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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

---

JOSEPH HEYWARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

---

LANELLE CANTEY DURANT  
Appellate Defender

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Defense  
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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	08-GS-10-6883 et al
	)	
Joseph Heyward.	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing was held on August 24, 2010, before The Honorable J.C. Nicholson, in Courtroom 4D of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Megan Wynes, Assistant Solicitor  
 Curtis Fleming, Assistant Solicitor  
 9<sup>TH</sup> CIRCUIT SOLICITORS OFFICE  
 100 Broad Street, Suite 400  
 Charleston, South Carolina 29401  
 Appearing for State of South Carolina

Cantrell Frayer, Public Defender  
 Ted Smith, Public Defender  
 CHARLESTON COUNTY PUBLIC DEFENDER  
 101 Meeting Street, Suite 500  
 Charleston, South Carolina 29401  
 Appearing for Defendant

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1

2

(DEFENDANT PRESENT)

3

(OFF RECORD BENCH CONFERENCE)

4

THE COURT: I understand that Mr.

5

Heyward is going to enter a plea; is that

6

correct? Does anybody have the sentencing

7

sheet?

8

SOLICITOR: We are getting it right

9

now.

10

THE COURT: Mr. Heyward, if you would

11

come around, please, to the podium. Mr.

12

Heyward, would you raise your right hand?

13

DEFENDANT: (Complies).

14

THE COURT: Do you swear to tell the

15

truth, nothing but the truth, so help you God?

16

DEFENDANT: Yes, sir.

17

THE COURT: All right. Mr. Heyward,

18

I am going to ask you some questions. If you

19

don't understand the question or if you need to

20

talk to your attorney about the question, please

21

let me know and I will give you an opportunity

22

to do that. Okay?

23

DEFENDANT: Yes, sir.

24

THE COURT: Can you do that?

25

DEFENDANT: Yes, sir.

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3

1                   THE COURT:     All right.  Mr. Heyward,  
2     how old are you?  
3                   DEFENDANT:     Forty-three (43).  
4                   THE COURT:     What is your date of  
5     birth?  
6                   DEFENDANT:     8-9-60.  
7                   THE COURT:     What is your social  
8     security number?  
9                   DEFENDANT:     251-29-1162.  
10                  THE COURT:     Are you married?  
11                  DEFENDANT:     No, sir.  
12                  THE COURT:     Have you ever been  
13     married?  
14                  DEFENDANT:     No, sir.  
15                  THE COURT:     Do you have any children?  
16                  DEFENDANT:     Yes.  
17                  THE COURT:     How many?  
18                  DEFENDANT:     Five.  
19                  THE COURT:     What are their ages, just  
20     approximately?  
21                  DEFENDANT:     (Emotional) -- 23, 20, 6,  
22     4 and 3.  
23                  THE COURT:     Do you see the children  
24     on a regular basis?  
25                  DEFENDANT:     Yes.

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1                   THE COURT:     Do you see the children  
2     on a regular basis?  
3                   DEFENDANT:     Yes.  
4                   THE COURT:     Do you pay child support  
5     for them or do they live with you?  
6                   DEFENDANT:     I take care of them.  
7                   THE COURT:     Do they live with you?  
8                   DEFENDANT:     Sometimes.  
9                   THE COURT:     Sometimes?  
10                  DEFENDANT:     (Affirmative nod).  
11                  THE COURT:     Okay. How far did you go  
12     in school?  
13                  DEFENDANT:     GED.  
14                  THE COURT:     GED?  
15                  DEFENDANT:     Yes, sir.  
16                  THE COURT:     What type of work have  
17     you done?  
18                  DEFENDANT:     Sheetmetal.  
19                  THE COURT:     What did you do with  
20     steel metal?  
21                  DEFENDANT:     Trim (phonetic).  
22                  THE COURT:     How long did you do that  
23     type of work?  
24                  DEFENDANT:     About three to four  
25     years.

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1 THE COURT: Three or four years?  
2 DEFENDANT: (Affirmative nod).  
3 THE COURT: How long have you been in  
4 jail?  
5 MS. FRAYER: Three years, eight months  
6 and nineteen days.  
7 THE COURT: Before you went to jail,  
8 I guess almost four years ago, where you working  
9 sheetmetal?  
10 DEFENDANT: Yes.  
11 THE COURT: Where did you work prior  
12 to that time?  
13 DEFENDANT: Before that, I used to  
14 work at a restaurant.  
15 THE COURT: What did you do at the  
16 restaurant?  
17 DEFENDANT: Line cook, at Wild Wings.  
18 THE COURT: Cook?  
19 DEFENDANT: Yes, sir.  
20 THE COURT: What restaurant?  
21 DEFENDANT: Wild Wings.  
22 THE COURT: Wild Wings?  
23 DEFENDANT: (Affirmative nod).  
24 THE COURT: Was that the one out in  
25 Mount Pleasant?

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1                   DEFENDANT:     Yes, sir.

2                   THE COURT:     All right.  Do you  
3 understand that on the criminal solicitation of  
4 a minor -- I believe that's a max of ten years,  
5 is that correct, Solicitor?

6                   SOLICITOR WYNES:  Yes, sir, that's  
7 correct.

8                   THE COURT:     You could receive up to  
9 ten years?

10                  DEFENDANT:     Yes, sir.

11                  THE COURT:     On the trafficking  
12 cocaine, the maximum on that is how much?

13                  SOLICITOR WYNES:  The maximum is  
14 twenty-five years.

15                  THE COURT:     And it's been reduced  
16 from twenty-eight to a hundred grams rather than  
17 a hundred to two hundred grams; do you  
18 understand?

19                  DEFENDANT:     Yes, sir.

20                  THE COURT:     The maximum is twenty-  
21 five years, do you understand?

22                  DEFENDANT:     Yes, sir.

23                  THE COURT:     Do you have any question  
24 about the charge or the maximum time that you  
25 could receive on each one?

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1                   DEFENDANT:     No, sir.

2                   THE COURT:     Have you had any drugs or  
3 alcohol in the last twenty-four hours?

4                   DEFENDANT:     No, sir.

5                   THE COURT:     Have you ever been  
6 diagnosed with emotional, nervous or mental  
7 condition by a doctor?

8                   DEFENDANT:     No, sir.

9                   THE COURT:     Are you satisfied with  
10 the services of your attorney?

11                  DEFENDANT:     Yes, sir.

12                  THE COURT:     Has she done everything  
13 that you've asked her to do?

14                  DEFENDANT:     Yes.

15                  THE COURT:     Is there anything else  
16 that she needs to do for you?

17                  DEFENDANT:     She has done what I've  
18 asked her.

19                  THE COURT:     Have you understood all  
20 the conversations that you have had with your  
21 attorney?

22                  DEFENDANT:     Yes, sir.

23                  THE COURT:     Have you had ample time  
24 to make a decision to enter your guilty plea  
25 today?

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1 DEFENDANT: Yes, sir.

2 THE COURT: How many previous times  
3 have you been through the criminal system?

4 DEFENDANT: Three.

5 THE COURT: Three times previously?

6 DEFENDANT: (Affirmative nod.)

7 THE COURT: Have you ever served any  
8 time as a result of your previous involvement  
9 with the criminal system?

10 DEFENDANT: Yes.

11 THE COURT: How much time?

12 DEFENDANT: I have six months on the  
13 first one, I had six years on the second one and  
14 seven years on the third.

15 THE COURT: How much did you actually  
16 serve?

17 DEFENDANT: (No verbal response).

18 THE COURT: Do you remember?

19 DEFENDANT: The last one was about  
20 three years, six months.

21 THE COURT: Do you understand on the  
22 trafficking charge that you will not be eligible  
23 for parole?

24 DEFENDANT: Yes, sir.

25 THE COURT: You understand?

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9

1                   DEFENDANT:     Yes, sir.

2                   THE COURT:     You've got to serve at  
3 least eighty-five percent?

4                   DEFENDANT:     Yes, sir.

5                   THE COURT:     Do you have any questions  
6 about that?

7                   DEFENDANT:     No, sir.

8                   THE COURT:     Do you understand under  
9 the Fifth Amendment to the Constitution that you  
10 have the right to remain silent, that no one can  
11 make you testify against yourself; do you  
12 understand?

13                   DEFENDANT:     Yes.

14                   THE COURT:     By entering a guilty plea  
15 you will be testifying against yourself, do you  
16 understand?

17                   DEFENDANT:     Yes.

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

21                   DEFENDANT:     Yes.

22                   THE COURT:     Do you understand that  
23 you are entitled to a jury trial?

24                   DEFENDANT:     Yes, sir.

25                   THE COURT:     As a matter of fact, we

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1 were going to start the jury trial; do you  
2 understand?

3 DEFENDANT: Yes, sir.

4 THE COURT: We drew the jury  
5 yesterday, do you understand?

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that  
8 during a jury trial that the State would be  
9 required to prove you guilty beyond a reasonable  
10 doubt and that all twelve jurors would have to  
11 vote to find you guilty. Do you understand?

12 DEFENDANT: Yeah.

13 THE COURT: You could testify on your  
14 behalf, your attorney could call other witnesses  
15 for you. Do you understand?

16 DEFENDANT: Yes.

17 THE COURT: Your attorney could  
18 cross-examine witnesses which the State called;  
19 do you understand?

20 DEFENDANT: Yes.

21 THE COURT: All right. Knowing that  
22 about a jury trial, do you want a jury trial?

23 DEFENDANT: No.

24 THE COURT: You understand that you  
25 have a right to appeal the guilty plea ten days

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1 from today?

2 DEFENDANT: Yes.

3 THE COURT: Has anybody coerced you  
4 or threatened you to make you plead guilty?

5 DEFENDANT: No, sir.

6 THE COURT: Has anybody intimidated  
7 you to make you plead guilty?

8 DEFENDANT: No, sir.

9 THE COURT: Have any promises been  
10 made to you other than a recommendation of  
11 eighteen years on the trafficking cocaine, and I  
12 believe concurrent; is that correct?

13 SOLICITOR WYNES: No position at all  
14 as to concurrent.

15 THE COURT: So a recommendation as to  
16 eighteen years and that's been reduced to  
17 trafficking twenty-eight to one hundred grams;  
18 is that correct?

19 SOLICITOR WYNES: That's correct.

20 THE COURT: All right. Other than  
21 that, have any other promises been made to you?

22 DEFENDANT: No, sir.

23 THE COURT: Have you had enough time  
24 to make your decision to plead guilty?

25 DEFENDANT: Yes.

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1 THE COURT: Yes or no?

2 DEFENDANT: I said 'yes.' Yes, sir.

3 THE COURT: Are you pleading guilty  
4 of your own free will and accord?

5 DEFENDANT: Yes.

6 THE COURT: Have you understood all  
7 of my questions?

8 DEFENDANT: Yes.

9 THE COURT: Have you answered them  
10 truthfully and correctly?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions  
13 to ask the court or your attorney?

14 DEFENDANT: I don't have any  
15 questions.

16 THE COURT: Okay. How do you wish to  
17 plead?

18 DEFENDANT: I plead guilty.

19 THE COURT: Are you guilty?

20 DEFENDANT: Yes, sir.

21 THE COURT: I am going to ask the  
22 State to give me the facts on the trafficking  
23 cocaine case. Okay?

24 DEFENDANT: Yes, sir.

25 THE COURT: And after the State gives

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13

1 me the facts, I am going to ask you if you agree  
2 with those facts or disagree. If you disagree,  
3 I want to know specifically what facts that you  
4 disagree with. Can you do that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Yes, ma'am.

7 SOLICITOR WYNES: Thank you, Your  
8 Honor. So you just want to hear the trafficking  
9 case?

10 THE COURT: (Affirmative nod), on the  
11 trafficking.

12 SOLICITOR WYNES: Okay. Of course  
13 Your Honor heard some of it yesterday throughout  
14 our proceedings, but essentially Mr. Heyward had  
15 engaged in chatting with an undercover officer  
16 and, through legal compliance, the officer  
17 identified Mr. Heyward as a suspect for having  
18 criminally solicited as an under-aged person.

19 A search warrant was obtained and  
20 executed at 32 North Anson Avenue in Charleston,  
21 which was Mr. Heyward's residence, on December  
22 7<sup>th</sup>, 2006. The purpose of the search warrant at  
23 the time was to locate computer or digital media  
24 in furtherance of the criminal solicitation of a  
25 minor charge. However, not only were those type

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1 items found but throughout the course of the  
2 search, in Mr. Heyward's bedroom, numerous  
3 packaging and cutting materials as well as  
4 cocaine was found. The lab tested weight was  
5 one hundred seventy-one grams, total, for the  
6 powder cocaine, Your Honor. It was packaged and  
7 located in various places throughout the rooms.  
8 He has such things as scales, baggies, cutting  
9 agents, strainers, that type of materials.

10 THE COURT: Mr. Heyward, do you agree  
11 with those facts that the State gave to the  
12 Court concerning the trafficking of cocaine?

13 DEFENDANT: Yes, sir.

14 THE COURT: Ms. Frayer, have you had  
15 ample opportunity to talk to your client?

16 MS. FRAYER: Yes, I have, Your Honor.

17 THE COURT: Have you explained to him  
18 the charge contained in the indictment?

19 MS. FRAYER: Yes, I have, Your Honor.

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

22 MS. FRAYER: Yes, I have, Your Honor.

23 THE COURT: Did he appear to  
24 understand?

25 MS. FRAYER: He did, Your Honor,

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15

1 (affirmative nod).

2 THE COURT: Have you had any  
3 difficulty in communicating with him?

4 MS. FRAYER: None whatsoever, Your  
5 Honor.

6 THE COURT: How does he wish to  
7 plead?

8 MS. FRAYER: He has informed me that  
9 he wishes to plead guilty to trafficking.

10 THE COURT: Do you agree with his  
11 decision to plead guilty?

12 MS. FRAYER: I do, Your Honor.

13 THE COURT: All right. From your  
14 investigation of the facts and circumstances in  
15 the case, do you agree that the State could  
16 produce sufficient evidence to find the  
17 Defendant guilty beyond a reasonable doubt?

18 MS. FRAYER: I believe that they  
19 could, Your Honor.

20 THE COURT: All right, as to the  
21 trafficking cocaine, I find that there is a  
22 factual basis for the plea, that he has freely,  
23 voluntarily, knowingly and intelligently made  
24 the dc, with the advice of his attorney; that  
25 all the elements of the crime have been met.

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1                   Now, I understand -- Mr. Heyward, on  
2                   the criminal solicitor solicitation, I am going  
3                   to ask the State to give me those facts and we  
4                   will go through the same thing on that charge.  
5                   Do you understand?

6                   DEFENDANT:       Yes, sir.

7                   SOLICITOR WYNES:   Thank you, Your  
8                   Honor. I briefly touched on it a moment ago,  
9                   but back in July of 2006, on July 12<sup>th</sup>  
10                  specifically, Mr. Heyward, using the street name  
11                  of "Bistro2006" engaged in sexually-explicit  
12                  chatting in a Yahoo chat room using Instant  
13                  Messenger, with what he believed was a fourteen-  
14                  year-old girl named Ashley Shelton (phonetic);  
15                  which was in reality Special Agent Christopher  
16                  Powell acting in an undercover capacity.

17                  There was one chat, which I will hand  
18                  up to Your Honor, (tendering). I believe that  
19                  you saw it briefly yesterday but I have a  
20                  photocopy for you. Normally I would have had  
21                  that highlighted, but it is not. I apologize  
22                  for that, Your Honor.

23                  The text is not extensively long. It  
24                  began at 1:25 p.m. and ended at 2:59 p.m. At  
25                  the beginning of the chat and throughout the

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1 chat is Mr. Heyward masturbating on a web  
2 camera. He continues to engage in discussion  
3 even after repeated references to the age of the  
4 undercover, which again he believed to be a girl  
5 named Ashley, age fourteen, Your Honor.

6 So as you can see in the chat, if you  
7 would like to take a minute to read it, there  
8 are repeated reference to sexual activity,  
9 stating things like: "Do you want to play with  
10 my dick?"

11 She says, "I have never done that.

12 He says, "I will teach you."

13 Basically -- I am not going to be quite  
14 as explicit on the record, I'll let you read it,  
15 Your Honor, but basically asked if Ashley had  
16 ever engaged in sexual acts before. She says  
17 'no.' He says that he likes "breaking in  
18 virgins." I will just let Your Honor read the  
19 chat.

20 But after the chat was completed, there  
21 was an undercover phone call placed to Mr.  
22 Heyward in furtherance of the discussion at the  
23 end of the chat to meet. He did not travel to  
24 meet the undercover but it was discussed.

25 That would be the extent of the

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1 solicitation, Your Honor.

2 THE COURT: Thank you very much. All  
3 right. Mr. Heyward, do you agree with those  
4 facts that the State gave as to criminal  
5 solicitation of a minor?

6 DEFENDANT: Can I talk to my lawyer a  
7 minute?

8 THE COURT: Yes, sir.

9 Defendant: (Sidebar with Ms. Frayer)  
10 -- repeat that?

11 THE COURT: Do you agree with the  
12 facts that the State gave to the Court  
13 concerning the crime of criminal solicitation?  
14 If you disagree with any of those facts, please  
15 tell me specifically which facts that you  
16 disagree with. But first of all, do you agree?

17 DEFENDANT: Yes, sir.

18 THE COURT: You do?

19 DEFENDANT: Yes, sir.

20 THE COURT: Very well, I find that  
21 there is a factual basis to accept the plea,  
22 that he has freely, voluntarily and knowingly  
23 made the decision to plead guilty with the  
24 advice of his attorney and that the elements of  
25 the charge have been met.

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1 I don't know if I asked you -- Ms.  
2 Frayer, I don't know if I asked you previously  
3 but do you agree with his decision to plead  
4 guilty to criminal solicitation of a minor?  
5 Is that correct?

6 MS. FRAYER: I do, Your Honor.

7 THE COURT: Thank you so very much.  
8 I understand with the sentencing today that it  
9 is going to be on the traffic recommendation.  
10 I believe that it is eighteen years. Is that  
11 correct?

12 SOLICITOR WYNES: That is correct,  
13 Your Honor, and I can provide you with his prior  
14 record when ---

15 THE COURT: As far as the criminal  
16 solicitation of a minor is concerned, I will  
17 accept the plea. We are going to postpone  
18 sentencing until we can -- until your attorney  
19 can set up either a phone conference or have Dr.  
20 Schwartz-Watts here. And there's no going to be  
21 any recommendation as to the sentence on the  
22 criminal solicitation, is that correct?

23 SOLICITOR WYNES: That's correct.

24 THE COURT: Mr. Heyward, do you  
25 understand?

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1                   DEFENDANT:     Yes, sir.

2                   THE COURT:     All right. I will be  
3 glad to hear you on sentencing. I understand  
4 the recommendation is eighteen years. I don't  
5 have any problem accepting the recommendation.  
6 I will be glad to hear from you.

7                   SOLICITOR WYNES:   Okay. Your Honor,  
8 I would just give the basis for the  
9 recommendation. It is primarily the weight of  
10 the cocaine and the fact that there was cutting  
11 and packing materials which supports our belief  
12 that he was trafficking.

13                   His prior record, if I could just put  
14 that on the record:

15                   '85, shoplifting and resisting arrest;

16                   '86, resisting arrest;

17                   '87, resisting arrest, and he received  
18 one year suspended on sixty days and a year's  
19 probation.

20                   '90, simple possession of marijuana;

21                   '91, he was arrested on probation,  
22 trespass and simple assault;

23                   '93, indecent exposure and PWID crack  
24 cocaine, for which he received a six-year  
25 sentence. That was in 1993.

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21

1           '97 was lewd act on a child, failure to  
2 stop for a blue light and possession of cocaine,  
3 resisting arrest and shoplifting. That was the  
4 three year sentence -- or ten years suspended on  
5 the service of seven and the balance -- rather,  
6 service of seven and the balance suspended on  
7 three years of probation.

8           That is his prior record. We felt that  
9 eighteen was appropriate given his prior record  
10 and given the amount of narcotics found in his  
11 bedroom.

12           THE COURT:     Do you agree with the  
13 three years, eight months, nineteen days? Time  
14 served?

15           SOLICITOR WYNES:   Yes, Your Honor.

16           THE COURT:     Okay, I will be glad to  
17 hear you on sentencing?

18           MS. FRAYER:     Thank you, Your Honor,  
19 may it please the Court. As my client told you,  
20 he is forty-three years old, he is a father of  
21 five children. His brother and sister are in  
22 the courtroom today, right there on the second  
23 row. I've spoken with his mother numerous  
24 times.

25           He was arrested on December 7<sup>th</sup>, 2006.

State of South Carolina v. Joseph Heyward  
Case No. 08-GS-10-6883  
Hearing of August 24, 2010  
Before The Honorable J.C. Nicholson, Jr.

1 I inherited the case in July of 2008 when I  
2 joined the Public Defenders office. Since that  
3 time I've had a chance to work with Mr. Heyward.  
4 We've discussed his case, we have discussed the  
5 charges and done investigation in the case.

6 Mr. Heyward felt very strongly about  
7 the drugs in this case. We -- after the  
8 pretrial hearing, Mr. Heyward informed me that  
9 he wished to plead guilty to the charge.

10 I have asked you to defer sentencing on  
11 the criminal solicitation because I did make the  
12 effort to have him evaluated by Dr. Schwartz-  
13 Watts, because I think that given his background  
14 and his record that there may be some tendency  
15 -- since he was chatting with a fourteen-year-  
16 old that he might be some type of pedophile or  
17 something like that and Dr. Schwartz-Watts, with  
18 her expertise, can give the Court some  
19 understanding of that.

20 My client is here today. He wants to  
21 accept responsibility for the drugs. They were  
22 in his bedroom. He and his mother lived there  
23 and of course he would not put that burden on  
24 his mother. He is here, he accepts  
25 responsibility.

State of South Carolina v. Joseph Heyward  
Case No. 08-GS-10-6883  
Hearing of August 24, 2010  
Before The Honorable J.C. Nicholson, Jr.

23

1           He is looking at a mandatory twenty-  
2 five years. He is very -- he is thankful to the  
3 State for the offer of eighteen. We are asking  
4 that you sentence him to eighteen years today.  
5 That would at least give him a chance to still  
6 be a part of the younger children's lives. He  
7 has -- every time that I've talked with him,  
8 that was his primary concern, for his children.  
9 That is what we are asking for today.

10           THE COURT:     Okay.

11           MS. FRAYER:    I don't know if my client  
12 would like to address you or not.

13           THE COURT:     Mr. Heyward, I would be  
14 glad to hear anything that you would like to  
15 tell me.

16           DEFENDANT:     Yes, sir. I accept full  
17 responsibility for everything with the drugs. I  
18 wouldn't place that on nobody. I was the one.  
19 Just the things about that, I did have them and  
20 I accept all of that. I don't try to put that  
21 on nobody. I was trying to survive for my kids.  
22 I know that ain't no excuse but I -- until I  
23 could find a job. I feel really bad because I  
24 am a real part of my children's life, helped to  
25 raise them, especially the two oldest ones. I

State of South Carolina v. Joseph Heyward  
Case No. 08-GS-10-6883  
Hearing of August 24, 2010  
Before The Honorable J.C. Nicholson, Jr.

1 apologize for being in Court, to everybody for  
2 taking up their time being here for these  
3 charges. I take full responsibility for my  
4 actions, I don't try to put it on nobody else.  
5 I know what I done was against the law.

6 THE COURT: Thank you, Mr. Heyward.  
7 Anything else?

8 MS. FRAYER: Nothing else.

9 THE COURT: Indictment 06883,  
10 trafficking cocaine twenty-eight to a hundred  
11 grams, you are sentenced to the State Department  
12 of Corrections for a period of eighteen (18)  
13 years. I give you credit for three years, eight  
14 months and nineteen days.

15 As to the criminal solicitation of a  
16 minor, we will hold sentencing on that until  
17 your attorney can arrange the availability of  
18 Dr. Schwartz-Watts. Thank you very much.

19 (HEARING CONCLUDED)

20

21

22

23

24

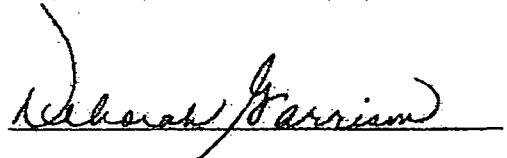
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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,  
official court reporter for the 9<sup>th</sup> Judicial  
Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true,  
accurate and complete transcript of the hearing  
held before The Honorable R. J.C. Nicholson on  
August 24, 2010;

I further certify that I am neither kin nor  
counsel to any of the parties and have no  
interest in the outcome of this action.



Deborah Garrison  
Circuit Court Reporter  
9<sup>th</sup> Judicial Circuit

Charleston, South Carolina  
September 2, 2011

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

JOSEPH HEYWARD #238182 Plaintiff(s) )

vs. )

STATE OF SOUTH CAROLINA Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-10-4503

(Please Print)

Submitted By: JOSEPH HEYWARD #238182

Address: MCCORMICK CORRECTIONAL INST. 386 REDEMPTION WAY MCCORMICK, S.C. 29899

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstatement Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Sexual Predator (510), Public Service Commission (990), Employment Security Comm (991), Other (999)

Submitting Party Signature: Joseph Heyward

Date: 6-22-11

FORM 5

STATE OF SOUTH CAROLINA )

County of CHARLESTON )

2011-CP-10-4503

IN THE COURT OF COMMON PLEAS

JOSEPH HEYWARD #238182 )

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

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
2011 JUN 27 AM 11:21  
CLERK OF COURT

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 M<sup>c</sup>CORMICK CORRECTIONAL INSTITUTION  
386 REDEMPTION WAY, M<sup>c</sup>CORMICK, S.C. 29899
2. Name and location of Court which imposed sentence CHARLESTON COUNTY  
GENERAL SESSION 100 BROAD ST., SUITE 106 CHARLESTON, S.C. 29401
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2008-65-10-06883 2008-65-10-04179

(b) \_\_\_\_\_  
(c) \_\_\_\_\_

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

(a)	<sup>2008-65-10-06993</sup> AUGUST 25, 2010	<sup>2008-65-10-04177</sup> NOV 16, 2010
(b)	18 YEAR SENTENCE	10 YEARS SUSPENDED UPON 5 YEARS
(c)		PROBATION

6. Check whether a finding of guilty was made:

(a) after a plea of guilty NEGOTIATED PLEA  
(b) after a plea of not guilty \_\_\_\_\_  
(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

(a) the name of each Court to which you appealed:  
i. N/A  
ii. " "  
iii. " "

(b) the result in each such Court to which you appealed:  
i. N/A  
ii. " "  
iii. " "

(c) the date of each such result:  
i. N/A  
ii. " "  
iii. " "

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

i. N/A  
ii. " "  
iii. " "

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

(a) MY COUNSEL NEVER TOLD ME I COULD APPEAL.



iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_ " "

iii. \_\_\_\_\_ " "

iv. \_\_\_\_\_ " "

(d) the date of each such disposition:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_ " "

iii. \_\_\_\_\_ " "

iv. \_\_\_\_\_ " "

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

i. \_\_\_\_\_ N/A

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?

\_\_\_\_\_ N/A  
" "

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

(a) which grounds have been presented:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_ " "

iii. \_\_\_\_\_ " "

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

i. \_\_\_\_\_ N/A

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) WAS NOT ADVISED BY COUNSEL
- (b) POST CONVICTION RELIEF APPLICATION 1<sup>ST</sup> TIME
- (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? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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. CANTRELL FRAYER 101 MARKET ST. 5<sup>TH</sup> FLOOR CHARLESTON, S.C. 29401
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. PLEA AND SENTENCING
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

To have my sentence vacated and to be able to accept the original plea that was offered to me. I don't want a new trial I just want the original plea because my attorney was ineffective in representing me.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of CHARLESTON )

VERIFICATION

I, Joseph Heyward, 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.

Joseph Heyward

SWORN to and subscribed before me this 22 day of June 2011.

JC Franklin (L.S.)  
Notary Public

My Commission Expires: 12-16-2019

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

I, Joseph Heyward, 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.

Joseph Heyward  
Applicant

SWORN or affirmed to and subscribed before me this  
22 day of June, 2011.

JC Franklin  
Notary Public

My Commission Expires: 12-16-2019

2011-CP-10-4503

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON )

CASE NO. 2008-GS-10-06883

JOSEPH HEYWARD # 238182 )

APPLICANT, )

APPLICANT'S MEMORANDUM )

IN SUPPORT OF POST CONVICTION )

VS. )

RELIEF APPLICATION )

STATE OF SOUTH CAROLINA )

DEFENDANT(S) )

FILED  
2011 JUN 27 AM 11:21  
JULIE J. FERGUSON  
CLERK OF COURT

COMES NOW MR. JOSEPH HEYWARD, # 238182, and would show unto this court respectfully the following;

[ PREAMBLE ]

THIS IS A MEMORANDUM IN SUPPORT OF MY POST-CONVICTION RELIEF APPLICATION FILED PURSUANT TO THE S.C. CODE ANN. § 17-27-10, DUE TO THE LIMITED SPACE THEREON THE POST-CONVICTION RELIEF APPLICATION.

THE GIST, THRUST OF THIS POST-CONVICTION RELIEF APPLICATION IS APPLICANT'S GUILTY PLEA WHICH WAS INVOLUNTARY DUE TO TRIAL COUNSEL INEFFECTIVENESS.

APPLICANT CLAIMS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL UPON THE PLEA OFFER WHICH WAS EXTENDED TO APPLICANT FOR A LESSER SENTENCE.

TRIAL COUNSEL'S CASE STRATEGY WAS NOT THOROUGHLY PREPARED BY NOT PRODUCING ANY CASE LAW TO SUPPORT AND DEFEND APPLICANT'S RIGHTS.

TRIAL COUNSEL DID COMMIT INEFFECTIVENESS BY NOT INVESTIGATING AND PROPERLY INFORMING APPLICANT OF HER RESULTS, WHERE APPLICANT CAN UPON TRIAL COUNSEL ADVICE MAKE AN INTELLIGENT PLEA.

### FACT'S

APPLICANT WAS INDICTED UPON INDICTMENT # 2008-CY-12-06883 AT THE JULY TERM OF THE COURT OF GENERAL SESSION OF CHARLESTON COUNTY, FOR TRAFFICKING COCAINE (100-200 GRAMS) IN VIOLATION OF S.C. CODE 44-53-370(e)(2)(c); WHICH STATES ONE HUNDRED GRAMS OR MORE, BUT LESS THAN TWO HUNDRED GRAMS, A MANDATORY TERM OF IMPRISONMENT OF TWENTY-FIVE YEARS, NO PART OF WHICH MAY BE SUSPENDED NOR PROBATION GRANTED, AND A FINE OF FIFTY THOUSAND DOLLARS;

APPLICANT PLEA GUILTY TO 18 YEARS UPON THE ADVICE OF TRIAL COUNSEL, WHERE TRIAL COUNSEL RELIED UPON AN INCORRECT ASSUMPTION CONCERNING A KEY EVIDENTIARY POINT WITHOUT DOING A FULL INVESTIGATION THAT WOULD HAVE SHOWN COUNSEL ERRONEOUS VIEW OF THE LAW.

### INEFFECTIVE ASSISTANCE OF COUNSEL

APPLICANT CONTENDS THAT HIS TRIAL COUNSEL WAS INEFFECTIVE IN CONDUCTING AN ADEQUATE PRE-TRIAL INVESTIGATION, AS THE SUPREME COURT ALSO RECOGNIZED IN STRICKLAND, COUNSEL BEARS A DUTY TO MAKE A "REASONABLE" INVESTIGATION OF THE LAW AND FACTS IN THE CLIENTS CASE.

IT IS THE DUTY OF THE LAWYER TO CONDUCT A PROMPT INVESTIGATION OF THE CIRCUMSTANCES OF THE CASE AND TO EXPLORE ALL AVENUES LEADING TO FACTS RELEVANT TO THE MERITS OF THE CASE AND THE PENALTY IN THE EVENT OF CONVICTION. THE INVESTIGATION SHOULD ALWAYS INCLUDE EFFORTS TO SECURE INFORMATION IN THE POSSESSION OF THE PROSECUTION AND THE LAW ENFORCEMENT. THE DUTY TO INVESTIGATE EXISTS REGARDLESS OF THE ACCUSED ADMISSIONS OR STATEMENTS TO THE LAWYER OF FACTS CONSTITUTING GUILT OR THE ACCUSED'S STATES HIS DESIRE TO PLEA GUILTY. WHEN A LAWYER FAILS TO CONDUCT A SUBSTANTIAL INVESTIGATION INTO ANY OF HIS/HER CLIENTS POSSIBLE LINES OF DEFENSE, THE LAWYER HAS FAILED TO RENDER EFFECTIVE ASSISTANCE OF COUNSEL. COBB V STATE, 3605 S.C. 299, 409 S.E. 2d 223 (1991).

APPLICANT SUBMITS COUNSEL INCORRECT ASSUMPTION IN WHICH COUNSEL RELIED UPON CONCERNING AN KEY EVIDENTIARY POINT WITHOUT CONDUCTING AN INVESTIGATION, THAT WOULD HAVE CORRECTED COUNSEL ERRONEOUS VIEW OF THE LAW.

- (1) COUNSEL'S UNWILLINGNESS IN PREPARING FOR TRIAL TO RECITE ONE CASE IN SUPPORT OF MOTION.
- (2) COUNSEL'S DUTY TO GO OVER TRIAL STRATEGY WITH APPLICANT.
- (3) COUNSEL'S ALLOWING APPLICANT TO PLEA GUILTY WITHOUT KNOWING THE CIRCUMSTANCES OF WHAT APPLICANT'S PLEA AGREEMENT

WAS OFFERED BY THE SOLICITOR OFFICE.

APPLICANT HAS THE BURDEN OF PROVING THAT HIS ATTORNEY WAS INEFFECTIVE UNDER STRICKLAND V. WASHINGTON, 466 U.S. 688, 689 (1984).

- COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS
- THAT APPLICANT WAS PREJUDICED BY COUNSEL'S DEFICIENT PERFORMANCE.

### I.

APPLICANT ASSERTS THAT IF HIS ATTORNEY WOULD HAVE INVESTIGATED THE CHARGE AGAINST APPLICANT, COUNSEL FAILURE TO RESEARCH THE MOTION THAT WAS FILED ON APPLICANT'S BEHALF COUNSEL WOULD HAVE A MORE INFORMED TRIAL STRATEGY.

APPLICANT ALSO ASSERTS THAT BY HIS TRIAL ATTORNEY NOT INVESTIGATING THE PROCEDURES WHICH WERE USED BY THE CHARLESTON CITY POLICEMAN DEPARTMENT IN OBTAINING THE SEARCH WARRANT WAS LEGAL. COUNSEL MOTIONS WHICH WERE FILED AFTER LEARNING THE FACTS SHOWS THAT COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS.

APPLICANT STATES THAT IF HIS ATTORNEY WOULD HAVE COMPLETED AND THOROUGHLY INVESTIGATION COUNSEL WOULD HAVE BEEN AWARE OF APPLICANT'S WILLINGNESS TO TAKE THE PLEA OFFER WHICH WAS ARRANGE THROUGH THE SOLICITOR OFFICE.

COUNSEL'S ACTION PREJUDICED APPLICANT BY HER DEFICIENT PERFORMANCE, IN THE FOLLOWING MANNER.

IN JACKSON V. STATE, HAD MY COUNSEL PUT FORTH THE STANDARD OF A COMPETENT LAWYER, COUNSEL WOULD HAVE KNOWN THE ORIGINAL PLEA OFFER WHICH WAS A SENTENCE OF YEARS, BUT FOR COUNSEL PERFORMANCE TO MAKE MOTION(S) WHICH WERE OF NO AVAIL TO MY CASE.

COUNSEL TRIAL STRATEGY WAS POOR WHERE APPLICANT EXPLAIN TO HIS ATTORNEY THE PROCEDURE WHICH THE CHARLESTON POLICE DEPARTMENT USED IN OBTAINING THE ARREST WARRANT. U.S. V. POPE, 5th Cir. No. 04-51008., A POLICE OFFICER WHO OBTAINED A WARRANT TO SEARCH FOR EVIDENCE OF ONE CRIME COULD NOT TURN TO GOOD-FAITH EXCEPTION TO THE FOURTH AMENDMENT'S EXCLUSIONARY RULE WHEN IT TURNED OUT THAT THE PROBABLE CAUSE SHOWING THAT HE MADE WITH RESPECT TO THE CRIME LISTED IN THE WARRANT WAS INSUFFICIENT.

IN THIS PRETEXT CASE THE AFFIDAVIT WHICH WAS SWORN UPON THE OATH OF AN CHARLESTON CITY POLICEMAN OFFICIAL WAS A LIE. THE AFFIDAVIT WAS SUBMITTED AT MY SUPPRESSION HEARING. THE TRIAL JUDGE RECEIVED TESTIMONY FROM THE CHARLESTON CITY POLICEMAN THAT HE LIED ON THE AFFIDAVIT.

FOR ALL THE FOLLOWING REASONS IN WHICH APPLICANT HAS SHOWN HIS ATTORNEY GAVE HIM ERRONEOUS ADVICE THAT SUBMITTING ALL THESE MOTIONS WOULD SOMEHOW SHOW THE TACTICS OF THE CHARLESTON CITY POLICEMAN DEPARTMENT WAS WRONG.

COUNSEL WAS UNABLE TO CITE ONE CASE BEFORE THE TRIAL JUDGE TO SUPPORT ANY LEGAL THEORY BASE UPON THESE MOTION WHICH WERE FILED.

APPLICANT PLEA IS RENDERED INVOLUNTARY UPON FAULTY LEGAL ADVICE REGARDING ELEMENTS OF POSSIBLE DEFENSE.

U.S. V. STREATER, 70 F.3d 1314.

FOR COUNSEL'S RENDERING INEFFECTIVENESS WHICH HAS BEEN PROVEN BY APPLICANT, THE REQUESTED RELIEF APPLICANT IS SEEKING IS TO BE GIVEN THE ORIGINAL PLEA OFFER WHICH WAS AVAILABLE IN THE STATE'S PLEA AGREEMENT.

APPLICANT PRAYS UPON THIS COURT FOR AN CORRECTIONS OF THE SENTENCE WHICH WAS IMPOSED. THEREFORE THE SENTENCE OF YEARS SHOULD REFLECT THE ORIGINAL PLEA OFFER OF YEARS.

### CONCLUSION

APPLICANT REQUEST THAT THIS COURT IMPLEMENT AN IN-DEPTH INQUIRY INTO ALL FACTS WITHIN THE POST-CONVICTION RELIEF APPLICATION / MEMORANDUM IN SUPPORT OF THE POST CONVICTION RELIEF APPLICATION.

APPLICATION TO INCLUDE ANY CLAIMS NOT DIRECTLY INCLUDED."

LAND, SUPRA;

THE APPLICANT, THEREFORE, REQUESTS THIS HONORABLE COURT GRANT THE MOTION FOR THE ABOVE STATED REASONS.

CONCLUSION

FOR THE REASONS CITED IN THE POST-CONVICTION RELIEF APPLICATION, AND THE AMENDMENT MOTIONS THEREOF, THE APPLICANT'S CONVICTION AND SENTENCE SHOULD COMPLY WITH THE AGREED PLEA BARGAIN.

RESPECTFULLY SUBMITTED,  
St Joseph Heyward  
JOSEPH HEYWARD

CERTIFICATE OF SERVICE

I JOSEPH HEYWARD, BEING DULY SWORN DEPOSES AND SAYS THAT I HAVE SERVED THE FOREGOING DOCUMENT BY DEPOSITING A COPY WITHIN THE U.S. POSTAL MAIL POSTAGE PREPAID AND ADDRESSED AS FOLLOWS:

SWORN AND SUBSCRIBED BEFORE ME  
THIS 22 DAY OF June 2011

J C Franklin  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 12/16/2019

RESPECTFULLY SUBMITTED,  
St Joseph Heyward  
JOSEPH HEYWARD

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) CASE NO.:

JOSEPH HEYWARD #238182 )  
APPLICANT, )

v. ) APPLICANT'S MOTION TO  
ADDRESS ALL ISSUES )

STATE OF SOUTH CAROLINA )  
DEFENDANT )

NOW COMES THE APPLICANT, JOSEPH HEYWARD, WHO ASK THIS HONORABLE COURT TO REQUIRE THE COURT APPOINTED ATTORNEY INVOLVED IN THIS PAST CONVICTION RELIEF ACTION TO BE METICULOUS IN THE PREPERATION OF ANY "ORDER" PREPARED IN THIS CASE SPECIFICALLY; THE APPLICANT ASK THAT EACH AND EVERY ISSUES RAISED IN THE POST-CONVICTION RELIEF APPLICATION AND ANY AMEXOMENT(S) THEREOF; AT THE HEARING, TO BE ADDRESSED IN THE "ORDER" OF THE COURT TO BE ISSUED AT THE CONCLUSION OF THE EVIDENTIARY HEARING IN THIS MATTER. THE REASON FOR THIS MOTION IS THAT IN PRUITT V. STATE, 423 S.E.2d 127 (1992); THE COURT STATED THAT THIS IS A LEGAL REQUIREMENT UNDER THE LAWS OF SOUTH CAROLINA; PURSUANT TO STATUTE, 17-27-80. ALSO; SEC; BRYAN V. STATE; 328 S.C. 236, 493 S.E.2d 500 (1997). FUTHORMORE, IN LAND V. STATE; 262 S.E. 2d AT 737; PURSUANT TO 17-27-110, THE SUPREMS COURT OF SOUTH CAROLINA, HAS ADOPTED RULES DESIGNED TO AID IN THE POST-CONVICTION PROCESS; SUCH AS (WORDS OMITTED) RULE 5, "WHICH" PLACES UPON APPOINTED COUNSEL THE DUTY TO ASCERTAIN FROM THE APPLICANT WHETHER HE HAS INCLUDED ALL GROUNDS KNOWN TO THE APPLICANT AS A BASIS FOR ATTACKING THE JUDGEMENT AND SENTENCE AND TO AMEND THE

RESPECTFULLY SUBMITTED;

SI Joseph Heyward

JOSEPH HEYWARD

M<sup>c</sup> CORMICK CORRECTIONAL INST.

386 REDEMPTION WAY

M<sup>c</sup> CORMICK, S.C. 29899

### CERTIFICATE OF SERVICE

I JOSEPH HEYWARD, DEPOSES UNDER THE PENALTY OF PERJURY THAT I HAVE SERVED THE ORIGINAL COPIES OF MY POST CONVICTION RELIEF APPLICATION / MOTION IN SUPPORT OF MY POST-CONVICTION RELIEF APPLICATION / MOTION TO ADDRESS ALL ISSUES WITHIN POST CONVICTION RELIEF APPLICATION / MOTION IN SUPPORT OF POST CONVICTION RELIEF APPLICATION BY DEPOSITING THE FOREGOING DOCUMENT(S) WITHIN THE U.S. POSTAL SERVICE POSTAGE PRE PAID ADDRESSED TO THE FOLLOWING:

CLERK OF COURT

CHARLESTON COUNTY

JULIE J. ARMSTRONG

100 BROAD STREET, SUITE 106

CHARLESTON, SOUTH CAROLINA 29401-2258

SWORN AND SUBSCRIBED TO BEFORE

ME THIS 22 DAY OF June 2011

Franklin

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 12/16/2019

(7)

RESPECTFULLY SUBMITTED;

SI Joseph Heyward

JOSEPH HEYWARD

Mr JOSEPH HEYWARD # 232182

McCORMICK CORRECTIONAL INSTITUTION

386 REDEMPTION WAY

McCORMICK, S.C. 29899

DATE:

JUNE J. ARMSTRONG

CHARLESTON COUNTY CLERK OF COURT

100 BROAD STREET SUITE 106

CHARLESTON, S.C. 29401

RE: POST CONVICTION RELIEF APPLICATION; MEMORANDUM IN SUPPORT OF POST  
CONVICTION RELIEF APPLICATION; MOTION TO ADDRESS ALL ISSUES.

MS. ARMSTRONG:

PLEASE FIND ENCLOSED THE FOLLOWING REFERENCE ABOVE DOCUMENT(S)  
WHICH I'M RESPECTFULLY REQUESTING THAT YOU CLACK DATE STAMP  
AND FILE THESE DOCUMENT(S) WITHIN YOUR OFFICE PLEASE RETURNED  
COPIES TO ME IN THE ENCLOSED ENVELOPE SELF ADDRESSED BACK  
TO ME.

THANKING YOU IN ADVANCE FOR YOUR TIME IN THIS MATTER,  
I LOOK FORWARD TO YOUR REPLY SOON.

RESPECTFULLY SUBMITTED,  
J. Joseph Heyward  
JOSEPH HEYWARD

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2011-CP-10-4503
Joseph Heyward. #238182,	)	
	)	
Applicant.	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____		

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 27, 2011 and amended on June 27, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2008 and July 2008 terms of the Charleston County Grand Jury for criminal solicitation of a minor (2008-GS-10-4179) and trafficking cocaine (100-200 grams) (2008-GS-10-6883). Cantrell Frayer, Esquire, represented the Applicant. On August 24, 2010, the Applicant pled guilty to the lesser-included offense of trafficking cocaine (28-100 grams) and as indicted to criminal solicitation of a minor. The Honorable J.C. Nicholson, Jr. sentenced him to confinement for eighteen (18) years for trafficking cocaine and ten (10) years suspended to five (5) years of probation for criminal solicitation of a minor. The Applicant did not appeal the conviction or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, the records of the South Carolina Department of Corrections, and the guilty plea transcript.

## II.

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

1. Ineffective assistance of counsel in that counsel
  - a. Was not thoroughly prepared by not producing any case law to support and defend Applicant's rights.
  - b. Did not investigate and properly inform Applicant of her results, where Applicant can upon trial counsel advice make an intelligent plea.
2. Involuntary guilty plea.

*Ard v. Catoe*



## III.

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

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

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

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

#### IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that

his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntary nature of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 305 S.E.2d 247.

#### V.

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

VI.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN  
Assistant Attorney General

By: Matthew J. Friedman  
ATTORNEYS FOR RESPONDENT

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

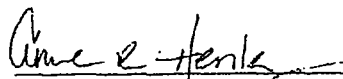
October 7, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2010-CP-10-4503
	)	
JOSEPH HEYWARD, #238182	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____		

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

**Kelly Morrow, Esquire**  
 935 Misty Lake Drive  
 Charleston, SC 29412

DATED this 7th day of October, 2011

  
 \_\_\_\_\_  
 Anne R. Henley, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Joseph Heyward,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 1 1-CP-10-4503
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing was held on January 10, 2012, before The Honorable R. Markley Dennis, Jr. in Courtroom 4D of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Kelly Morrow, Esq.  
(Information not provided)  
Appearing for Applicant

Matthew Friedman, Esq.  
OFFICE OF ATTORNEY GENERAL  
P O Box 11549  
Columbia, SC 29211-1549  
Appearing for State of South Carolina

**DEBORAH GARRISON**  
*Circuit Court Reporter - 9<sup>th</sup> Judicial Circuit*  
Post Office Box 901  
Johns Island, South Carolina 29457  
[dGarrison@sccourts.org](mailto:dGarrison@sccourts.org)

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Case No. 11-CP-10-4503  
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## EXHIBITS

(No Exhibits Entered)

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1 THE COURT: Good morning, Mr.  
2 Heyward. We're here on your application for  
3 post-conviction relief and you're here with  
4 your lawyer, Kelly Morrow. She has explained/  
5 talked with you about this and you understand  
6 what your possible outcomes are in this  
7 proceeding?

8 APPLICANT: Yes, sir.

9 THE COURT: According to this you  
10 were allowed to plea to a lesser-included  
11 offense than trafficking cocaine; that being  
12 apparently the most serious one.

13 What's the maximum for criminal  
14 solicitation with a minor?

15 MATTHEW FRIEDMAN: I believe that  
16 it's ten years.

17 THE COURT: All right. Clearly the  
18 trafficking carries the most consequence. You  
19 were allowed to plea to the lesser-included  
20 offense of twenty-eight to a hundred grams.  
21 What was the weight of the drugs that was  
22 shown?

23 MATTHEW FRIEDMAN: It was about a  
24 hundred and seventy grams?

25 THE COURT: Do you agree with that,

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1 Mr. Heyward, that it was about a hundred and  
2 seventy grams?

3 APPLICANT: Yes.

4 THE COURT: You understand that if  
5 I return this that you go back and you have  
6 exposure for trafficking, one hundred to two  
7 hundred grams, which carries a greater minimum  
8 sentence, I think. What is the minimum  
9 sentence?

10 MATTHEW FRIEDMAN: Minimum of  
11 twenty-five, mandatory.

12 THE COURT: So it's a mandatory of  
13 twenty-five. Do you understand that?

14 APPLICANT: Yes.

15 THE COURT: So you're giving up  
16 basically the eighteen years -- it's twenty-  
17 five to thirty. Do you understand that?

18 APPLICANT: Yes, sir.

19 THE COURT: Okay. And that's your  
20 desire?

21 APPLICANT: Yes, sir.

22 THE COURT: Very well. You may  
23 proceed, Ms. Morrow.

24 MS. MORROW: I am ready to proceed,  
25 Your Honor. I'm prepared.

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1 THE COURT: Okay.

2 MS. MORROW: However, my client would  
3 like a continuance.

4 THE COURT: He wants a continuance?

5 MS. MORROW: Yes, sir, based on the  
6 fact that he would like additional time to  
7 research his case.

8 THE COURT: What is it that he needs  
9 to research? What is it that you need to  
10 research?

11 APPLICANT: I have found some more  
12 grounds, ineffectiveness as well as ---

13 THE COURT: We will allow you to  
14 amend that. What are your grounds?

15 APPLICANT: Yeah, when, uh, the --  
16 the, the -- the Motion that she said that she  
17 was going to file for me and everything wasn't  
18 filed.

19 THE COURT: Well, you understand  
20 that when you plead guilty in this state --  
21 federal court, you may have -- you can preserve  
22 some Motion argument. In this state when you  
23 plead guilty, you waive that. Do you  
24 understand that?

25 APPLICANT: (No verbal response).

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1 THE COURT: Do you understand that?

2 APPLICANT: No, sir, I didn't.

3 THE COURT: A guilty plea waives --  
4 you waive all Motions and all things that you  
5 could have filed. That's what happens when you  
6 plead guilty. And you pled guilty, right?

7 APPLICANT: Yeah. Yes, sir.

8 THE COURT: I will be happy for you  
9 to amend it but it's -- it's really -- I am  
10 sure that your lawyer has told you this, that  
11 once you plead guilty that those are gone.

12 So the only way you can preserve that  
13 is to go to trial. You go to trial on the  
14 indicted offense. I don't know what somebody  
15 is going to do but the worse case scenario, of  
16 course, for you would be that somebody would  
17 give you thirty years and then put the  
18 solicitation behind that. So you got -- that  
19 means that you could get forty.

20 But that's your call. It's up to you.

21 So -- you're prepared to go forward  
22 with his application today?

23 MS. MORROW: I am, Your Honor.

24 THE COURT: Is the State willing to  
25 have him raise the issue concerning the Motion?

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1 MATTHEW FRIEDMAN: Yes, Your  
2 Honor. No problem.

3 THE COURT: All right. You can  
4 testify to whatever Motion you want to testify  
5 to. The Motion to continue is denied.

6 Thank you very much. Witnesses are  
7 present. Call your first witness.

8 MS. MORROW: (Sidebar with  
9 Applicant), -- Your Honor, my client would like  
10 to withdraw at this time.

11 THE COURT: Mr. Heyward, why do you  
12 change your mind? And I ---

13 APPLICANT: I ---

14 THE COURT: Hold on just a second,  
15 Mr. Heyward. Before you answer the question,  
16 uh, -- I really do think all of these things to  
17 heart and they're serious to me.

18 As I told one of the gentlemen this  
19 morning, one of the things that I think is a  
20 benefit to me -- at least to me personally. I  
21 can't say it across the board but for me  
22 personally was having the privilege of  
23 practicing law for twenty-one years; in doing  
24 so, representing persons just like you. I  
25 handled a number of post-conviction relief

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1 applications when I was a lawyer. So I think  
2 this is a serious proceeding and I take it that  
3 way, the concerns that you have.

4 APPLICANT: Yes, sir.

5 THE COURT: I understand that. But  
6 when you withdraw this application, what you're  
7 doing is setting it up so that if you change  
8 your mind you can't come back. The law is, as  
9 you know, says that you can't have successive  
10 applications and there is a statute of  
11 limitations. Which I haven't check it but my  
12 guess is it's probably run to file another  
13 application.

14 So what we are doing today can create  
15 a legal obstacle for you, first of all. I am  
16 not saying that it can't be surmounted but more  
17 than likely it will not be able to be  
18 surmounted. Just as I talked to you about this  
19 matter about the Motions, frankly, personally,  
20 I think the -- I like the federal system where  
21 persons can raise Motions, have a ruling and  
22 then enter a guilty plea, then appeal that  
23 Motion and not run the risk of going to trial.  
24 We all know -- not saying that it will, but we  
25 all know the possibilities that that carries

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1 with it -- you know, some possibility -- not  
2 saying that it would but there is the  
3 possibility of a greater sentence after trial  
4 than it is a guilty plea. I don't think that  
5 necessarily is absolute, but it's a possibility  
6 and something that I think -- at least I told  
7 my clients, that you have to think about.

8 I mean, it's your decision. Not mine.  
9 But -- it's your decision but it's a factor  
10 that you need to weigh and out into that.

11 But in this state when you enter a  
12 guilty plea, you take out all of those Motion  
13 issues. It's gone, as a matter of law.

14 Now, I've already expressed my  
15 personal desire. But I took an oath to apply  
16 the law, so that's where we are. But when you  
17 say, 'I want to change my mind', you're going  
18 to have to convince me why you want to change  
19 your mind.

20 Because you told me when I was talking  
21 to you earlier that, no, you wanted to go  
22 forward with this.

23 APPLICANT: Yeah, I -- after you  
24 said -- after you said that, I feel like I'm  
25 talking about something that nothing to do with

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1 the Motion any everything. I was going for  
2 trial, because then everything changed because  
3 before I went to trial she said that she was  
4 going to file on these Motions. But she  
5 didn't. She filed one and -- it didn't work.

6 THE COURT: Well, she tried one.

7 APPLICANT: Everything I got was  
8 based on those.

9 THE COURT: Well, let me ask you a  
10 question. Do you think it was a benefit to you  
11 -- and you don't -- this doesn't bind you but  
12 do you think that it was a benefit to allow you  
13 to plead to a lesser-included offense here?

14 APPLICANT: Uh, -- yes.

15 THE COURT: See, that's the factor  
16 that you've got to consider. If you represent  
17 -- if your lawyer is there, my guess is that  
18 the solicitor said 'If you want to file some  
19 Motions' that's typically what they do. That's  
20 the advocacy part: 'If you want to get this  
21 deal, we've got to go forward. If you want to  
22 file your Motion, that's fine, but the deal is  
23 off the table.'

24 Now, I don't know whether that was the  
25 case but it wouldn't surprise me that that is

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1 the case.

2 APPLICANT: Well, before I had two  
3 pleas before and, uh, -- this is what I  
4 basically told my lawyer. I said, 'Well, what  
5 the police done to get these, I would go  
6 forward. I would take those pleas.' See what  
7 I'm saying?

8 THE COURT: Well, kinda, sorta. But  
9 ---

10 APPLICANT: But she said that we  
11 were going to go ahead because -- her  
12 investigator told me that after she read the  
13 statement and she sees that -- after I tell her  
14 what's wrong with it, she says yeah, it was  
15 wrong. You see what I'm saying?

16 THE COURT: Oh, sure. And let me  
17 tell you something, that's the beauty of this  
18 system. When I was sitting on that side, I  
19 didn't always agree with what the judge did.  
20 I had my opinion as a lawyer. And, frankly, I  
21 -- I don't think I'm any smarter than any of  
22 these lawyers here, I just happened to be in a  
23 position that I was elected as judge. Really  
24 and truly it is just -- as I told somebody last  
25 week, we are going to disagree but it's my

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1 decision and I'm going to make it.

2 You know, I understand that people  
3 don't agree with me, necessarily, all the time.  
4 If I am wrong, then somebody up the road can  
5 appeal. If they change that or correct that,  
6 they can correct it -- if they think that it is  
7 an error. That is the beauty of this system.

8 That's why it frees me to do the best  
9 I can. It freed me as a lawyer to tell my  
10 client what I thought was a good or bad idea.  
11 But it's his case or her case. If my position  
12 is legally incorrect, there is a place to have  
13 that -- checked further. That may be a  
14 possibility.

15 The problem that we have here is that  
16 we have a plea and it restricts to a large  
17 extent what you can consider, because of the  
18 plea. If you'd gone to trial, it would -- it  
19 could preserve all things.

20 But if you go to trial, that's where  
21 you've got to weigh this other thing. You're  
22 going to trial on the more serious offense.

23 The problem that most people don't  
24 understand is -- and that's why I asked how  
25 much were the drugs. About seven years ago,

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1 and I realized then why I didn't try many  
2 trafficking cases. Growing up -- and I am  
3 dating myself. Most people that I see  
4 probably, sometimes, weren't around when *Miami*  
5 *Vice* hit the television screen. And there was  
6 all this big money, boats and all this stuff in  
7 Miami with the big drug trafficking. That's  
8 what you think about when you think of  
9 trafficking.

10 But in this state, do you know what  
11 you have to prove to convict somebody of  
12 trafficking? That you were in possession and  
13 that the amount was over the limit. That's it.  
14 They don't have to prove that you were making  
15 lot of money. They don't have to prove that it  
16 was a big business operation for you. Just the  
17 quantity of the drugs. That puts it -- that's  
18 it. That's all that they have to prove.

19 That's the problem. If I am your  
20 lawyer, I am saying 'you know, we've got to',  
21 you can't ignore that. That's there. That's  
22 reality.

23 It's your call. It's whatever you  
24 want to go. I am ready to try your case. I  
25 haven't heard it, just what you've told me. I

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1 don't know anything else about it. So -- we  
2 can go forward and -- you know, I don't know  
3 what I will do.

4 But if you win, you're going back to  
5 square one. That's the only -- that's the  
6 scary thing to me. For somebody that was in  
7 possession of that much drugs.

8 Because I don't know what kind of  
9 deals there may be. I don't know what the  
10 Motion outcome would be. It might be good.  
11 It might not be good. Don't know.

12 But that's the risk that you run.  
13 That's why I say it's your call. You're the  
14 only one that is exposed to the risk. None of  
15 us are. I am not trying to be callous, that's  
16 just reality.

17 So what's your call?

18 APPLICANT: We will move forward.

19 THE COURT: All right. Call your  
20 first witness, please.

21 MS. MORROW: I would like to call Mr.  
22 Heyward.

23 THE COURT: Okay.

24 (WITNESS TAKES STAND)

25 JOSEPH HEYWARD, being duly sworn to

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1. tell the truth, the whole truth and nothing but  
2. the truth, testified, as follows:

3. DIRECT EXAMINATION

4. BY MS. MORROW:

5. Q. Mr. Heyward, you applied for a PCR based  
6. on ineffective assistance of counsel in that  
7. counsel was not thoroughly prepared by not  
8. producing case law to support and defend your  
9. rights, and that counsel did not investigate  
10. and properly inform you of her results so that  
11. you could, upon trial counsel advice, make an  
12. intelligent plea. And you also applied for a  
13. PCR on an involuntary guilty plea.

14. Beginning with the ineffective assistance  
15. of counsel, can you please tell us about your  
16. claim?

17. A. Well, what that has to do with -- the  
18. Motion that she filed at the suppression  
19. hearing and before that, before she said that  
20. they -- that they had a warrant for the  
21. solicitation charge and that's when they found  
22. the drugs, with that warrant. She said that  
23. they find that, that it ain't right. I thought  
24. that it wasn't right, too. And so she said,  
25. basically, that she was going to file Motions

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1 dealing with that to get that evidence  
2 suppressed.

3 Q. Okay.

4 A. And when it came down to it, we was  
5 dealing with one Motion. When the judge asked  
6 for anything to support that, to back it up,  
7 she couldn't.

8 It's not only that she didn't file the  
9 Motion and everything. On the affidavit with  
10 the officer, that the officer made, that sworn  
11 affidavit, that didn't happen also.

12 So on top of that, plus I believing that  
13 the officer be wrong, I think something was  
14 wrong -- they denying these affidavits and, you  
15 know, my lawyer telling me that they wrong and  
16 she was going to file a Motion. I went ahead.

17 Q. Also, can you discuss why you feel that  
18 you involuntarily plead guilty?

19 A. That was it, too.

20 Q. You mentioned in your affidavit that she  
21 did not properly investigate.

22 A. Yeah, yeah.

23 Q. Or inform you of the process?

24 A. Yeah, that goes to -- if she had done the  
25 investigation and if she had come back and tell

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1 me what they had done was right, then I would  
2 have took the original plea that was offered to  
3 me. That's the main thing that I am getting  
4 at.

5 Q. And you're saying that she did ---

6 A. No.

7 Q. --- not do that at that time?

8 A. No. No. But I mean -- when the judge  
9 asked for anything to support what she was  
10 saying, she couldn't find it, couldn't say  
11 nothing. You know, and I -- I mean, if I had  
12 right then and there -- I even told her in some  
13 letters that I wrote her and talked to her, I  
14 told her that 'if what they done was right,  
15 then I will take the plea.'

16 Q. As for ineffective assistance of counsel,  
17 do you think that your attorney's actions  
18 prejudiced you in your defense?

19 A. Yeah. Definitely, yes.

20 Q. As for your involuntary guilty plea, if  
21 your attorney had properly informed you as to  
22 her results as to the offer and plea process,  
23 would you have insisted on going to trial, not  
24 have taken the guilty plea?

25 A. No. I would have taken the plea. If she

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1 had investigated properly and, uh, told me that  
2 what they had done was right, I would have took  
3 the plea. I'm talking about the original one.

4 Q. I'm asking about the plea that you did  
5 take, would you have gone to trial if she had  
6 properly informed you? If she had properly  
7 informed you, would you have gone to trial  
8 instead of taking the guilty plea which you  
9 took?

10 A. I don't really understand that. What I am  
11 saying is -- what I am saying is that if she  
12 had informed me before now -- not on this plea  
13 but before this --

14 Q. The final plea? Prior offer?

15 A. Yeah. If she had informed me then, I  
16 wouldn't have took the plea. I would have  
17 insisted on a trial.

18 Q. Okay. So basically on the plea that you  
19 took, that you pled to in court, the guilty  
20 plea, what I am asking you is that if she  
21 advocated on your behalf properly and informed  
22 you, would you have taken the plea or would you  
23 have gone to trial instead of taking this  
24 current plea that you took and, uh, -- instead  
25 of going to trial?

1 A. See, I -- (pause) -- that question is  
2 confusing. You're talking about I -- I  
3 wouldn't have -- (pause), I wouldn't have take  
4 the plea. I mean, I would go to trial.

5 See, what I am talking about is stemming  
6 from before. After this, I took the plea  
7 because we lost that hearing.

8 Q. Okay. So had you been successful at the  
9 hearing, would you have gone to trial instead,  
10 if that Motion to suppress had been ---

11 A. Oh, yes, ma'am. Yes, ma'am. Yes.

12 Q. Okay.

13 MS. MORROW: Nothing further.

14 THE COURT: Cross examine?

15 MATTHEW FRIEDMAN: Thank you.

16 CROSS EXAMINATION

17 BY MATTHEW FRIEDMAN:

18 Q. Good morning, Mr. Heyward. You referenced  
19 the original plea. Was there a plea offer in  
20 this case?

21 A. Yes.

22 Q. What was that offer?

23 A. I think the first one -- for fifteen years  
24 and the second one was seven to twenty-five.

25 Q. Did your attorney communicate those offers

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1 to you?

2 A. Yes, sir.

3 Q. Whose decision was it to reject those  
4 offers?

5 A. Decision?

6 Q. (Affirmative nod).

7 A. From we was talking, both our decision.  
8 We both felt at that particular time they was  
9 wrong because they'd lied on their affidavits,  
10 too.

11 Q. But you ultimately did plead guilty, is  
12 that right?

13 A. Yes, sir.

14 Q. Do you remember during the plea hearing  
15 that you said that you understood the nature of  
16 the charges?

17 A. Yes, sir.

18 Q. And the possible punishment?

19 A. Yes, sir.

20 Q. Do you recall telling the judge that you  
21 were satisfied with your attorney?

22 A. Yes, sir.

23 Q. You also told the judge that you had  
24 enough time to make the decision to plead  
25 guilty?

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1 A. Yes, sir.

2 Q. Do you remember telling the judge that you  
3 understood your right to a jury trial?

4 A. Yes, sir.

5 Q. You also told him that you did not want a  
6 jury trial?

7 A. Yes, sir.

8 Q. Sounds like today that your testimony is  
9 that you did not want a jury trial?

10 A. (No verbal response).

11 Q. Is that right?

12 A. (No verbal response).

13 Q. Did you want to go to trial?

14 A. If we had won our suppression hearing.

15 Q. Do you remember telling the judge during  
16 your plea that no one had threatened or  
17 promised you anything to get you to plead  
18 guilty?

19 A. Yes, sir.

20 Q. You also told the judge that you were  
21 pleading guilty of your own free will and  
22 accord?

23 A. Yes, sir.

24 Q. During the plea you told the court that  
25 you were in fact guilty of these offenses?

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1 A. Yes, sir.

2 Q. Do you remember addressing the court  
3 during your plea?

4 A. Yes, sir.

5 Q. You said that you were taking full  
6 responsibility for the drugs, is that right?

7 A. Yes, sir.

8 Q. What was it that you wanted your attorney  
9 to investigate that she failed to do?

10 A. The Motion that she filed and investigate  
11 the fact that I -- that they had a warrant for  
12 one charge and that they came across the drugs,  
13 that they illegally used that -- used that to  
14 charge me with the drugs. That was the  
15 question. I thought that they couldn't. She  
16 thought that they couldn't. But her  
17 investigator told me that they could. When she  
18 said that, -- if she had said right then and  
19 there that they could use these things, I would  
20 have right then and there accepted the plea  
21 that was offered. But she didn't. She said  
22 that -- she still felt that they were wrong and  
23 she was going to file some more Motions.

24 Q. What was the Motion that she filed?

25 A. I think it had something to do with --

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1       poison seed of the tree, or something like  
2       that.

3       Q.   Was that a suppression Motion?

4       A.   Yes, sir.

5                 MATTHEW FRIEDMAN:         I have nothing  
6       further, Your Honor.

7                 THE COURT:         Redirect?

8                 MS. MORROW:         Nothing further.

9                 THE COURT:         You may come down, Mr.  
10       Heyward. Thank you, sir.

11                         (WITNESS STEPS DOWN)

12                 MS. MORROW:         I would like to call Ms.  
13       Cantrell Frayer, Your Honor.

14                 THE COURT:         Ms. Frayer.

15                         (WITNESS TAKES STAND)

16                         CANTRELL FRAYER, being duly sworn to  
17       tell the truth, the whole truth and nothing but  
18       the truth, testified, as follows:

19                                 DIRECT EXAMINATION

20       BY MS. MORROW:

21       Q.   Good morning, Ms. Frayer.

22       A.   Good morning.

23       Q.   Did you produce any case law in support of  
24       Mr. Heyward's Motion to suppress?

25       A.   The Motion to suppress that we argued,

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1 that was one of the Motions that we had, we  
2 argued -- we tried to argue *Arizona v. Hicks*  
3 but the truth of the matter was that we had  
4 told Mr. Heyward that they had a warrant for  
5 the computer, then they got the second warrant  
6 -- after they found the drugs, they did obtain  
7 a second search warrant. So there was -- so  
8 the search issue became invalid.

9 I lacked client control in this case.

10 We argued a Motion that we knew that we  
11 could not win, basically.

12 Q. Did you investigate into the multiple  
13 warrants, as to their validity?

14 A. Yes, we did. The original warrant, search  
15 warrant, was for computer items, hard drives,  
16 anything that could be related to a computer or  
17 where files could be stored. I explained to  
18 Mr. Heyward that when they went into the desk  
19 drawer and they found drugs in the desk drawer  
20 that you could have -- the computer desk  
21 drawer. That if the computer is there, that  
22 you could have books or things related to a  
23 computer -- disks or whatever -- and during  
24 that Motion, the State even produced a flash  
25 drive which showed how small it was, that that

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1 could have been anywhere. So it was at that  
2 point that -- basically we lost the Motion.

3 Q. During the offer and plea process, did you  
4 fully investigate and properly inform Mr.  
5 Heyward of your results. Can you just explain  
6 a little bit about what happened during this  
7 process and the offers extended to Mr. Heyward.

8 A. Originally Mr. Heyward was represented by  
9 Attorney Stephen Harris with our office. I  
10 came to the Public Defenders Office in July of  
11 2008 and I got Mr. Heyward's case. Attorney --  
12 the assistant attorney general sent me an offer  
13 on September 12<sup>th</sup>, 2008, which I then forwarded  
14 to Mr. Heyward.

15 On September 19<sup>th</sup>, 2008, I sent him  
16 the offer, which was that -- 'You may plead to  
17 one count of trafficking, 28 to 100 grams  
18 rather than trafficking 100 to 200 grams, and  
19 one count of criminal solicitation of a minor.  
20 The solicitation charge carries ten years and  
21 will be a straight up plea. The reduced  
22 trafficking charge carries seven to twenty-  
23 five.' Mandatory twenty-five. Based on his  
24 record and the weight of narcotics, I would  
25 recommend a minimum of fifteen years active

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1 incarceration on trafficking.

2 She would -- there was a proximity  
3 charge and she was not going to indict that,  
4 which would have been a strike. And she would  
5 not -- she wouldn't ask for the -- she would  
6 not have indicted the failure to register as a  
7 sex offender.

8 Q. Did you relay this offer to Mr. Heyward?

9 A. Yes, I did.

10 Q. What was his response?

11 A. Mr. Heyward told me that he wanted to tell  
12 his story, that they didn't have a right to  
13 come in his house and -- they came to computer,  
14 they should have only found -- gotten the  
15 computer stuff. He felt that once they found  
16 the drugs that they should have stopped  
17 searching for the computer item and continued  
18 until they had gotten the search warrant for  
19 the drugs.

20 So -- over the period from 2008 to 2010  
21 when Mr. -- when we finally got on the trial  
22 docket, then that had -- that had been a  
23 constant thing with Mr. Heyward, whether his  
24 rights have been -- at that time.

25 Q. Was there an additional offer given after

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1 this occurrence? The first offer than you  
2 mentioned?

3 A. Right. They kept the offer open until  
4 basically 2010. It wasn't until June 23<sup>rd</sup>,  
5 2010, after she sent it back 'Okay, this is  
6 the final offer. He has one last chance to  
7 accept.'

8 Then after I met with him again and told  
9 him, he communicated to me that he absolutely  
10 did not want to plea. I sent a letter to the  
11 assistant attorney, Jennifer Lyons (phonetic),  
12 telling her that the offer was rejected and to  
13 please place him on a trial docket as soon as  
14 possible.

15 MS. MORROW: No further questions.

16 THE COURT: Cross-examine, please.

17 MATTHEW FRIEDMAN: Thank you, Your  
18 Honor.

19 CROSS EXAMINATION

20 BY MATTHEW FRIEDMAN:

21 Q. Ms. Frayer, how old have been practicing  
22 law?

23 A. Ten years.

24 Q. You were appointed on this case, is that  
25 correct?

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1 A. Yes.

2 Q. Do you remember about how many times you  
3 met with the applicant?

4 A. From 2008 until 2010, I would say well  
5 over twenty times including with my  
6 investigator and -- I also had a second chair,  
7 Ted Smith, from our office who also met with me  
8 and Mr. Heyward.

9 Q. Do you recall if you discussed the  
10 elements of the charges that the State was  
11 required to prove?

12 A. Yes, we did.

13 Q. Did you discuss potential defenses with  
14 him?

15 A. Yes, we did.

16 Q. I believe that you testified that that 15-  
17 year recommendation was extended on September  
18 12<sup>th</sup>, 2008; is that correct?

19 A. Yes.

20 Q. Until June of 2010?

21 A. Yes, sir.

22 Q. Whose decision was it to reject that  
23 offer?

24 A. Mr. Heyward's.

25 Q. Do you recall having discussions with Mr.

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1 Heyward about that second search warrant that  
2 was obtained by the police?

3 A. Yes, we did.

4 Q. I believe that you testified that some  
5 Motions were argued pretrial.

6 A. Yes. We argued -- Beattie Butler from our  
7 office, who is the head trial attorney in our  
8 office, even met with Mr. Heyward. During that  
9 time, Mr. Heyward expressed that he -- that he  
10 felt that the drug trial should be separate  
11 from the criminal solicitation trial, so we did  
12 attempt to argue a joinder Motion; which we  
13 lost, due to the fact that the drugs were found  
14 during the search for the computer. Judge  
15 Nicholson stated that it would be difficult to  
16 have that trial without mentioning --  
17 mentioning one without mentioning the other.

18 Q. And after those pretrial Motions, was  
19 there a time when Mr. Heyward told you that he  
20 wanted to plead guilty?

21 A. Yes. After we finished with those  
22 pretrial Motions, I visited him at the jail  
23 that evening and go over -- you know, 'Okay, we  
24 had court today, here is what we are going to  
25 do in the morning. I am going to start...' -

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1 openings, you know, starting -- my opening  
2 statement is something like 'this.' You know,  
3 going over that with him.

4 He stopped me. He said, 'Listen, I  
5 appreciate you -- you've gone your best, but  
6 that judge isn't listening to nothing we're  
7 saying. We're already lost. I want you to see  
8 if you can get me the offer back from the  
9 attorney general.'

10 Q. Did you contact the assistant attorney  
11 general and try to get that offer back?

12 A. Yes, I did. I called the next morning.  
13 I told her and she said that because we had  
14 already started the pretrial that she had to  
15 talk to her supervisor.

16 She indicated to me that the supervisor  
17 told her that she could not go below twenty.  
18 I told her that -- I said, 'Well, twenty is not  
19 going to do it. We will just go ahead to  
20 trial.' Then she said, 'Well, you know, I'll  
21 do eighteen. I'll probably get in trouble but  
22 I'll offer him eighteen if he -- you know, if  
23 we can do it now.'

24 So I went to Mr. Heyward, Mr. Smith  
25 and I, and we talked to him about the offer was

1 now eighteen.

2 Q. Whose decision was it to plead guilty to  
3 the eighteen?

4 A. Mr. Heyward's.

5 MATTHEW FRIEDMAN: I have nothing  
6 further.

7 THE COURT: Redirect?

8 MS. MORROW: Thank you.

9 REDIRECT EXAMINATION

10 BY MS. MORROW:

11 Q. At the point whenever these offers were  
12 extended, whose choice was it to reject these  
13 offers -- was it yours and Mr. Heyward's, was  
14 it Mr. Heyward's alone?

15 A. Mr. Heyward's. It was Mr. Heyward's  
16 decision. I told him that 'I work for you.  
17 I think that we should plea.' He said, 'I want  
18 to tell my story.' I have a clear memory that  
19 that is what he told me that he wanted to do,  
20 that he wanted to plea, he wanted to tell his  
21 story.

22 I was -- there was an incident where I  
23 sent him something on the criminal solicitation  
24 part, because we had an issue about the age of  
25 consent. I sent him a memo explaining that and

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1 he sent it back to me and said this -- this was  
2 information that I had gotten to help his case.  
3 But I did have Mr. Heyward sign a document  
4 saying that -- what was -- all we had covered,  
5 what the plea was, and that was -- that was  
6 signed by Mr. Heyward. He initialed -- there  
7 were twelve and he initialed those, witnesses  
8 by my paralegal.

9 MS. MORROW: Court's indulgence,  
10 (sidebar with Mr. Heyward).

11 REDIRECT EXAMINATION CONTINUED

12 BY MS. MORROW:

13 Q. Ms. Frayer, did you receive any letters  
14 from Mr. Heyward?

15 A. Yes.

16 Q. Did you receive letters stating that if  
17 what the police had done was correct, proper,  
18 or right, that he would proceed?

19 A. Mr. Heyward never said if they were right.  
20 He -- from the offset when I met with him, the  
21 police, what they did -- that they should have  
22 stopped, gotten a warrant, and that was from  
23 2008 when I first met with him until when the  
24 case was placed on the docket.

25 MS. MORROW: No further questions,

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1 Your Honor.

2 THE COURT: Recross?

3 MATTHEW FRIEDMAN: No other  
4 questions.

5 THE COURT: Thank you, you may come  
6 down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Do you have any  
9 additional witnesses?

10 MS. MORROW: No, sir.

11 THE COURT: Does the State have any  
12 additional witnesses?

13 MATTHEW FRIEDMAN: No witnesses  
14 from the State.

15 THE COURT: Very well, I will be  
16 happy to hear from you in closing then?

17 MS. MORROW: Your Honor, it is my  
18 client's position that he received ineffective  
19 assistance of counsel by his attorney by not  
20 producing case law to support and defend his  
21 rights, also in not fully investigating the  
22 warrants. She also did not properly inform him  
23 of her results so that he could make an  
24 intelligent plea.

25 It is also his position that had he

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1       been properly informed during the offer process  
2       that he would not have pled but would have,  
3       instead, proceeded to trial.

4               THE COURT:       Okay.

5               MATTHEW FRIEDMAN:       Thank you,  
6       Your Honor. The State would submit that the  
7       applicant has failed to meet his burden.

8               There is nothing to suggest that Ms.  
9       Frayer was ineffective in this case. She  
10       testified that she explained the second warrant  
11       the police obtained, she explained that to the  
12       applicant. She also argued a suppression  
13       Motion. Before that, she took him a 15-year  
14       offer which he chose to reject.

15              After the pretrial Motions were  
16       denied, counsel testified that the Applicant  
17       informed her that he wanted to plead guilty.  
18       She went back to the solicitor to get an offer.  
19       She communicated that 18-year offer to the  
20       Applicant and she indicated that it was his  
21       decision to plead guilty. The record reflects  
22       that the plea was entered freely and  
23       voluntarily.

24              For those reasons, we would ask the  
25       Court to deny and dismiss the application.

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1 THE COURT: Any reply argument?

2 MS. MORROW: No, Your Honor.

3 THE COURT: Very well. Certainly

4 I understand the Applicant's position. He

5 articulated it very clearly. He would go to

6 trial if he prevailed on his suppression

7 Motion. If prevail on your suppression Motion,

8 there's nothing to try other than the criminal

9 solicitation. I understand that. But that's

10 one of those risks that everybody makes. You

11 take a chance and -- frankly, I understand that

12 he lost the -- I believe the first offer was

13 seven to twenty-five and then the next was

14 fifteen years. Then he lost the fifteen years.

15 Quite honestly, I don't know that that

16 is ineffective assistance. That's just one of

17 those risks that lawyers have to deal with, and

18 it's part of the -- part of the case management

19 offer that governs this circuit and, I think,

20 just about every circuit in the state, that

21 there has to be an offer; but there is a limit

22 as to how long. Clearly that was extended to

23 you. There was strategy behind it, and I

24 understand that, and you explored it.

25 Any lawyer can read the law. You have

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1 something to argue, and you take a chance.  
2 Sometimes you win. Sometimes you don't. When  
3 you don't, there are some consequences that  
4 flow. In this case the consequence was that  
5 you lost the 15-year offer.

6 Quite frankly, I don't -- I notice the  
7 sheet but this was not addressed -- there was  
8 no discussion other than a recommendation of  
9 eighteen years. So there really was never a  
10 guarantee of eighteen years, or a guarantee of  
11 fifteen years. The judge could sentence you up  
12 to twenty-five years, from seven to twenty-  
13 five, as you stated; which is what that charge  
14 carries.

15 So really I don't find that there was  
16 any ineffective assistance of counsel here.  
17 But assuming that she didn't advise you  
18 properly, you really -- the consequence would  
19 have been the same; you would have pled guilty,  
20 which is what you did. So it really doesn't  
21 affect the outcome. So I respectfully deny  
22 your Motion and ask the State to prepare the  
23 appropriate Order and submit it within thirty  
24 days. Good luck to you, Mr. Heyward.

25

(HEARING CONCLUDED)

1 CERTIFICATE OF REPORTER

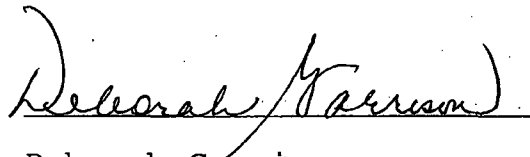
2

3 I, the undersigned, Deborah Garrison,  
4 official court reporter for the 9<sup>th</sup> Judicial  
5 Circuit of the State of South Carolina, do  
6 hereby certify that the foregoing is a true,  
7 accurate and complete transcript of the hearing  
8 held before The Honorable R. Markley Dennis,  
9 Jr., on January 10, 2012;

10 I further certify that I am neither kin  
11 nor counsel to any of the parties and have no  
12 interest in the outcome of this action.

13

14



15

Deborah Garrison

16

Circuit Court Reporter

17

9<sup>th</sup> Judicial Circuit

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22 Charleston, South Carolina

23 March 26, 2012

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Joseph Heyward, #238182, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2011-CP-10-4503

**ORDER OF DISMISSAL**

FILED  
 2012 FEB 22 AM 9:03  
 JULIE M. STRONG  
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 27, 2011 and amended on June 27, 2011. The Respondent made its Return on October 7, 2011. An evidentiary hearing into the matter was convened on January 10, 2012 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Kelly Morrow, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant and plea counsel, Cantrell Frayer, Esquire, testified at the PCR hearing. This Court had before it the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the PCR application and amended application, and Respondent's Return thereto.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2008 and July 2008 terms of the Charleston County Grand Jury for criminal solicitation of a minor (2008-GS-10-4179) and trafficking cocaine (100-200 grams) (2008-GS-10-6883). Cantrell Frayer, Esquire, represented the Applicant. On August 24, 2010, the

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Applicant pled guilty to the lesser-included offense of trafficking cocaine (28-100 grams) and as indicted to criminal solicitation of a minor. The Honorable J.C. Nicholson, Jr. sentenced him to confinement for eighteen (18) years for trafficking cocaine and ten (10) years suspended to five (5) years of probation for criminal solicitation of a minor. The Applicant did not appeal the conviction or sentence.

### ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
  - a. Was not thoroughly prepared by not producing any case law to support and defend Applicant's rights.
  - b. Did not investigate and properly inform Applicant of her results, where Applicant can upon trial counsel advice make an intelligent plea.
2. Involuntary guilty plea.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and hear 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 his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified that counsel failed to investigate the motion to suppress she filed and the warrant for the solicitation charge. He asserted that if counsel had properly informed him and investigated properly, then he would have taken the original plea offer for fifteen (15) years. He admitted that he did not want to go to trial. Applicant testified that it was his decision and counsel's decision for him to reject the first two plea offers.

Plea counsel testified that she met with Applicant more than twenty times prior to the

plea hearing. She testified that the pre-trial motions, including the motion to suppress, were argued and denied and the opening statements would have been the next day, but Applicant informed counsel that he wanted to plead guilty. She testified that she contacted the solicitor, Megan Wines, and asked for another offer. Ms. Wines offered twenty (20) years, but counsel was able to talk her down to eighteen (18) years. Counsel testified that she communicated the original offer for fifteen (15) years to Applicant, and it was Applicant's decision to reject the offer. She asserted that the offer was kept open for nearly two years. Counsel testified that it was Applicant's decision to accept the offer for a recommendation of eighteen (18) years. She testified that she lacked client control in this case. Counsel testified that she explained to Applicant that the police properly obtained a second warrant. She researched the relevant law on warrants and argued a motion that she knew she could not win.

#### Ineffective Assistance of Counsel

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this

presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that Applicant's testimony is not credible while also finding that

counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

This Court finds that the record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he understood the nature of the charges and the possible punishments. He indicated that no one had threatened him or promised him anything to get him to plead guilty. He admitted that he was guilty of these offenses. Applicant told the court that he was satisfied with counsel's representation. This Court finds that it was Applicant's decision to plead guilty with a full understanding of the consequences of the plea.

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 that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. She obtained a favorable sentence for Applicant under the circumstances. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly communicated each plea offer to Applicant. This Court finds counsel's testimony credible that Applicant decided to plead guilty after his pre-trial

motions were denied. This Court finds that counsel properly made a motion to suppress and explained to Applicant that the police had obtained a second search warrant. Applicant has failed to show that counsel was deficient or that any alleged deficiency would have changed the outcome of the proceedings.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

#### All Other Allegations

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

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and

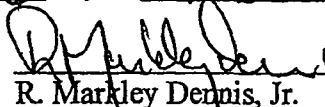
dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order 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 served and filed.

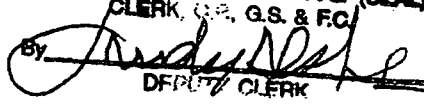
**IT IS THEREFORE ORDERED:**

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 16 day of Feb., 2012.

  
 \_\_\_\_\_  
 R. Markley Dennis, Jr.  
 Presiding Judge  
 9<sup>th</sup> Judicial Circuit

Charleston, South Carolina.

APPROVED BY: HUE GORY  
 JULIE J. ARMSTRONG (SEAL)  
 CLERK, C.P., G.S. & F.C.  
 By:   
 DEPUTY CLERK

7  
RMAJ/7

DOCKET NO. 2008-GS-10-06883

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS

JULY TERM 2008

THE STATE

vs.

Joseph George Hayward  
D.O.B. 10/09/1966

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

BY \_\_\_\_\_  
Defendant  
I hereby appear in my own proper person and plead guilty to the within indictment.

FILED  
2008 JUL 21 AM 11:19  
JULIE J. BRISSON  
CLERK OF COURT

Defendant  
Witness:  
C.C.C. PLS. AND G.S.

08-1702-2

WITNESSES  
Chito T. Walker Perry

ARREST WARRANT NUMBER  
1-597293

ACTION OF GRAND JURY

TRUE

*Marta Dune*  
Foreperson of Grand Jury  
Date: JUL 15 2008

VERDICT

Foreperson of Petit Jury  
Date:

Indictment for  
TRAFFICING COCAINE  
(100-200 GRAMS)  
SC Code: 44-53-370(e)(2)(c)  
CDR Code: 0280  
FELONY/EXM

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

INDICTMENT

At a Court of General Sessions, convened on July 14, 2008, the Grand Jurors of Charleston County present upon their oath:

**TRAFFICING COCAINE (100-200 GRAMS)**

That Joseph George Heyward did in Charleston County on or about December 7, 2006, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (100) one hundred grams but less than (200) two hundred grams of cocaine, a schedule II controlled substance, in violation of Section 44-53-370(e)(2)(c), of the Code of Laws of South Carolina, (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL

  
 HENRY McMASTER (MBW)  
 ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
AKA: Joseph George Heyward
Race: B Sex: M
DOB: 10/7/1966 SS#:
Address: 100B: 10/7/1966
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2008GS-10-06883
A/W#: I-591293
Date of Offense: 12/7/06
S.C. Code §: 44-53-370(2)(C)
CDR Code #: 0280

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Trafficking Cocaine 28-100 grams (PLEADS 25 YRS.)

in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 2359
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: MEAG B Wines, 7176 Joseph Heyward, Attorney for Defendant, SC Bar# 108444

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 3 YRS. EMOS. 19 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Table with columns for assessment code, description, and amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2912(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCA Surcharge) \$5, § 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$, TOTAL \$ 285.40

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

Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Deb Guffison
Court Reporter: Deb Guffison
SCCA/217 (06/2010)

Presiding Judge: [Signature]
Judge Code:
Sentence Date: 8/24/10

DOCKET NO. 2008-GS-10-04179

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS

April 2008 TERM

THE STATE

vs.

Joseph George Heyward  
D.O.B. 10/09/1966

Indictment for  
CRIMINAL SOLICITATION  
OF A MINOR

SC Code: 16-15-0342  
CDR Code: 2999

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant  
2008 APR 10 11:05 AM  
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

WITNESSES

Special Agent Lucinda McKellar - SLED

ARREST WARRANT NUMBER

DP-

ACTION OF GRAND JURY

TRUE BILL

*Robert Cochran*

Foreperson of Grand Jury  
Date:

APR 06 2008

VERDICT

Foreperson of Petit Jury  
Date:



STATE OF SOUTH CAROLINA )  
 COUNTY OF Charleston )  
 STATE VS. )  
Joseph G. Heyward )  
 AKA: )  
 Race: S Sex: M Age: 48 )  
 DOB: 06-00-0000 SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip: \_\_\_\_\_ )  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008 65 10 04179  
 A/W#: ~~2008 65 10 04179~~ DP  
 Date of Offense: 7-12-06  
 S.C. Code §: 16-15-342  
 CDR Code #: 2999

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  
 TO: Criminal Solicitation of a Minor (10 yrs)  CONVICTED OF or  PLEADS

in violation of § 16-15-342 of the S.C. Code of Laws, bearing CDR Code # 2999  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS/CSC  §17-25-45  
 w/minor 1st or Lewd Act)

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

ATTEST: Megan B. Wins W. H. Joseph Heyward Joseph Heyward 68444  
 SC Bar# SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 5

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  PTUP while in jail  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_  
 \*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(B)(1) Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 18.90
TOTAL		\$ 1048.90

\_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: COMPLETE SEXUAL TREATMENT PROGRAM UNLESS COMPLETED WHILE IN JAIL  
 Condition Discharge, § 44-53-450(C) requires  
 \$350 be paid to the Clerk prior to case disposition  
 Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk: Colleen C. Bussard  
 Court Reporter: Hilary Sweden  
 SCCA 1213 (06/2010)  
SENTENCE POSTPONED

Presiding Judge: [Signature]  
 Judge Code: [Signature]  
 Sentence Date: 8/24/10

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/13/11  
 OMCOMITA RELEASE DATE SCREEN C040481  
 SCDC# > 238182 LOC: MCCORMICK  
 HEYWARD, JOSEPH GEORGE SCDC CLASSIFICATION... VIOLENT  
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... Y  
 SEXUAL PREDATOR...: PENDING  
 DNA STATUS.....: COMPLETED  
 GPS REQUIREMENT...: N  
 PREA DECISION.....  
 CURRENT SENTENCE: 018-00-000 CONSECUTIVE SENTENCE ...: N  
 018-00-000 CURRENT SENT START DATE: 12/06/2006  
 PROJECTED COMPLETION DATES  
 MAXOUT DATE .....: 03/21/2022 CURRENT EWC ..: 2 F 5  
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC  
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED .....: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999  
 TOTAL EARNED WORK CREDITS ...: 000592 LABOR CREW DISQ REASON:  
 TOTAL EDUCATION CREDITS ....: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT  
 TOTAL EXTRA EARNED CREDITS ..: 000  
 TOTAL SERVICE TIME EARNED ...: 001657

PFKEYS: 5:HISTORY OF DATE CHANGES  
 4-© 1 Sess-1 167.7.50.33 SCDC1345 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
RECORD SUMMARY REPORT DATED 07/13/11

C040

HEYWARD, JOSEPH GEORGE FBI # 61188EA3 SID# SC00519706 SCDC # 238182  
 OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE  
 INSTITUTION ..: MCCORMICK CORR INST DORM.....: F30121A  
 SECURITY/CUST.: 3 MINIMUM IN RACE....:B SEX...:M  
 CURR INCARC SENT...: 18 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 03/21/2022  
 CENTRAL MONITORING.: YES SEPREQ PROJ PAROLE DATE: 00/00/0000  
 SOCIAL SECURITY #...:251291162 EWC JOB...: GENERAL WORKER  
 EDUC PGM.: NO CURR EDUC PROGRAM  
 CURRENT PROGRAM...: NO CURRENT PROGRAM EWC LEVEL: 2F5 EEC LEVEL:  
 AGE...: 44 DATE OF BIRTH...:10/ 9/66 ASSIGNMENT...: BLDING DETAIL BLDG

PREVIOUS NUMBERS:

00177438  
00191987

CURRENT OFFENSES	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START	V/NV	CATEGOR
CRIM. SOLICITATION MINOR	0 0 0	CHARLESTON	8/24/2010	N	4
TRAFFICKING IN COCAINE	18 0 0	CHARLESTON	12/ 6/20	6 V	4
LEWD ACT/CHILD UNDER 14	7 0 0	CHARLESTON	1/15/1997	N	4

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START	V/NV	CATEGOR
RESISTING OFFICER	1 0 0	CHARLESTON	1/15/1997	N	3
FAIL TO STOP FOR OFFICER	2 0 0	CHARLESTON	1/15/1997	N	2
MARIJUANA POSSESS	2 0 0	CHARLESTON	1/15/1997	N	2

PRIOR COMMITMENTS OVER 90 DAYS:

9/12/92 COCAINE POSSESS 6 YRS 0 MOS 0 DYS  
 4/14/92 \*INDECENT EXPOSURE 6 YRS 0 MOS 0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

RAPE NOTIFY OPEN ARREST NOTIFICATION CATEG: 5  
 TRAF COCAINE (10-286, 1ST) WANTED PRESIDING JUDGE CATEG: 4  
 \*NO DETAINERS\*

ESCAPES:

\*NO ESCAPE HISTORY\*

CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES:

\*NO ASSAULTIVE DISCIPLINARY HISTORY\*

NON-ASSAULTIVE DISCIPLINARIES:

1/31/99 I/M UNDER INFLUENCE/POSS CONVICTED MAJOR  
 5/19/98 REFUSING OR FAILING OBEY DROPPED MINOR

HISTORY OF MOVEMENTS:

11/16/10	MCCORMICK	INCARCERATED	RETURN FROM COURT
11/16/10	CHARLESTON CO	AUTH ABSENCE (AWL)	TO COURT
11/ 2/10	MCCORMICK	INCARCERATED	ADMINISTRATIVE
8/25/10	KIRKLAND	INCARCERATED	R&E PROCESSING
8/25/10	LIEBER	INCARCERATED	NEW SENT W/O PR/CS/SF REL
8/22/ 0	CHARLESTON CO	PROBATION	RELEASED TO PROBATION
8/22/ 0	RIDGELAND	INCARCERATED	ADMINISTRATIVE
8/22/ 0	KIRKLAND	INCARCERATED	MEDICAL
2/ 9/99	RIDGELAND	INCARCERATED	RETURN FROM COURT
2/ 5/99	CHARLESTON CO	AUTH ABSENCE (AWL)	TO COURT
2/18/97	RIDGELAND	INCARCERATED	ADMINISTRATIVE
1/22/97	LIEBER R&E	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	11/04/10	0/ 0/ 0		2F5
WARDKEEPER	04/28/00	8/22/ 0	RELEASED/PAROLED	2F5

HEYWARD, JOSEPH GEORGE FBI # 611188EA3 SID# SC00519706 SCDC # 238182 (CONTIN  
 SENIOR COOK 08/06/99 4/27/ 0 INMATE REQUEST 2F5  
 SENIOR COOK 02/12/99 8/ 5/99 MI ELIGIBLE FOR LEVEL 2 3F5  
 SR DINING ROOM OPERA 02/10/99 2/11/99 PROMOTION 3F5  
 SR DINING ROOM OPERA 06/24/97 2/ 5/99 COURT 2F5  
 SR DINING ROOM OPERA 02/28/97 6/23/97 REMOVAL FROM 7 DAY CREDIT 2F7  
 SR DINING ROOM OPERA 02/26/97 2/27/97 MI ELIGIBLE FOR LEVEL 2 3F7

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

\*NO SCHOOL ASSIGNMENTS\*

\*\*\*\*\* END OF REPORT \*\*\*\*\*