failed to perfect the appeal.
 - o. Failed to present an entrapment defense
2. Trial court error.

3. Involuntary guilty plea.
4. Lack of subject matter jurisdiction.

III.

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

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

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A

reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

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

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal

defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

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

V.

The Respondent submits the Applicant's assertion that the plea court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary

elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictment in this case was true-billed and clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

June 12, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
)
)
 TYRONE BERNARD PATRICK, 233697)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2012-CP-39-0081

AFFIDAVIT OF SERVICE BY MAIL

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

Tyrone Bernard Patrick, 233697
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 12th day of June, 2012.



 Judy A. C. Carey, Legal Assistant
 For Respondent

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| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF PICKENS |) | |
| Tyrone Bernard Patrick, |) | |
| |) | TRANSCRIPT OF RECORD |
| Applicant, |) | 2012-CP-39-0081 |
| -vs- |) | |
| |) | |
| The State, |) | |
| |) | October 21, 2013 |
| Respondent. |) | Pickens, South Carolina |

B E F O R E:

HONORABLE EDWARD W. MILLER, JUDGE

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

R. MILLS ARIAIL, JR, ESQUIRE
Attorney for the Applicant

KAREN C. RATIGAN, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

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EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EV.</u> |
|------------|-------------------------------|------------|------------|
| A-1 | Statement of Stephaney Foster | 17 | 17 |

MOTIONS AND MATTERS

1 THE COURT: Okay.

2 MS. RATIGAN: May it please the Court. Your Honor, this
3 the case of Tyrone Patrick vs. the State of South Carolina,
4 the Docket Number is 2012-CP-39-0081. Mr. Patrick was
5 indicted for trafficking cocaine base, possession with intent
6 to distribute, uh, cocaine base within proximity of a school
7 and possession of a weapon durin' the commission of a violent
8 crime. He was represented on these charges by Mr. Eppes. Uh,
9 the case actually was brought to trial April 13th of 2011
10 before Judge Welmaker, uh, after the case had begun, I believe
11 it was prior to the defense's cross-examination of the first
12 witness, Mr. Patrick chose to plead guilty. Your Honor, he
13 pled guilty under Alford to a negotiated sentence. Judge
14 Welmaker sentenced him pursuant to the negotiation to
15 concurrent terms of 20 years for trafficking cocaine base
16 second offense, 5 years for possession with intent to
17 distribute within proximity and 5 years for possession of a
18 weapon durin' the commission of violent crime. He did file a
19 notice of appeal at the Court of Appeals by order dated June
20 3rd, 2011, the Court dismissed the appeal because there was a
21 a failure to provide a written explanation of any issues that
22 could be reviewed from the guilty plea. The State is ready to
23 proceed, however I've been advised Mr. Ariail has some motions
24 to make at this time.

25 MR. ARIAIL: Uh, yes, Your Honor, just, uh, the motion

MOTIONS AND MATTERS

1 that I have apparently this began as a trial as you've heard,
2 my client has requested that I get a copy a the transcript to
3 be able to review it, to understand why he went into, why he
4 entered his plea. He says there's some relevant stuff in
5 there one of which is a a representation on the record of a
6 Stephaney Foster who was a witness that he's gonna say that
7 say that he ne -- never dealt with drugs, uh, and that they
8 had a discussion in regards to this. He wanted me to subpoena
9 Mr. Kraig Pringle who represented her or actually who, uh,
10 yeah, who has taken a statement from her, uh, and that was a
11 discussion that was on the record. He thinks that is relevant
12 because, uh, understand a little bit a the background in
13 regard to why he entered the plea, what he was dealin' with,
14 discussions he had with Mr. Eppes in regards to that. I have
15 not been able to get a copy a the transcript, I don't
16 understand what went on at his trial. I understand that he
17 has issues in regards to that, uh, and all I had is that it
18 was a negotiated guilty plea for a certain amount a time after
19 a trial began. I'm making a motion either to add that to the
20 record, uh, for your review after this, um, uh, to allow you
21 to see and be able to look at that when you consider all the
22 evidence in this.

23 THE COURT: Transcript?

24 MS. RATIGAN: Your Honor, we never order the transcript
25 if it results in a guilty plea if the trial has begun because

MOTIONS AND MATTERS

1 obviously the plea is dispositive of all issues. There's a
2 very thorough colloquy, uh, Your Honor will see it's it's a I
3 think it's 16 or 17-page transcript, it's extremely thorough
4 about Mr. Patrick waiving all of his rights and understanding
5 the, understanding what he was doing and again, since it's an
6 Alford plea and it's negotiated, the State doesn't really see
7 the benefit in in having the trial transcript. If Mr. Patrick
8 has issues that, uh, I think that came up durin' the trial, he
9 can certainly testify about that and Mr. Eppes can also
10 testify about it, we just don't think the the transcript is
11 relevant since he did plea.

12 THE APPLICANT: Judge, judge, on on the reason why I
13 think ---

14 THE COURT: Stand up you gonna talk to me.

15 (Whereupon, the applicant complied.)

16 THE APPLICANT: Oh. Judge Your Honor, the reason why I
17 think the transcript is relevant because under 17-27-150 that
18 we demonstrate just cause to show why under *Hill vs. Lockhart*
19 I can demonstrate that there's a reasonable probability had
20 trial counsel performed up to professional norm I would not
21 have pled guilty and exoneratin' evidence that's in the record
22 was that the evidence from this crime a individual claim and
23 it was statement I had nuttin' to do with it. Durin' the
24 negotiation of me, uh, pleadin' guilty through Frank Eppes, I
25 was informed if I don't plead guilty I'm gonna receive 50

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 years and without this statement, I why -- without this
2 evidence since it been suppressed it's no use to go to trial
3 so in order to show forth in the record why I pled guilty this
4 is the reason, one a the most severe factors ---

5 THE COURT: Well you, I tell you what, is he gonna
6 testify?

7 MR. ARIAIL: He's gonna testify, Your Honor.

8 THE COURT: Well let's get goin'.

9 MR. ARIAIL: Okay. I call Mr. Patrick to the stand.

10 (Whereupon, the applicant came forward.)

11 DIRECT EXAMINATION BY MR. ARIAIL:

12 Q. Mr. Patrick, ---

13 A. Yes, sir.

14 Q. I wanna begin a little bit before this ---

15 THE COURT: Well wait a minute, wait a minute.

16 MR. ARIAIL: Oh, sorry.

17 THE COURT: Raise your right hand.

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

19 TYRONE PATRICK, having been first
20 duly sworn, testified as follows:

21 THE COURT: Alright, good. State your full name for the
22 record.

23 THE APPLICANT: Tyrone Patrick.

24 THE COURT: Alright. Now go ahead.

25 MR. ARIAIL: Thank you Judge, sorry.

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 BY MR. ARIAIL:

2 Q. Uh, Mr. Patrick, in regards to this case now, uh, you
3 entered in negotiated plea, correct, pled guilty after your
4 trial began, is that right?

5 A. Yes, sir.

6 Q. Okay. And let's go back, you were sayin' some things
7 with Judge Miller that I wanna go back into. You began this
8 and were represented by Mr. Eppes, correct?

9 A. Mr. Eppes.

10 Q. How is Ms. Johnson involved in this?

11 A. Well Teal Johnson she came in right before I came to
12 trial and she was tellin' me, uh, Eppes couldn't be here right
13 now so therefore she wanted to take down some a the things I
14 needed for trial so I gave her some information and she, uh,
15 related it to Frank and 'cause Frank wasn't there and one a
16 the things I wanted to relate to Teal was I was like how could
17 I go to trial when I never talked to Frank about discovery ---

18 Q. Okay, ---

19 A. --- yeah.

20 Q. --- okay, well this, I I just wanna handle Ms. Johnson
21 for a second.

22 A. Okay.

23 Q. There there's nothing you're alleging from her,
24 correct, ---

25 A. No, sir.

1 Q. --- or that she's done anything ineffective in this case,
2 right?

3 A. No, sir.

4 Q. Okay. So now in regards to Mr. Eppes, I wanna go through
5 exactly when was the first time you met with him?

6 A. Uh, when I hired him, ---

7 Q. Okay.

8 A. --- he came to see me.

9 Q. Okay. Where'd ya -- where'd he come see ya in Pickens?

10 A. In Pickens County.

11 Q. Okay. And how many, I guess when you hired him were you
12 already on a trial docket or did ya have a plea offer, where
13 were ya in this your case?

14 A. When I first hired Mr. Eppes, I asked Mr. Eppes, uh, what
15 how basically how I was supposed to go about this case and I,
16 durin' our conversation it was basically related that I told
17 him I had a co-defendant who's demonstratin' that I will have
18 nuttin' to do with this crime so he stated to me if I got this
19 information because I was lettin' him know that this, that
20 these people aint listening' nuttin' I'm sayin' so he was like
21 if I got this information and I I I presented it to him, he
22 would get me a bond, uh, reduction, ---

23 Q. Okay.

24 A. --- so that's what I, we went about it. I, uh, I had my
25 co-defendant, uh, call him from the county, we went about

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

- 1 gettin' a statement and got it, uh, presented to her and from
2 that point 'bout three to two more times every time I talked
3 to him the negotiation was based based on they don't care what
4 what you gotta say, they don't like you, I -- it's best for
5 you to take this plea, if I was you, ---
- 6 Q. Okay.
- 7 A. --- I would plea.
- 8 Q. You're gettin' way ahead a me, let's go back. Now you
9 had a plea offer, correct, at one time?
- 10 A. They they were tellin' me I was gonna get a life
11 sentence.
- 12 Q. Okay. Did you get, did you ever have a discussion with
13 Mr. ---
- 14 A. At never ---
- 15 Q. --- Eppes in regard to a plea offer?
- 16 A. At at no time did I ever wanna accept a plea for these
17 charges.
- 18 Q. Okay, so you weren't, it didn't matter what the plea
19 offer was, you were goin' to trial.
- 20 A. I never accept it. I ---
- 21 Q. You ---
- 22 A. --- told him from the get -- from the rip I wanted a
23 trial.
- 24 Q. Okay, and the reason you wanted a trial you had a
25 statement from a co-defendant, is that correct, or ---

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 A. I felt like I was innocent innocent of the charge.

2 Q. Okay, so tell me how you felt you were innocent of the
3 char [sic], what information did you have that you gave to
4 Mr. Eppes that showed you were innocent?

5 A. Uh, one a the the prongs that I raised in my PCR
6 application was when they entered this residence I was sleep
7 and due to the investigation work when I came to the residence
8 at night it was lotta people in there and when we, when I went
9 to sleep and they busted this residence I was woke up outta
10 the bed and drug out the house. Everything in this residence
11 was put on, was just placed on me so my thing with Eppes was
12 just by me bein' present in this house does this make me
13 guilty.

14 Q. Okay, so whose house was it?

15 A. It was Stephaney Foster' house.

16 Q. Okay, so you were sleepin' at Te -- Stephaney Foster's
17 house with how many other people?

18 A. Well I went to sleep with about nine people in the
19 house.

20 Q. When you were arrested, how many people?

21 A. Just me and her.

22 Q. Okay, so what -- now Stephaney Foster I guess at one time
23 you were represented by Kraig Pringle, is that right?

24 A. Yes, sir.

25 Q. Okay, now Kraig Pringle went and got a statement from

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 her?

2 A. He wanted the -- when I notified him a the incident, he
3 went and got the statement and he interviewed her. He came
4 back, took this information to the Court durin' one a my bond
5 reduction hearin' ---

6 Q. Okay.

7 A. --- and he instilled this information to the Court that
8 basically I don't have nuttin' to do with these these charges.
9 He came back and told me Fa -- uh, "Fat Bat", they hate your
10 "A".

11 Q. Okay, no f ---

12 A. I don't know what's goin' on.

13 Q. "Fat Bat", that's your name, correct?

14 A. That's my nickname.

15 Q. Okay.

16 A. And he basically told me, They gonna railroad your "A".

17 Q. Okay, let's try not to, no language if you could, ---

18 A. Yeah; ---

19 Q. --- okay?

20 A. --- okay. I'm just tellin' ---

21 Q. Now ---

22 A. --- you what he told me.

23 Q. --- I understand that but tell me this: What did
24 Stephaney Foster she fill a document out? She give ya a
25 statement? Did she do anything that says, Hey, look, he's not

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 guilty a this?

2 A. It was officers in the county that knew about this
3 situation so they got this information and she presented it.
4 It came through, uh, Jenny went through Kraig, it went through
5 the proper channels and Frank informed me numerous of times
6 that they know about this state, they just don't believe it.

7 Q. Okay, so hold on. It went from Stephaney to Jenny
8 McCrackin, correct?

9 A. It went to the officers to Jenny 'cause they wouldn't
10 accept it so she mailed it to Jenny McCrackin and she took it
11 to Kraig Pringle.

12 Q. So Kraig Pringle has a statement that was put, was this
13 put into your trial and ---

14 A. Yes. Kraig Pringle introduced the statement at my bond
15 reduction hearin' to Judge ---

16 Q. Okay.

17 A. --- Wel, I mean, Welmaker.

18 Q. Okay, that was at a bond reduction hearin', ---

19 A. Yes, sir.

20 Q. --- so what about the trial? Was that ---

21 A. That ---

22 Q. --- introduced by ---

23 A. At the trial Frank, well Frank tried to introduce the
24 statement. The reason why I raised it in my PCR as Frank
25 bein' ineffective he failed to corroborate to make another

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 statement because he didn't do no investigation work to find
2 out how the statement was made, so when it came to trial to
3 admit the statement in court, Frank stood up and said, Your
4 Honor, I don't know how I'm gonna get this statement in,
5 turned around and told me the statement been suppressed so I'm
6 like had he corroborated to make another statement now that I
7 know the law under, uh, *State vs. Doctor* and I know how it's
8 supposed to go about implicatin' when a a witness is
9 unavailable ---

10 Q. Um-um.

11 A. --- how you gotta corroborate to make another statement
12 so it don't look like I'm blowin' smoke. He got to do
13 investigation work to to corroborate to make another
14 statement.

15 Q. Okay, so you sayin' that statement if he had
16 corroborated it would have basically said you were not in
17 possession, constructive or actual possession ---

18 A. Or even had ---

19 Q. --- of ---

20 A. --- no knowledge of the drug bein' in the house.

21 Q. So know -- no knowledge of the drugs, no knowledge of any
22 a that activity that was goin' on.

23 A. And that's the stance I took ---

24 Q. Was she gon ---

25 A. --- from day one.

TYRONE PATRICK -- DIRECT EXAMINATION BY MR. ARIAIL

1 Q. --- was she gonna say whose drugs that they were?

2 A. Yes, yes. The statement that's implicated 'cause I got
3 the statement right here and the statement that's implicated
4 in the trial script the reason why I wanted a trial transcript
5 is to show for why this statement is relevant and how it's
6 exoneratin' evident ---

7 Q. Okay.

8 A. --- and this is what caused the break down in the
9 procedure under *Cronic* of why as a adversary it it just killed
10 the defense ---

11 Q. Okay, well ---

12 A. --- because now they were tellin' me you should plea
13 guilty because you go out there they gonna give you 50 years,
14 they don't like you.

15 Q. Okay, let's do this before we forget about this. You got
16 a copy a the statement ---

17 A. Yes, sir.

18 Q. --- from Ms. Foster, ya got it on ya right now, ---

19 A. Yes, sir.

20 Q. --- okay, did you give that to Frank?

21 A. Frank had the statement.

22 Q. Okay, you wanna make it a, we need to make an exhibit a
23 the Court so if you got it, let's put it in here and make sure
24 we got it.

25 A. See, I did the claims but I wanted to go through 'em but

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 now wait, you gonna what?

2 Q. You wanna ---

3 THE COURT: Well you got ---

4 MR. ARIAIL: Yeah, ---

5 THE COURT: --- to show it.

6 MR. ARIAIL: --- put -- yeah.

7 (Whereupon, respondent examined the document.)

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

9 THE COURT: Go ahead.

10 MR. ARIAIL: Your Honor, I'd like to introduce this as
11 our exhibit Number ---

12 THE COURT: Any, any, uh, objection?

13 MS. RATIGAN: I'd object, Your Honor, it hasn't been
14 properly authenticated, uh, there's no witness here to testify
15 to that authenticity. I can't cross-examine a witness, it's
16 hearsay.

17 THE APPLICANT: And that's the whole purpose for this
18 hearin'. I made numerous, uh, ---

19 THE COURT: Hang on.

20 THE APPLICANT: Okay.

21 THE COURT: You got anything you wanna say?

22 MR. ARIAIL: Your Honor, I just basically I understand
23 her arguments in regards to that, I have no -- I have not
24 talked with Ms. Foster, I have not been able to find
25 Ms. Foster, he's let me know about that but, uh, she's not

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 here in regards to it.

2 THE COURT: Well, ---

3 THE APPLICANT: And my ---

4 THE COURT: Hey ju -- hey, ---

5 THE APPLICANT: Okay, okay.

6 THE COURT: --- hey. Uh, we'll let it in for what it's
7 worth.

8 MR. ARIAIL: Okay. Okay.

9 (Statement of Stephaney Foster marked Applicant's Exhibit
10 No. 1 for identification and admitted into evidence.)

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

12 THE COURT: Okay.

13 BY MR. ARIAIL:

14 Q. Okay, now that statement we got right there from
15 Ms. Foster did you discuss that with Mr. Eppes?

16 A. Yes, sir.

17 Q. What he happen to say in regard to it?

18 A. Every, uh, conversation that we had probly lasted five to
19 ten minutes. It would be, uh, Frank comin' tellin' me that
20 the prosecution they know about this, they know about this
21 statement, they don't talk to her, they just don't believe it
22 and they hate your "A".

23 Q. Okay, he didn't say, Hey, by the way she said this is
24 not, this gonna help you out, you gonna be successful on you
25 case based on this statement?

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 A. At no time in this, uh, proceedin' with me and Frank were
2 I ever told that I was gonna get a fundamental fair trial. I
3 was basically told that, "Fat Bat", you better take the less
4 of two evils and ---

5 THE COURT: Fat what?

6 MR. ARIAIL: "Fat Bat".

7 THE APPLICANT: That's my nickname.

8 THE COURT: What is it?

9 THE APPLICANT: Fat "Fat Bat".

10 THE COURT: "Fat Bat"?

11 THE APPLICANT: Yeah.

12 THE COURT: "Fat Back"?

13 THE APPLICANT: "Fat Bat".

14 THE COURT: "Fat Back" or "Fat Bat"?

15 THE APPLICANT: It's "Bat".

16 THE COURT: B-A-T?

17 THE APPLICANT: Yeah, so, uh, ---

18 THE COURT: Where you get that kinda nickname?

19 THE APPLICANT: From my grandpa, he gave it to me.

20 THE COURT: Did he? Okay.

21 THE APPLICANT: So Frank was tryin' to, on his behalf he
22 was tryin' to inform me that take this, take this what they
23 gonna give you because under no circumstance is this gonna be
24 fair. At the time I was a little hardhead but I felt like I
25 was innocent and one a the main issues that I raise in my PCR

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 application too was the commission of the violent crime.

2 BY MR. ARIAIL:

3 Q. Okay.

4 A. I was explainin' to Frank that these guns was found in
5 the house so how can these guns become mine, how can I be in
6 co -- in commission of a violent crime in a drug traff --
7 traffickin' trial if the weapons was never found on me. The
8 trial transcript demonstrates or or police testimony where
9 these guns were found even though they lied and put me in the
10 bathroom which I was sleep but it demonstrates that I had no
11 no relevance to these these weapons and after comin' in bein'
12 confined and studyin' *Bailey vs. United States* found out that
13 the gun has to be a operated factor in the commission of the
14 crime, it has to be bartered with, traded with or it had to be
15 used. Now I'm convicted because my counsel informed me to
16 plead guilty under this unconstitutional conviction and this
17 conviction is illegal by the Constitution because *Bailey vs.*
18 *United States* rule you can't be convicted under commission of
19 a violent crime with the gun bein' found in a residence with
20 drugs. He stood up in court if you look at the trial
21 transcript in the colloquy and demonstrated in court to say,
22 Judge, I think he would be found guilty of all three charges
23 and this is in the trial transcript, so this is erroneous
24 advice and it's a misadvice and under *Hill vs. Lockhart* I was
25 misled into the the element a what constitutes grip a these

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 charges. All throughout the transcript I've read *Roland vs.*
2 *State*, would demonstrate that I'm refusin' this plea. I don't
3 wanna plea but due to the coercion [sic] of them utilizin' my
4 family, friends overbearin' my will I chose took this guilty
5 plea not because it was a knowin' and intelligent guilty plea,
6 it was a involuntary guilty plea and it wasn't intelligently
7 made and it wasn't, uh, voluntary, it was through coercion
8 and it and and what I would say ---

9 THE COURT: Okay.

10 THE APPLICANT: --- misadvice.

11 THE COURT: Alright.

12 BY MR. ARIAIL:

13 Q. Okay, let's go back to this voluntary. I mean, you
14 understood when you were talkin' to him you were pleadin'
15 guilty and ya'll negotiated a plea, correct?

16 A. No, it's like in in in the trial transcript one thing I
17 read about *Alford vs. North Carolina*, Alford demonstrated that
18 his counsel informed him of all the elements before he decided
19 to plead guilty to that in that death penalty situation. What
20 makes my situation different from *Alford vs. North Carolina*
21 I'm not allegin' that I had, uh, competent competent advice
22 because I received, uh, uh, erroneous advice. On *Alford*
23 attorney investigated all a the witnesses that was involved in
24 the crime, in my situation Frank didn't investigate nobody, he
25 didn't even subpoena nobody, ---

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

- 1 Q. Okay, so ---
- 2 A. --- and he didn't corroborate to make another statement.
- 3 Q. Or is -- that's -- I I'm tryin' to, I'm tryin' to make it
- 4 very simple as to what your grounds are. You've been talkin'
- 5 'bout all this case law and all these different things but
- 6 what did Frank do? You're sayin' he, first of all, he didn't
- 7 investigate any witnesses, that what you're sayin', ---
- 8 A. He didn't subpoena ---
- 9 Q. --- so that would ---
- 10 A. --- the wi ---
- 11 Q. --- be -- di -- di -- well subpoena, investigate is two
- 12 different things. I mean, did he, did he try ---
- 13 A. Investigation ---
- 14 Q. --- try to find ---
- 15 A. --- in order -- when Frank knew that the witness was
- 16 gonna be unavailable, his sole responsibility as counsel was
- 17 to corroborate to make another statement because he knew the
- 18 witness was not gonna be available.
- 19 Q. Okay, so what steps do you know he -- do you ---
- 20 A. The steps ---
- 21 Q. --- know he ---
- 22 A. --- that ---
- 23 Q. --- took?
- 24 A. --- he should've took to ---
- 25 Q. So ---

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 A. --- make it a -- be a reasonable probability, that had I
2 not pled guilty, under *Hill vs. Lockhart* he had to subpoena
3 Kraig Pringle, he had to have Kraig Pringle there at the
4 introduction of the statements so Kraig Pringle could could
5 verify the the ---

6 Q. Okay, ---

7 A. --- legitimacy or to make another statement, ---

8 Q. --- e, ---

9 A. --- that woulda made me stand trial ---

10 Q. Okay, e ---

11 A. --- because of exoneratin' evidence.

12 Q. --- even if he had Kraig Pringle, did he take the steps
13 to find Stephaney Foster?

14 A. No.

15 Q. Okay. Well what steps do you know he took to try to find
16 Stephaney Foster?

17 A. The day a trial I was told that she wasn't gonna be
18 there, therefore do you still want this trial. At that point
19 right there, I'm skeptical of goin' forward because I don't
20 have a defense so I was never given a fundamental fair trial
21 due to the part that I'm -- my evidence gonna be waived fully
22 just like we here today, there's no witnesses here, there's no
23 there's nothin' done, so it's basically conclusions,
24 assumptions and things a this nature.

25 Q. Okay, ---

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 A. I inform you under *Butler vs. State* and *Cherry vs. State*
2 you cannot have a procedin' with opinions, assumptions and
3 conclusion because it takes evidence to prove it, do
4 demonstrate the proof and I told you the reason why you need
5 to subpoena the transcript, I told you the reason why you need
6 to subpoena the witness and Kraig Pringle so this wouldn't
7 occur ---

8 Q. Right, ---

9 A. --- but this is the ---

10 Q. --- but ---

11 A. --- same thing that keep occurin'.

12 Q. --- where where is Stephaney Foster today?

13 A. She she she's from Spartanburg.

14 Q. Okay, but I've asked you for an address and I can't get
15 one, correct?

16 A. And I gave it to you.

17 Q. You gave me Jenny McCrackin's, correct?

18 A. I gave you Jenny Crackin and I told you Steph mother's
19 address ---

20 Q. Okay.

21 A. --- and you talked to me for about ten minutes and I was
22 just demonstratin' that a PCR hearin' is a burden a proof
23 hearin' and it it's futile ---

24 THE COURT: Look, you you talk about the facts a the
25 case, you don't need to discuss the law durin' your testimony.

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 THE APPLICANT: And that's why, Judge Your Honor, I made
2 a format for me to run down my claims and I tried to explain
3 to, uh, counsel ---

4 THE COURT: Okay, you just, you testify to the facts
5 about what happened, that's what you're testifyin' about, ---

6 THE APPLICANT: Okay.

7 THE COURT: --- okay. You're not makin' legal arguments.
8 Go ahead.

9 BY MR. ARIAIL:

10 Q. I I need to know what Frank has, you said first of all he
11 didn't interview witnesses, he didn't give you a plea offer,
12 that correct?

13 A. It was basically that they gon -- the the plea offer
14 consisted of Teal came to me and told me that, uh, the plea
15 would be under 15, Frank was tellin' me I'm gonna get 15 to
16 life ---

17 Q. Okay.

18 A. --- the whole time so either take this plea or they gonna
19 throw the book at ya.

20 Q. Okay, but then you went to trial and Frank made motions,
21 correct, to suppress evidence ---

22 A. In the Fourth Amendment me and Teal I never went over the
23 preparation of ---

24 Q. Okay.

25 A. --- what type defense or strategy we were gonna utilize

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 in trial. Frank didn't know what to suppress inside of the
2 Fourth Amendment argument due to the fact that we never went
3 over it so he ---

4 Q. Okay.

5 A. --- didn't know what ---

6 Q. Okay.

7 A. --- curred [sic].

8 Q. And I understand you're sayin' you didn't have a
9 conversation with Frank about trial strategy or the things to
10 suppress, did he make a motion to suppress at your trial?

11 A. Yes, sir.

12 Q. Okay, and that was denied, correct?

13 A. Yes, sir.

14 Q. Okay. So then after that did you have discussions with
15 Frank in regards to what he believed or what he thought the
16 best approach was to handling the case?

17 A. It was no, it was no discussion of, uh, how we was gonna
18 go about handlin' the case.

19 Q. Okay. Did he, did he tell you after he lost his motion
20 to suppress after it began that he thought it was better for
21 you to plead guilty?

22 A. What frustrated me with the motion to suppress they was
23 utilizin' *Illinois vs. Gates* and they was usin', Frank stood
24 up and he stated under a a confidential informer was not
25 reliable and it should be suppressed because none a the

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 confidential informers was, uh, reliable, uh, credible.

2 Q. Okay.

3 A. Now under *Illinois vs. Gates* then disbanded that ideology
4 because it knocked down due to the totality of the
5 circumstance so my argument with Frank before the trial was if
6 we could attack this on the totalities of the circumstances
7 and demonstrate that the totality of the circumstances does
8 not establish probable cause, it won't be no trial ---

9 Q. Okay.

10 A. --- and he never did it. He never, uh, talked with me to
11 form a defense to elaborate to demonstrate the totality of the
12 circumstances thus not demonstratin' probable cause.

13 Q. Okay, so at some point in time you made a decision you
14 wanna plead guilty, right?

15 A. Oh, I never wanted to plead guilty.

16 Q. Okay. Uh, you pled guilty, right?

17 A. Yes, sir.

18 Q. Okay, but you didn't wanna plead guilty but ya did.

19 A. Yes, sir.

20 Q. Okay. So did you -- ya had some discussions with Frank
21 in regards to what you ---

22 A. Alright, ---

23 Q. --- you're gonna plead guilty, right?

24 A. --- when the statement got suppressed, Frank stood up in
25 court in trial and said, Judge Your Honor, my client would

TYRONE PATRICK - DIRECT EXAMINATION BY MR. ARIAIL

1 like to accept a plea. If the statement is allowed in or the
2 statement is suppressed, he will plea, this is on, this is one
3 of the reason why I wanted the transcript to demonstrate that.
4 So when the statement got suppressed, we went in negotiation
5 of should I take this plea. I got took to the back a the
6 courtroom where I was demonstrated that if I ain't gonna be
7 able to see my mother in 20 years or 50 years, she be dead in
8 50 years, so I still rejected the plea and came back out in
9 the trial. After a little bit more, uh, family and friends
10 and and and and counsel cohercin' [sic] me to plead guilty, I
11 broke down and took the plea but at no time did I take this
12 plea voluntarily, knowingly or intelligent because I never
13 wanted to plead to charges I'm innocent of.

14 Q. Okay. Now I I'm I'm still tryin' to figure out exactly
15 you've said a lotta different things in regards to it but
16 there are other things, I mean, he investigated, did he, did
17 he try to find Ms. Foster at any time?

18 A. Only thing I was told on that nature when I came to court
19 that she was, she was not located.

20 Q. Yeah.

21 A. All throughout the time I was detained for two years ---

22 Q. Yeah.

23 A. --- this is what I put on the forefront, this is what I
24 wanted there, ---

25 Q. Um-hum.

TYRONE PATRICK - CROSS-EXAMINATION BY MS. RATIGAN

1 A. --- these are the witness I wanted there to demonstrate.

2 After readin' the law ---

3 Q. Right.

4 A. --- I found out not only that the prosecution but any
5 counsel this is what subpoena power is for, subpoena power
6 just in case they don't show the sheriff's can go look for
7 these people, this was never done, this was never
8 demonstrated. These people, even Kraig Pringle was subpoenaed
9 the day of trial, there was no investigation work and I read
10 that least thirty days before trial peoples gotta be notified
11 and subpoena on what's gonna transpire in court.

12 Q. Okay.

13 A. It was none a this that took place. This was all
14 basically, to me I wasn't gonna get a fundamental fair
15 trial.

16 Q. Right, and you submit an application, it's pretty thick,
17 the, uh, it includes all the other information you need
18 discussed, correct?

19 A. Everything I raised in my PCR application is why I'm here
20 today.

21 Q. Okay.

22 MR. ARIAIL: Your Honor, I have no further questions.

23 THE COURT: Cross?

24 CROSS-EXAMINATION BY MS. RATIGAN:

25 Q. How many times would you say you met with Mr. Eppes

1 before you pled guilty?

2 A. I would say about three or four times.

3 Q. And did you review the State's evidence with him?

4 A. At no time the discovery ever was discussed between me
5 and Frank. I was told that I wasn't entitled to my discovery.

6 Q. Okay. Did you tell him your version of what had
7 happened, that you'd been asleep when the arrest happened?

8 A. Yes, ma'am.

9 Q. Okay. And you told Mr. Eppes that you were innocent?

10 A. Yes, ma'am.

11 Q. Did he ever ex -- tell you that the State had made a plea
12 offer in your case?

13 A. He told me that I would face 15 to life.

14 Q. Okay, so that the State had made you a 15-year offer, is
15 that what you're saying?

16 A. Basically, ---

17 Q. Okay.

18 A. --- yes, ma'am.

19 Q. And you told him you didn't want that 'cause you wanted a
20 trial.

21 A. I want a trial.

22 Q. Okay. Did he ever explain to you the idea of
23 constructive possession? Did ya'll talk about that before the
24 trial?

25 A. No, ma'am.

TYRONE PATRICK - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. Okay. Did Mr. Eppes ever tell you what the State would
2 have to show at trial to prove that you were guilty?

3 A. On the record in the trial transcript Frank stated that I
4 asked the judge, I said, Judge Your Honor, does mere presence
5 constitute guilt for me be guilty a these charges? Frank said
6 in the the transcript he said, Judge, I informed Mr. Patrick
7 that if two people are in a residence and one a them claims
8 the drugs, two people can be found guilty of this charge, this
9 is the the the that's what, that that was related to me on
10 record. Now after comin' readin' state and federal law it
11 goes completely against this assumption that he gave me on
12 record because two people does not constitute constructive
13 possession of the drugs in a residence.

14 Q. Okay, but the question I asked you was did he tell you,
15 you know, the elements of the crime, what the State would have
16 to prove at trial to find you ---

17 A. No, ---

18 Q. --- guilty?

19 A. --- the only thing he ---

20 Q. Okay.

21 A. --- ever give me is what's on record in the trial
22 transcript.

23 Q. Okay. So after the motion to suppress was denied you
24 felt you were coerced into pleading guilty?

25 A. I was coherced [sic] through erroneous advice and

1 through, uh, overwhelming pressure and the participation of
2 the trial judge.

3 Q. Okay, but you told, uh, the judge, you told Judge
4 Welmaker you were telling the truth, do you recall telling
5 that?

6 A. Yeah, I told him I was, I was gonna tell the truth.

7 Q. And did Mr. Eppes explain to you before the guilty plea
8 what an Alford plea was, that you weren't having to mit -- to
9 admit your guilt, did he explain that to you?

10 A. The the Alford plea came about because I we -- I told him
11 I'm innocent, why should I plead guilty to sumtin' I'm
12 innocent of.

13 Q. Okay, but ---

14 A. He said ---

15 Q. --- so what I'm sayin' is did he ask -- did he explain
16 what an Alford plea was to you?

17 A. No, he said we could take a Alford plea and I said,
18 What's a Alford plea, he said, Well that means you aint gotta
19 say you you guilty a the charge.

20 Q. Okay. And did Mr. Eppes tell you that the plea offer was
21 for a negotiated 20-year sentence? Did he explain that?

22 A. Basically I was gonna get 20 years or 50 years, that's
23 that's what was related to me, my family and everybody that
24 was in there.

25 Q. So Mr. Eppes told you you would get 20 years if you pled

TYRONE PATRICK - CROSS-EXAMINATION BY MS. RATIGAN

1 guilty and 50 years if you went to trial, is that fair to
2 say?

3 A. Yes, yes, ma'am.

4 Q. Okay.

5 MS. RATIGAN: That's all I have, Your Honor.

6 THE APPLICANT: Well Judge Your Honor, ---

7 THE COURT: What?

8 THE APPLICANT: --- uh, I read this this case called
9 *State vs. Smith* ---

10 THE COURT: Well you're you're up here to testify to the
11 facts, you're not up here to make ---

12 THE APPLICANT: Well ---

13 THE COURT: --- legal argument so...

14 THE APPLICANT: --- and it's a claim that I didn't get to
15 raise the participation of, uh, trial judge far as, as far as
16 him, uh, leanin' on me 'cause I raised it in my application as
17 far as me not gettin' the minimum a criteria what I was facin'
18 and in the trial transcript you will see that the judge gave
19 me explicit it detail of how much time I could catch if it was
20 given to me consecutive ---

21 THE COURT: Yeah, okay.

22 THE APPLICANT: --- and my argument under, uh, *Pittman*
23 *vs. State* is I never got the minimum criteria to make
24 intelligent decision to get the full consequences of a guilty
25 plea because the judge never gave me the minimum criteria what

FRANK L. EPPES - DIRECT EXAMINATION BY MS. RATIGAN

1 I was facin'. He told me explicitly that the maximum sentence
2 on all charges, he said, Don't you know you could face 30
3 years on this charge, don't you know you could face 15 years
4 on this charge. Uh, ---

5 THE COURT: Okay. Alright, thank you.

6 MR. ARIAIL: Nothin' further, Your Honor.

7 THE COURT: Okay, you step down.

8 (Whereupon the applicant left the stand.)

9 THE COURT: Alright, anything else?

10 MR. ARIAIL: Nothing, Your Honor.

11 THE COURT: Alright.

12 MS. RATIGAN: State would call Mr. Eppes.

13 (Whereupon, the witness came forward.)

14 THE CLERK: Place your left hand on the Bible, raise your
15 right hand please.

16 FRANK L. EPPES, having been first
17 duly sworn, testified as follows:

18 THE CLERK: State your full name for the record.

19 THE WITNESS: Frank L. Eppes.

20 THE COURT: What's does that L stands for?

21 THE WITNESS: Langston.

22 THE COURT: Alright. Alright.

23 DIRECT EXAMINATION BY MS. RATIGAN:

24 Q. Mr. Eppes, do you recall representing Mr. Patrick on
25 these charges?

FRANK L. EPPES - DIRECT EXAMINATION BY MS. RATIGAN

1 A. I do.

2 Q. And were you appointed or retained?

3 A. I was retained.

4 Q. And did you file the usual Brady and Rule 5 motions?

5 A. To my knowledge I did. I got the discovery so I have to
6 think I did.

7 Q. Did you review the discovery materials with your
8 client?

9 A. I would have discussed it with him but I'm not sure I
10 took the stuff over there. We had a kinda unique situation
11 about the critical discovery that I understand how he said
12 what he said because there was a confidential informant and I
13 had to engage in pretty extensive negotiations with the
14 solicitor's office to get access to the tapes of the
15 confidential informant. There were two cases that involved
16 sales of drugs, uh, and I -- those cases wound up not bein'
17 the depo -- dispositive cases but they were very significant
18 as far as our talks and our negotiations and the solicitor's
19 office here has a policy of not providing tapes to defendants
20 although Mr. Patrick was virtually certain of who the
21 confidential informant was.

22 Q. Okay. Did he ---

23 THE COURT: These were ---

24 MS. RATIGAN: I'm sorry.

25 THE COURT: Let me interrupt that the sales were made by

FRANK L. EPPES - DIRECT EXAMINATION BY MS. RATIGAN

1 the the CI the CI ---

2 THE WITNESS: The CI made purchases from Mr. Patrick ---

3 THE COURT: Patrick, okay.

4 THE WITNESS: --- and they were on tape ---

5 THE COURT: Those were also charges that were pending?

6 THE WITNESS: Those were charges that were pending and

7 that discovery ---

8 THE COURT: Okay.

9 THE WITNESS: --- they wouldn't let me have ---

10 THE COURT: Okay, just so I'm clear, those -- did they --

11 those charges get dismissed as a result of the ---

12 THE WITNESS: As a result ---

13 THE COURT: --- negotiated plea?

14 THE WITNESS: --- of a guilty plea, yes, sir.

15 THE COURT: Okay.

16 THE APPLICANT: Uh, ---

17 THE COURT: --- Alright, thank you.

18 THE APPLICANT: --- Judge Your Honor, I'd like to state I

19 would ---

20 THE COURT: Uh, no, sir, you're not ---

21 THE APPLICANT: Okay, yeah.

22 THE COURT: Go ahead.

23 BY MS. RATIGAN:

24 Q. Did Mr. Patrick tell ya his version of what had happened?

25 A. Yes.

FRANK L. EPPES - DIRECT EXAMINATION BY MS. RATIGAN

1 Q. Did ya'll discuss, uh, his co-defendant Stephaney Foster?

2 A. We did.

3 Q. Were you aware of, uh, Applicant's Exhibit 1 the
4 statement that she allegedly wrote?

5 A. I was, as a matter of fact, it's in my file.

6 Q. Were you ever able to talk with Ms. Foster?

7 A. I don't remember. Uh, I believed what Ms. Pat --
8 Mr. Patrick said, uh, and I know that we looked at for
9 Ms. Foster for the trial and could not find her but I have no
10 memory of whether I spoke to her or not, or not, it seems like
11 I did but I just don't remember as I sit here today.

12 Q. And you could not find her to subpoena her for trial?

13 A. We tried to get her for the trial and we could not find
14 her.

15 Q. Okay. Did you explain to Mr. Patrick that you just
16 couldn't locate her?

17 A. We, I'm sure we had discussions of that nature.

18 Q. Okay. Did you explain to Mr. Patrick the kinda legal
19 concepts of mere presence and constructive possession, did
20 ya'll talk about that?

21 A. Did I explain in them that way I'm not sure. Did I
22 explain to him that the police came in the house, he was
23 there, the other person was there and the drugs were there and
24 the police were all gonna testify that he was livin' in the
25 house and therefore he could be found guilty of possessing the

FRANK L. EPPES - DIRECT EXAMINATION BY MS. RATIGAN

1 drugs, yes, I explained it to him that way. I think he
2 alluded to those discussions.

3 Q. The State ever make any kind of a plea offer to you?

4 A. The State switched solicitors, at at one point the plea
5 offer was a static 15 years. In my mind I think at one point
6 we got offered 10 but I can't swear to that, uh, but
7 Mr. Patrick was always adamant that he wanted to go to trial,
8 he felt like he'd prevail at trial.

9 Q. Now Mr. Patrick has testified that you failed to
10 corroborate his statement, can you shed any light on how you
11 would have gone about corroborating that, uh, not his
12 statement, corroborating Ms. Foster's statement? Is there
13 any -- can you shed some light on how you might have ---

14 A. I I unders -- I understand 'what he's sayin' about
15 Mr. Pringle havin' witnessed that statement but Mr. Pringle's
16 testimony would not have been admissible, it woulda been
17 hearsay in my view.

18 THE COURT: She a co-defendant?

19 THE WITNESS: Ms. Foster was a, she had charges too but
20 they always treated 'em like separate individuals. It was
21 my, ---

22 THE COURT: Okay, did she have ---

23 THE WITNESS: --- it was my belief ---

24 THE COURT: --- a lawyer?

25 THE WITNESS: She did, Mr. Pringle.

FRANK L. EPPE - DIRECT EXAMINATION BY MS. RATIGAN

1 THE COURT: Okay. So you woulda had to get his
2 permission to speak with her anyway, ---

3 THE APPLICANT: No, ---

4 THE COURT: --- is that right?

5 THE APPLICANT: --- Ms. Pringle was my ---

6 THE COURT: You be quite.

7 THE BAILIFF: Can't talk.

8 THE WITNESS: Well if she had another lawyer, I don't
9 remember who it was beyond Mr. Pringle.

10 BY MS. RATIGAN:

11 Q. So the case eventually ended up on the trial docket.

12 A. Mr. Patrick's case did, yes.

13 Q. Okay. Did you have a suppression hearing?

14 A. We had a, we had a suppression hearing that that I've
15 changed into a hearin' on everything in the kitchen sink for
16 lack of a better way to describe it. There were several
17 issues that Mr. Patrick was concerned about and I attempted to
18 get them all addressed by the judge in the suppression hearing
19 even though my memory is that a couple of 'em were not
20 straight suppression issues.

21 Q. And was your motion to suppress denied by Judge
22 Welmaker?

23 A. Uh, it was.

24 Q. Okay. Now Mr. Patrick has stated that you told the Court
25 that he would plead guilty if the statement was suppressed, do

FRANK L. EPPES - DIRECT EXAMINATION BY MS. RATIGAN

1 you recall making any kind of statement like that?

2 A. Uh, I don't remember how it came about but once Judge
3 Welmaker ruled against us Mr. Patrick in discussions with he
4 and I and, uh, his mother was involved a little bit too, he
5 changed his mind and decided to enter a guilty plea.

6 Q. Do you recall how far into the trial ya'll had gotten
7 before, I mean, had you already started into witnesses and all
8 that stuff or do you not recall?

9 A. It seems like we done openin' statements but I don't
10 remember, we might not ---

11 THE COURT: How far in the trial, is that what you asked?

12 MS. RATIGAN: Yes, sir.

13 THE COURT: One direct witness.

14 MS. RATIGAN: Okay.

15 BY MS. RATIGAN:

16 Q. Did you explain to Mr. Patrick what entering Alford plea
17 would mean?

18 A. I did.

19 Q. And did you explain to Mr. Patrick what a negotiated
20 sentence would be?

21 A. I did.

22 MS. RATIGAN: That's all I have, Your Honor.

23 THE COURT: Okay, any cross?

24 MR. ARIAIL: Yes, Your Honor.

25 THE WITNESS: Your Honor, can I clarify somethin' on my

FRANK L. EPPES - CROSS-EXAMINATION BY MR. ARIAIL

1 statement?

2 THE COURT: Yeah.

3 THE WITNESS: I, you know, I was listenin' today and got
4 the impression that Mr. Pringle might have been Ms. Foster's
5 lawyer and I think that was my impression today and I don't
6 have any memory of it right this minute who her lawyer was or
7 wasn't.

8 THE COURT: Okay, but my question was if you were gonna
9 speak to her, you would have to get permission from her
10 attorney, whoever it was to do that.

11 THE WITNESS: Perhaps, I don't remember.

12 THE COURT: Alright.

13 THE WITNESS: I have no memory of it, I just remember we
14 couldn't find her.

15 THE COURT: Okay.

16 THE WITNESS: We tried to subpoena.

17 THE COURT: Okay.

18 CROSS-EXAMINATION BY MR. ARIAIL:

19 Q. Regard to that, in regards to tryin' to find her, wha'd
20 you do to try to find her, Frank?

21 A. I called the numbers that I had that Mr. Patrick gave me.

22 Q. Did you ever have, uh, an address or anything you could
23 serve her?

24 A. If I did I don't remember it right now.

25 Q. Okay, yeah, but you never could get in touch with her.

1 A. I never could get in touch with her.

2 Q. So there's no way, I mean, you couldn't tell her to come
3 to trial or anything like that.

4 A. If I, if I got in touch with her and told her to come to
5 trial, she didn't come but I don't have the memory of it.

6 Q. Okay. Were there any other ways you thought you could
7 get that statement in to to help him or did you try to --
8 how'd that come about in the trial with Judge ---

9 A. I was not as impressed with the statement as Mr. Patrick
10 was.

11 Q. Okay.

12 A. I felt like the police were gonna, were gonna put the lie
13 to the statement.

14 Q. Okay, so basically your thought on that was even even
15 though she's sayin' that, that was ---

16 A. It was helpful ---

17 Q. --- it's ---

18 A. --- but I did not believe it would be dispositive.

19 Q. Okay. Did you explain that to him?

20 A. I did.

21 Q. Okay. Now what discussions did you have with him? I --
22 ya'll got to the one direct witness, your motions had been
23 denied, he wants to enter a guilty plea, I think he does it
24 twice durin' his trial but ---

25 A. Mr. Mr. Patrick's statements of my discussions with him

FRANK L. EPPES - CROSS-EXAMINATION BY MR. ARIAIL

1 while I feel like there was more to it than that were very
2 accurate and very likely word-for-word accurate in --
3 including a word that's not appropriate to use in court
4 because I was pretty convinced that the prosecutor and the
5 police departments involved were not going to change their
6 minds about Mr. Patrick ---

7 Q. Okay.

8 A. --- and I was pretty straightforward with him about that.
9 I I frankly felt like a lesser sentence woulda been more
10 appropriate but there was no changin' their mind.

11 Q. When you say not changin' their mind, not reducin' it
12 lower than they currently were offerin'?

13 A. They never offered any kinda plea that did not involve a
14 negotiated innocence.

15 Q. Okay. Now you've -- one a his issues is a constructive
16 versus I guess constructive possession is did you, I think it
17 was fully discussed on the plea, you think he knew, understood
18 what was goin' on with that, uh, ---

19 A. I thought he did.

20 Q. Okay. Did you think you answered all his questions in
21 regards to that?

22 A. I thought I had.

23 Q. Okay. Was the whole case pretty much based upon whether
24 or not Stephaney Foster was gonna be enough to get this,
25 enough to say the stuff was not his, is that really the only

FRANK L. EPPES - EXAMINATION BY THE COURT

1 theory in the case?

2 A. It -- I worried more, I worried as much about the sales
3 as I did about the traffickin' case. My memory of it is that
4 we pushed it towards trial partly because the trafficking
5 ca -- the sales were the base for the search warrant, maybe
6 they weren't, I don't remember now, but the sales were part
7 of, a critical part of it and I remember, you know, spendin'
8 the time to see the ta -- listen to the tapes and satisfy
9 myself that the the sale cases were bad cases too and then the
10 State chose to go to trial on the traffickin' case which I
11 frankly thought was the weaker case but we got in there and it
12 was gonna be the police officer's testimony versus "Fat's" and
13 I I just felt like we'd lose.

14 Q. Okay. Is there anything else you coulda done that you
15 think to, any other information you could presented to court
16 to get that, get a different result?

17 A. I, if if I thought of it now, I would happily say it.
18 I'd I'd ---

19 Q. Okay.

20 A. --- like nothin' better except for him to win this.

21 MR. ARIAIL: Okay, I have no further questions.

22 MS. RATIGAN: I have nothing further, Your Honor.

23 EXAMINATION BY THE COURT:

24 Q. Okay. Uh, mama was obviously in -- involved in the
25 decision to plea?

FRANK L. EPPES - EXAMINATION BY THE COURT

1 A. Yes, sir.

2 Q. And in fact, Judge Welmaker tried to give him an
3 opportunity to back out ---

4 A. He did everything, ---

5 Q. --- I'm not mistaken.

6 A. --- he did everything he could to talk him into backin'
7 out.

8 Q. Yeah, and, uh, where was it? Oh Page 11, well it starts
9 bottom Page 10 where he's talkin' to his mother, he's
10 addressing the judge but he's keeps tellin' his mother, tells
11 about her three times he's gonna plead and, uh, Judge Alford
12 said, Do you wanna enter your plea or not, he says, I'm
13 pleadin', I'm pleadin', I'm pleadin'. Did ya coerce him or
14 force him in any way?

15 A. No, sir.

16 Q. Okay. Thanks, you can step down.

17 (Whereupon, the witness left the stand.)

18 THE COURT: I will just note for the record Page 5 Lines
19 19 through 22, uh, the Court is talking and he says that,
20 quote, We've heard some witnesses already. Your attorney has
21 had an opportunity to examine him outside the presence of the
22 jury that he's about to start examining the first witness
23 under cross-examination now, so I'm gonna take that that with
24 respect to the transcript the only thing, uh, would be the
25 pretrial motions and the, uh, in fronta the jury half of a

MOTIONS AND MATTERS

1 witness, okay. You got anything else you wanna put up?

2 MS. RATIGAN: Uh, the State would rest, Your Honor.

3 THE COURT: Okay, anything else?

4 MR. ARIAIL: Nothing, Your Honor.

5 THE COURT: Alright, well anything ya'll wanna tell me?

6 THE APPLICANT: Your Honor, ---

7 THE COURT: What? Stand up.

8 (Whereupon, the applicant complied.)

9 THE APPLICANT: Under the exhaustion doctrine.

10 THE COURT: Under what?

11 THE APPLICANT: Under the exhaustion doctrine 2254 if I
12 don't fully allege and adequately submit my claims then either
13 they'll consider abandon. Attorney general in her order gonna
14 say all claims that was not raised in the PCR procedin' is
15 considered waived and abandoned so that's considered, uh,
16 impedin' or hinderin' because I didn't get to fully elaborate
17 claims that I raise in my PCR application. Now if all the
18 claims in my PCR application gonna be ruled upon and I'm not
19 gonna get a issue from Attorney General Office sayin' that I
20 waive, abandon these claims then it's good but it's bad if the
21 claims that I brought forth today I don't get to fully
22 elaborate a other part to show full why a due process
23 violation occurred durin' this involuntary guilty plea and
24 with my counsel he, I think he did a a a great job due to the
25 fact of the short period a time he had but he's only talked to

MOTIONS AND MATTERS

1 me for ten minutes on the telephone and he's came in here and
2 put, and put up the best defense he could on short notice
3 but ---

4 THE COURT: Well ---

5 THE APPLICANT: --- my claims ---

6 THE COURT: --- you you make all ---

7 THE APPLICANT: --- are not ---

8 THE COURT: --- these ---

9 THE APPLICANT: --- fully elaborated.

10 THE COURT: --- assertions about what happened ---

11 THE APPLICANT: Yeah.

12 THE COURT: --- without any any evidence to back it up.

13 THE APPLICANT: Evidence is the claims are not bein'
14 fully raised in the PCR application.

15 THE COURT: Well you're up here and you had an
16 opportunity to testify ---

17 THE APPLICANT: And I did.

18 THE COURT: --- and you, ---

19 THE APPLICANT: --- and ---

20 THE COURT: --- and you ---

21 THE APPLICANT: --- I couldn't elaborate, ya'll stopped
22 me.

23 THE COURT: No, ---

24 THE APPLICANT: I couldn't ---

25 THE COURT: --- sir, I stopped ---

MOTIONS AND MATTERS

1 THE APPLICANT: --- get ---

2 THE COURT: --- you from making legal arguments from the,
3 uh, you were up her to testify to the facts.

4 THE APPLICANT: The facts in my PCR application
5 demonstrate that the first claim is involuntary guilty plea
6 due to the wrong ---

7 THE COURT: Okay.

8 THE APPLICANT: --- advice of counsel, ---

9 THE COURT: Okay.

10 THE APPLICANT: --- the second one's partic --
11 participation of trial judge as far as a Rule 11 violation as
12 far as him usin' cohercion to make me plead guilty, the second
13 one, uh, (C) is witness availability, gun is the firearm
14 charge, discovery. These issues gotta be laborated [sic] on
15 in order for me to get a conclusion of rule a law on 'em to
16 preserve 'em for review.

17 THE COURT: Um, okay.

18 THE APPLICANT: If I don't get 'em on the record and
19 lawyer don't present 'em on the record, ---

20 THE COURT: Well you just presented 'em, --

21 THE APPLICANT: Okay, ---

22 THE COURT: --- didn't you?

23 THE APPLICANT: --- thank you ---

24 (Cross-talk.)

25 THE COURT: Yeah, okay.

MOTIONS AND MATTERS

1 MR. ARIAIL: Your Honor, we've also made his application
2 part a the record.

3 THE COURT: It's part of the record.

4 THE APPLICANT: Okay, thank you.

5 THE COURT: Uh, but I'm gonna deny his application. He
6 hasn't shown any evidence that the plea was involuntary, he
7 didn't show any evidence that Mr. Eppes' conduct in the trial
8 fell below an objective standard of reasonableness, uh, hadn't
9 shown anything to show coercion, the judge in fact offered him
10 several times, uh, not to enter the plea, uh, it was, uh,
11 clear from the the, uh, transcript of the plea that, uh,
12 Mr. Patrick knew what was goin' on and that it was a free and
13 voluntary waiver of his rights. Uh, I I don't find any any
14 ground which would justify granting relief, okay. Thank you.

15 MS. RATIGAN: Thank Your Honor.

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CERTIFICATE OF REPORTER

1
2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on October 21, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 4 through 48, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

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

13 March 15, 2014

14
15 

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

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-39-0081

2013 DEC - 3

P

Tyrone Bernard Patrick,
S.C.D.C. No. 233697,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 20, 2012. The Respondent made its return on June 12, 2012. An evidentiary hearing into the matter was convened on October 21, 2013 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Frank Eppes, Esquire. The Court had before it the transcript of the guilty plea hearing, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted by the Pickens County Grand Jury for trafficking cocaine base (2009-GS-39-1593), possession with

intent to distribute (PWID) cocaine base within proximity of a school (2009-GS-39-1594), and possession of a weapon during the commission of a violent crime (2009-GS-39-1595). He was represented by Frank Eppes, Esquire.

On April 13, 2011, the State called the case to trial. The Applicant, however, subsequently entered an Alford¹ plea pursuant to a negotiated sentence. The Honorable G. Edward Welmaker sentenced the Applicant pursuant to concurrent terms of twenty years for trafficking cocaine base, second offense, five years for PWID cocaine base within proximity of a school, and five years for possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. By order dated June 3, 2011, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failed to object to improper jury instruction.
 - b. "Silently surrendering competent representation in the presence of the trial courts' improper 'browbeating' of Applicant with incomplete sentencing declarations."
 - c. Failed to timely "move the court to subpoena witnesses."
 - d. Failed to move for a continuance.
 - e. Failed to thoroughly cross-examine the State witness about consent to search.
 - f. Failed to investigate and failed to object to admission of evidence "seized in the residence where Applicant occupied 'mere presence.'"
 - g. Failed to request a specific reasonable doubt charge.
 - h. Failed to properly object to the pre-trial identification and hearsay statements used in support of the search warrant affidavit.
 - i. Failed to properly cross-examine witnesses.

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970).

- j. Failed to object to the admission of hearsay.
- k. Failed to object to the admission of statements.
- l. Failed to file a proper motion to compel discovery.
- m. Failed to challenge subject matter jurisdiction of the Applicant's prior conviction.
- n. Failed to perfect the appeal.
- o. Failed to present an entrapment defense
- 2. Trial court error.
- 3. Involuntary guilty plea.
- 4. Lack of subject matter jurisdiction.

At the PCR hearing, the Applicant proceeded solely upon the issues of ineffective assistance of plea counsel and involuntary guilty plea. This Court finds all issues related to the events of the Applicant's trial were not raised at the hearing and are thus abandoned. This Court further notes such issues are without merit, as the Applicant ultimately pled guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel/Involuntary Guilty Plea

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under

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

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had three or four meetings with plea counsel. The Applicant stated that, while he told plea counsel he was innocent, they never reviewed the discovery materials. The Applicant stated he rejected a fifteen-year plea offer because he wanted a jury trial. The Applicant stated plea counsel failed to "corroborate the statement" – that Kraig Pringle took from co-defendant Stephanie Foster – in order to show that he had no knowledge of the drugs. The Applicant stated plea counsel failed to investigate the case or subpoena witnesses (Pringle and Foster). The Applicant stated he "broke down" and decided to plead guilty because of coercion. The Applicant stated plea counsel explained the concepts of an Alford plea and a negotiated sentence.

Plea counsel testified he filed discovery motions after he was retained. Plea counsel testified he reviewed the discovery materials (except for some information about the confidential informant) with the Applicant. Plea counsel testified the Applicant told him that he was innocent and rejected a fifteen-year plea offer from the State. Plea counsel testified he did "corroborate" the statement at issue but that Pringle's testimony would be inadmissible hearsay. Plea counsel testified, however, that he was not impressed by Foster's statement. Plea counsel testified that, while the Applicant gave him contact information for Foster, he was never able to get in touch with her. Plea counsel testified they had a pre-trial suppression hearing and had begun the trial² when the Applicant decided to plead guilty. Plea counsel testified the State would only offer a negotiated sentence and that he explained the nature of such (as well as what an Alford plea entailed) to the Applicant. Plea counsel testified he could not have done anything else to obtain a different result in this case.

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

This Court finds the Applicant failed to meet his burden of proving plea counsel should have corroborated the statement. The Applicant stated Kraig Pringle took a statement from his co-defendant, Stephanie Foster, and plea counsel could have corroborated this statement to show he had no knowledge of the drugs. Plea counsel testified Pringle's testimony would have been inadmissible hearsay. This Court finds the Applicant has failed to articulate what he wanted plea

² This Court notes the trial halted after the direct examination of the first witness.

counsel to have done to "corroborate" the statement. Without such a showing, this Court cannot speculate as to whether any additional investigation into the statement would have yielded a different result in this case. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have investigated and subpoenaed Pringle and Foster. Plea counsel indicated he had contact information for Foster but was never able to get in touch with her prior to the trial. This Court finds plea counsel's testimony is credible. Regardless, as neither Pringle nor Foster testified at the PCR hearing, this Court cannot speculate as to any impact their testimony may have had upon the Applicant's case. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). Further, the Applicant has failed to articulate what plea counsel could have discovered if he had further investigated these two witnesses. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving he was coerced into pleading guilty. The Applicant told the plea judge that he understood his questions and had given truthful answers. (Plea transcript, p.14). The Applicant told the plea judge he was satisfied with plea counsel's representation and had understood their discussions. (Plea

transcript, p.10). While this Court notes the guilty plea did stop at one point, when the plea judge asked the Applicant if he wanted to wanted to plead guilty, the Applicant stated "I'm pleading, I'm pleading, I'm pleading." (Plea transcript, p.8; p.10). When the plea judge noted the jury was still waiting, the Applicant did not tell the judge that he wanted to resume the trial. (Plea transcript, p.10). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

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

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

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

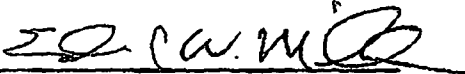
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 25 day of November 2013.


 Edward W. Miller
 Presiding Judge
 Thirteenth Judicial Circuit

Summerville, South Carolina.

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA
 2013 DEC -2 P 2:03

WITNESSES

Jonathan Hamby

Easley Police Department

7/31/2009

ARREST WARRANT NUMBER
K360815

ACTION OF GRAND JURY

TRUE BILL
Date OCT 13 2009

Page N. Ball
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-39-1593
JMM

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

TYRONE BERNARD PATRICK

0389

Indictment for

TRAFFICKING COCAINE BASE (CRACK
COCAINE)

VIOLATION § 44-53-0375(G)(2)

JK

DL SUSPENDS

Did Clerk receive driver's license?

YES

NO

If no, explain

Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
TRAFFICKING COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on _____ the Grand Jurors of Pickens
County present upon their oath:

That TYRONE BERNARD PATRICK did in Pickens County, on or about the 30th day of July, 2009, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Cocaine Base (Crack Cocaine). This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

WITNESSES

Jonathan Hamby

Easley Police Department

7/31/2009

DOCKET NO. 2009-GS-39- ^{JMM} 1594

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

vs.

TYRONE BERNARD PATRICK

ARREST WARRANT NUMBER

K360816

ACTION OF GRAND JURY

TRUE BILL

Date: OCT 13 2009

Tyrene M. Bunker
Foreperson of Grand Jury

VERDICT

0108

Indictment for

POSSESSION OF COCAINE BASE W/IN TO
DIST. 1/2 MILE FROM SCHOOL

VIOLATION § 44-53-0445(B)(2)

Foreperson of Petit Jury

Date:

AKB

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
POSSESSION OF COCAINE BASE W/I TO DIST. 1/2 MILE FROM
SCHOOL

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Pickens

That TYRONE BERNARD PATRICK did in Pickens County, on or about the 30th day of July, 2009, willfully and unlawfully possess with the intent to distribute a quantity of Cocaine Base (Crack Cocaine), a controlled substance. The incident occurred within one-half (1/2) mile from Simpson Academy. This is in violation of §44-53-445 of the South Carolina Code of Laws (1976) as amended.

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

~~SOLICITOR~~

WITNESSES

Jonathan Hamby

Easley Police Department

7/31/2009

DOCKET NO. 2009-GS-39-1595

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

TYRONE BERNARD PATRICK

ARREST WARRANT NUMBER

K360817

ACTION OF GRAND JURY

TRUE BILL

Date: OCT 13 2009

Gregory H. Babin
Foreperson of Grand Jury

VERDICT

0549

Indictment for

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

Foreperson of Petit Jury

Date:

HB

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

INDICTMENT FOR
 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
 CRIME

At a Court of General Sessions, convened on _____ the Grand Jurors of Pickens

County present upon their oath:

That TYRONE BERNARD PATRICK did in Pickens County, on or about the 30th day of July, 2009, possess or visibly display two .38 caliber handguns during the commission or attempted commission of a violent crime, to wit: trafficking cocaine base substance. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

 SOLICITOR