

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Beaufort County

S.C. Supreme Court

Deadra L. Jefferson, Circuit Court Judge

RAMON ATIENZO-PEREZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000307

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2009 GS 07 02346

State of South Carolina,
Plaintiff

VS

Ramon Atienzo-Perez,
Defendant

TRANSCRIPT OF RECORD

January 24, 2011
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CRAIG D. BROWN, Judge.

DEBORAH E. EVERETT
Court Reporter

 ORIGINAL

A P P E A R A N C E S

Assistant Solicitor of Beaufort County

Michael Dirnbauer, Attorney at Law
Attorney for the Defendant (Ramon Atienzo-Perez)

Rebecca McCann, Interpreter

Christopher Lempesis, Attorney at Law
Attorney for the Defendant (Ignacio Sandoval-Costa)

Rocio Marin-Riley, Interpreter

I N D E X

(NO WITNESSES INTRODUCED)

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EXHIBITS

(NO EXHIBITS INTRODUCED)

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1 (Whereupon hearing commenced)

2 First being duly sworn, **RAMON ATIENZO-**
3 **PEREZ**, testified as follows: (through an interpreter)

4 First being duly sworn, **IGNACIO SANDOVAL-**
5 **ACOSTA**, testified as follows: (through an interpreter)

6 First being duly sworn, **INTERPRETERS**,
7 translated as follows:

8 THE COURT: All right, I've seen you here before,
9 probably in this court room. Please tell me your name
10 again?

11 INTERPRETER 1: Rebecca McCann, M-c, capitol C-a-
12 n-n.

13 THE COURT: And the defendant to my right, what is
14 his name?

15 INTERPRETER 2: Ignacio Sandoval-Acosta.

16 THE COURT: And your name, ma'am?

17 INTERPRETER 2: R-o-c-i-o M-a-r-i-n Riley, R-i-l-
18 e-y.

19 THE COURT: Rocio?

20 INTERPRETER 2: Rocio.

21 THE COURT: I'm not even going to attempt to
22 pronounce that.

23 INTERPRETER 2: (laughter) Everyone just calls me
24 Rosie.

25 THE COURT: (laughter) Okay. And your name, sir?

1 MR. CHRIS LEMPESIS: Chris Lempesis, L-e-m-p-e-s-
2 i-s.

3 THE COURT: Have the defendants been sworn?

4 CLERK OF COURT: Yes, sir.

5 THE COURT: Have the interpreters been sworn?

6 CLERK OF COURT: Yes, sir.

7 THE COURT: Any objection to or do we need to put
8 anything else on the record in regard to the
9 interpreter's qualifications from the State?

10 SOLICITOR: No, sir.

11 THE COURT: Mr. Dirnbauer?

12 MR. DIRNBAUER: No, sir.

13 THE COURT: Mr. Lempesis?

14 MR. LEMPESIS: No, sir.

15 THE COURT: For the interpreters, each of you can
16 interpret and understand that you've got to interpret
17 word for word from English to Spanish and from Spanish
18 to English for the Court, do you understand that Ms.
19 McCann?

20 INTERPRETER 1: Yes, I do.

21 THE COURT: Ms. Riley?

22 INTERPRETER 2: Yes, sir, I do.

23 THE COURT: Any objection by either counsel --
24 please interpret what I'm saying to your clients -- Ms.
25 Riley? Any objection by either attorney, us taking

1 these pleas together, Mr. Dirnbauer?

2 MR. DIRNBAUER: No, Your Honor.

3 THE COURT: Mr. Lempesis?

4 MR. LEMPESIS: No sir, Your Honor?

5 THE COURT: Any objection by your client, Mr.
6 Dirnbauer?

7 INTERPRETER 1: (interpreted to client)

8 INTERPRETER 1: No, Your Honor.

9 MR. DIRNBAUER: No, Your Honor.

10 THE COURT: Mr. Lempesis?

11 INTERPRETER 2: (interpreted to client)

12 INTERPRETER 2: No, sir.

13 MR. LEMPESIS: No, sir.

14 THE COURT: Mr. Dirnbauer, you represent Ramon
15 Atienzo-Perez?

16 MR. DIRNBAUER: Yes, Your Honor.

17 THE COURT: And Mr. Lempesis, you represent
18 Ignacio Sandoval-Costa?

19 MR. LEMPESIS: Yes, Your Honor.

20 THE COURT: Have each of you all explained to your
21 clients the charges contained in the indictment, the
22 possible punishment and their Constitutional Rights,
23 Mr. Dirnbauer?

24 MR. DIRNBAUER: Yes, Your Honor.

25 THE COURT: Mr. Lempesis?

1 MR. LEMPESIS: Yes sir, Your Honor.

2 THE COURT: In your opinion, does your client
3 understand the possible punishment and his
4 Constitutional Rights, Mr. Dirnbauer?

5 MR. DIRNBAUER: Yes, Your Honor.

6 THE COURT: Mr. Lempesis?

7 MR. LEMPESIS: Yes sir, Your Honor.

8 THE COURT: Does your client wish to plead guilty
9 or not guilty, Mr. Dirnbauer?

10 MR. DIRNBAUER: My client wishes to plead guilty,
11 Your Honor.

12 THE COURT: Mr. Lempesis?

13 MR. LEMPESIS: My client wishes to plead guilty,
14 Your Honor.

15 THE COURT: Mr. Dirnbaur and Mr. Lempesis, do you
16 agree with your client's decision?

17 MR. DIRNBAUER: Yes, Your Honor.

18 MR. LEMPESIS: Yes sir, Your Honor.

19 THE COURT: From your investigation of the facts
20 and circumstances of this case, do each of you believe
21 that the State could produce enough evidence to
22 convince a jury of their guilt, beyond a reasonable
23 doubt, and if they were to stand trial, their
24 conviction would be probable, Mr. Dirnbauer?

25 MR. DIRNBAUER: Yes, Your Honor.

1 THE COURT: Mr. Lempesis?

2 MR. LEMPESIS: Yes sir, Your Honor.

3 THE COURT: Has either of your clients been
4 ordered to submit to a psychological or mental
5 evaluation, Mr. Dirnbauer?

6 MR. DIRNBAUER: No, Your Honor.

7 THE COURT: Mr. Lempesis?

8 MR. LEMPESIS: No sir, Your Honor.

9 THE COURT: Any question in your mind about your
10 client's competency, Mr. Dirnbauer?

11 MR. DIRNBAUER: No, Your Honor.

12 THE COURT: Mr. Lempesis?

13 MR. LEMPESIS: No sir, Your Honor.

14 THE COURT: All right. Sir, you are Mr. Ramon
15 Atienzo-Perez?

16 (through interpreter): Yes, Your Honor.

17 THE COURT: And sir, you are Mr. Ignacio Sandoval-
18 Costa?

19 (through interpreter): Yes, sir.

20 THE COURT: Certain questions that I must ask each
21 of you to ensure that your guilty plea is entered into
22 freely, voluntarily, knowingly and intelligently and
23 that you fully understand the nature of the offense
24 that you are pleading guilty to and the consequence of
25 your plea. If at any point and time either of you need

1 to speak to your attorney I will be happy to let you
2 talk to them. Do you understand, Mr. Perez?

3 (through interpreter): Yes, sir.

4 THE COURT: Do you understand, Mr. Acosta?

5 (through interpreter): Yes, sir.

6 THE COURT: How old are you, Mr. Perez?

7 (through interpreter): Twenty-eight.

8 THE COURT: Mr. Acosta?

9 (through interpreter): Forty.

10 THE COURT: How far did you go in school, Mr.
11 Perez?

12 (through interpreter): The first of the
13 Preparatory.

14 THE COURT: Mr. Acosta?

15 (through interpreter): Sixth grade.

16 THE COURT: What kind of work have you done, Mr.
17 Perez?

18 (through interpreter): Sheet rocking.

19 THE COURT: Mr. Acosta?

20 (through interpreter): Carpentry and painting.

21 THE COURT: Are you married, Mr. Perez?

22 (through interpreter): Yes.

23 THE COURT: Mr. Acosta?

24 (through interpreter): He's divorced.

25 THE COURT: Do you have any children, Mr. Perez?

1 (through interpreter): Yes.

2 THE COURT: Mr. Acosta?

3 (through interpreter): Yes, two.

4 THE COURT: Have you ever been in criminal court
5 before, Mr. Perez?

6 (through interpreter): Yes.

7 THE COURT: Mr. Acosta?

8 (through interpreter): No.

9 THE COURT: Have you ever been treated for alcohol
10 abuse, drug abuse or mental illness, Mr. Perez?

11 (through interpreter): No.

12 THE COURT: Mr. Acosta?

13 (through interpreter): No, sir.

14 THE COURT: Within the last twenty-four hours have
15 either of you taken any medications, drugs, or alcohol,
16 Mr. Perez?

17 (through interpreter): No.

18 THE COURT: Mr. Acosta?

19 (through interpreter): No.

20 THE COURT: Are either of you aware of any
21 physical, emotional, or nervous problem that might keep
22 you from understanding what you are doing here today,
23 Mr. Perez?

24 (through interpreter): No.

25 THE COURT: Mr. Acosta?

1 (through interpreter): No.

2 THE COURT: Can you hand me the plea sheets?

3 Mr. Perez, you are pleading guilty to Trafficking
4 Cocaine, Twenty-eight Grams or More but Less than One
5 Hundred Grams, First Offense, is that correct?

6 (through interpreter): Yes.

7 THE COURT: And Mr. Acosta, you are also pleading
8 guilty to Trafficking Cocaine, Twenty-eight Grams or
9 More but Less than a Hundred Grams, First Offense, is
10 that correct?

11 (through interpreter): Yes.

12 THE COURT: Do each of you understand that it
13 carries a minimum of seven years -- correct Solicitor?

14 SOLICITOR: Yes, Your Honor.

15 THE COURT: And a maximum sentence of twenty-five
16 years, do you understand that Mr. Perez?

17 (through interpreter): Yes.

18 THE COURT: Mr. Acosta, do you understand that as
19 well?

20 (through interpreter): Yes.

21 THE COURT: The State has indicated that you are
22 pleading to a negotiated sentence. Is that your
23 understanding, Mr. Perez?

24 (through interpreter): Yes.

25 THE COURT: Is that your understanding, Mr.

1 Acosta?

2 (through interpreter): Yes.

3 THE COURT: With regards to Mr. Perez, it's my
4 understanding that that negotiated sentence is for
5 twenty years, is that correct Mr. Solicitor?

6 SOLICITOR: That's correct, Your Honor.

7 THE COURT: Is that your understanding, Mr.
8 Dirnbauer?

9 MR. DIRNBAUER: Yes, Your Honor.

10 THE COURT: Is that your understanding, Mr. Perez?

11 (through interpreter): Yes.

12 THE COURT: Do you understand, Mr. Perez -- I'll
13 come back to you in just a second. With regards to Mr.
14 Acosta, do you understand also that it carries a
15 mandatory minimum of seven years and a maximum sentence
16 of twenty-five years? Do you understand that?

17 (through interpreter): Yes.

18 THE COURT: The State has indicated that it has
19 negotiated a sentence in your case of seventeen years.
20 Is that correct, Mr. Acosta?

21 (through interpreter): Yes.

22 THE COURT: Is that correct, Mr. Lempesis?

23 MR. LEMPESIS: Yes sir, Your Honor and also if I
24 may? We'd asked that the Court question the defendant
25 on whether or not he has been advised that such a

1 guilty plea conviction would have an adverse effect on
2 his immigration status.

3 THE COURT: Mr. Lempesis, I'm going to get to
4 that.

5 MR. LEMPESIS: Thank you, Your Honor.

6 THE COURT: Mr. Dirnbauer, you've heard me
7 question your client about the negotiated plea, is that
8 your understanding of what the negotiation was as well?

9 MR. DIRNBAUER: Yes, Your Honor.

10 THE COURT: Now, do each of you understand that
11 under a negotiated plea the Court can choose to go
12 along with the negotiation that your attorney's have
13 negotiated today or I can set it aside. If I choose
14 not to accept the guilty plea, I can let you plead in
15 front of another judge on a different day, do you
16 understand that Mr. Perez?

17 (through interpreter): Yes.

18 THE COURT: Do you understand that Mr. Acosta?

19 (through interpreter): Yes.

20 THE COURT: Do each of you want me to accept this
21 negotiated plea that has been put here before the Court
22 today, Mr. Perez?

23 (through interpreter): Yes.

24 THE COURT: Mr. Acosta?

25 (through interpreter): Yes.

1 THE COURT: Now, do each of you understand that
2 the charges -- the charges you are pleading guilty to,
3 that those are considered to be violent offenses, do
4 you understand that, Mr. Perez?

5 (through interpreter): Yes.

6 THE COURT: Mr. Acosta?

7 (through interpreter): Yes.

8 THE COURT: Each of you may discuss parole and
9 parole eligibility with your lawyer or others. Until I
10 sentence you, no one can tell you when, if ever, you
11 may come up for parole. Each of you should assume you
12 will serve the entire time in jail that I sentence you
13 to. Do you understand this, Mr. Perez?

14 (through interpreter): Yes.

15 THE COURT: Do you understand that Mr. Acosta?

16 (through interpreter): Yes.

17 THE COURT: Understanding that, do you wish to
18 proceed here today, Mr. Perez?

19 (through interpreter): Yes.

20 THE COURT: Mr. Acosta?

21 (through interpreter): Yes.

22 THE COURT: Are either of you relying on any
23 information concerning parole or possible parole in
24 making your decision here today? Mr. Perez?

25 (through interpreter): I don't understand.

1 THE COURT: All right. Mr. Dirnbauer, do you want
2 to talk to your client?

3 MR. DIRNBAUER: Yes, sir.

4 THE COURT: Does your client understand (to Mr.
5 Lempesis)?

6 MR. LEMPESIS: Yes sir, Your Honor.

7 THE COURT: Mr. Perez, you've had an opportunity
8 to speak with your attorney. Is that correct?

9 (through interpreter): Yes.

10 THE COURT: Regarding parole or parole
11 eligibility, is that correct?

12 (through interpreter): Yes.

13 THE COURT: Are you relying on any information
14 concerning parole or parole eligibility in making your
15 decision here today?

16 (through interpreter): No, no.

17 THE COURT: Do each of you understand the nature
18 of the charges against you and the range of possible
19 punishment, Mr. Perez?

20 (through interpreter): Yes.

21 THE COURT: Mr. Acosta?

22 (through interpreter): Yes.

23 THE COURT: Now, Mr. Lempesis brought this up.
24 It's my understanding that immigration had a hold on
25 Mr. Perez. Is that your understanding Mr. Dirnbauer?

1 MR. DIRNBAUER: Yes, Your Honor.

2 THE COURT: He is -- ICE may have a hold on your
3 client, as well, Mr. Lempesis?

4 MR. LEMPESIS: As far as I know.

5 THE COURT: Sir?

6 MR. LEMPESIS: As far as I know, Your Honor.

7 THE COURT: Do each of you, Mr. Perez and Mr.
8 Acosta, understand that this plea today will more than
9 likely have an impact upon your immigration -- your
10 status in this country, Mr. Perez?

11 (through interpreter): Yes.

12 THE COURT: Mr. Acosta?

13 (through interpreter): Yes.

14 THE COURT: Do each of you understand that as a
15 result of your guilty plea here today that could very
16 well result in your deportation from this country upon
17 fulfilling your obligation under this sentence? Do you
18 understand that Mr. Perez?

19 (through interpreter): Yes.

20 THE COURT: Mr. Acosta?

21 (through interpreter): Yes.

22 THE COURT: Understanding that this plea could
23 have an impact upon your status in this country, do
24 each of you wish to proceed here today and plead
25 guilty? Mr. Perez?

1 (through interpreter) Yes.

2 THE COURT: Mr. Acosta?

3 (through interpreter) Yes.

4 THE COURT: Mr. Dirnbauer, Mr. Lempesis, is there
5 anything else you would like me to add with regards to
6 immigration status?

7 MR. LEMPESIS: No sir, Your Honor. That covers
8 it.

9 MR. DIRNBAUER: No sir, Your Honor.

10 THE COURT: Now, do each of you understand that
11 when you plead guilty in this country you give up
12 certain important constitutional rights? Each of you
13 have a right to a jury trial. At a jury trial, I would
14 instruct the jury that you are presumed innocent. The
15 State would have the burden of proving you guilty
16 beyond a reasonable doubt. You have the right to
17 question the witnesses against you as well as the right
18 to present witnesses in your defense. You would have
19 the right to remain silent. If you did not testify, I
20 would instruct the jury not to hold that fact against
21 you. You have the right to present any defense you
22 might have to the charges against you. If you made any
23 incriminating statements about the charges you would
24 have the right to challenge the admissibility of those
25 statements. Do you understand these rights, Mr. Perez?

1 (through interpreter): Yes.

2 THE COURT: Mr. Acosta?

3 (through interpreter): Yes.

4 THE COURT: By pleading guilty you are giving up
5 all of these rights. Understanding the rights that
6 I've explained to you, do each of you wish to give up
7 these rights and plead guilty, Mr. Perez?

8 (through interpreter): Yes.

9 THE COURT: Mr. Acosta?

10 (through interpreter): Yes.

11 THE COURT: I have already put on the record, the
12 plea negotiation. Any -- at least what my
13 understanding the plea negotiations are -- are there
14 any other matters with regard to each of these pleas
15 that I need to be made aware of by the State, Mr.
16 Solicitor?

17 SOLICITOR: Not sure if we put this on the record.
18 They were originally charged with Trafficking over Four
19 Hundred Grams. Part of this plea is reducing two of
20 them to where we are now, twenty-eight to a hundred
21 grams. If you would like me to I can explain why
22 there's a difference in the years between these two
23 negotiations now or I can ---

24 THE COURT: No, we'll get to that. Is that your
25 understanding Mr. Dirnbauer?

1 MR. DIRNBAUER: Yes, sir.

2 THE COURT: Mr. Lempesis?

3 MR. LEMPESIS: Yes sir, Your Honor.

4 THE COURT: Is that your understanding, Mr. Perez?

5 (through interpreter): Yes.

6 THE COURT: Mr. Acosta?

7 (through interpreter): Yes.

8 THE COURT: All right, Mr. Perez and Mr. Acosta,
9 are each of you satisfied with how your lawyers have
10 advised you and represented you? Mr. Perez?

11 (through interpreter): Yes.

12 THE COURT: Mr. Acosta?

13 (through interpreter): Yes.

14 THE COURT: Have each of you talked with your
15 lawyer for as long as necessary for them to properly
16 represent you? Mr. Perez?

17 (through interpreter): Yes.

18 THE COURT: Mr. Acosta?

19 (through interpreter): Yes.

20 THE COURT: Do either of you need more time with
21 your lawyer, Mr. Perez?

22 (through interpreter): No.

23 THE COURT: Mr. Acosta?

24 (through interpreter): No.

25 THE COURT: Have each of you understood your

1 lawyer? Mr. Perez?

2 (through interpreter): Yes.

3 THE COURT: Mr. Acosta?

4 (through interpreter): Yes.

5 THE COURT: Do each of you believe your lawyers
6 have done everything they should have done or could
7 have done for you, Mr. Perez?

8 (through interpreter): Yes.

9 THE COURT: Mr. Acosta?

10 (through interpreter): Yes.

11 THE COURT: Have either of your lawyers done
12 anything that you believe they should not have done,
13 Mr. Perez?

14 (through interpreter): No.

15 THE COURT: Mr. Acosta?

16 (through interpreter): No.

17 THE COURT: Are each of you completely satisfied
18 with your lawyer's services, Mr. Perez?

19 (through interpreter): Yes.

20 THE COURT: Mr. Acosta?

21 (through interpreter): Yes.

22 THE COURT: Do either of you have any complaints,
23 whatsoever, that you want to make about your lawyer,
24 Mr. Perez?

25 (through interpreter): No.

1 THE COURT: Mr. Acosta?

2 (through interpreter): No.

3 THE COURT: Other than the negotiated plea has
4 anyone promised either of you anything or held out any
5 hope of reward to get you to plead guilty, Mr. Perez?

6 (through interpreter): No.

7 THE COURT: Mr. Acosta?

8 (through interpreter): No.

9 THE COURT: Has anybody threatened, used force,
10 pressure or any kind of intimidation to get you to
11 plead guilty, Mr. Perez?

12 (through interpreter): No.

13 THE COURT: Mr. Acosta?

14 (through interpreter): No.

15 THE COURT: Has anybody connected with this case,
16 whether it be the Prosecutor or any of the police
17 officers, mistreated you in any way, Mr. Perez?

18 (through interpreter): No.

19 THE COURT: Mr. Acosta?

20 (through interpreter): No.

21 THE COURT: Do each of you understand that you
22 have a right to appeal your guilty plea and any
23 sentence handed down by this Court but if you want to
24 appeal you must do so within ten days from today and if
25 you want to appeal and you cannot afford an attorney,

1 one would be appointed to represent you at no cost. Do
2 you understand, Mr. Perez?

3 (through interpreter): Yes.

4 THE COURT: Mr. Acosta?

5 (through interpreter): Yes.

6 THE COURT: Have each of you had enough time to
7 make up your mind as to whether or not you wish to
8 plead guilty or go to trial, Mr. Perez?

9 (through interpreter): Yes.

10 THE COURT: Mr. Acosta?

11 (through interpreter): Yes.

12 THE COURT: How do you plead to this charge of
13 Trafficking Cocaine, Twenty-Eight Grams or More but
14 Less than One Hundred Grams, First Offense, Mr. Perez?

15 (through interpreter): Guilty.

16 THE COURT: And how do you plead, Mr. Acosta, to
17 Trafficking Cocaine, Twenty-eight Grams or More but
18 Less than One Hundred Grams, First Offense?

19 (through interpreter): Guilty.

20 THE COURT: Are each of you pleading guilty of
21 your own free will, Mr. Perez?

22 (through interpreter): Yes.

23 THE COURT: Mr. Acosta?

24 (through interpreter): Yes.

25 THE COURT: Have each of you, through your

1 interpreters, understood what I've asked you, Mr.
2 Perez?

3 (through interpreter): Yes.

4 THE COURT: Mr. Acosta?

5 (through interpreter): Yes.

6 THE COURT: Is there anything that either of you
7 would like to ask me regarding what we've just been
8 over, Mr. Perez?

9 (through interpreter): No.

10 THE COURT: Mr. Acosta?

11 (through interpreter): No.

12 THE COURT: Is there anyone that has suggested to
13 you how to answer to my questions here today, Mr.
14 Perez?

15 (through interpreter): No.

16 THE COURT: Mr. Acosta?

17 (through interpreter): No.

18 THE COURT: Mr. Solicitor?

19 SOLICITOR: Thank you, Your Honor. First off, Mr.
20 Perez is pleading to a twenty-year negotiated deal. He
21 was initially offered seventeen years which he turned
22 down.

23 Mr. Acosta was never made that initial offer which
24 is why he was given the opportunity to plead to it
25 today.

1 Going to the facts of the case. Late night,
2 October 19th, early morning of October 20th, 2009, at
3 Street, in Beaufort County, the drug task
4 force got an anonymous tip about a certain trailer at
5 . They did a knock and talk and got consent
6 to search the trailer. There were a number of people
7 in the trailer, including Mr. Acosta and his brother.
8 Mr. Perez came later while the police were still at the
9 trailer.

10 During the consensual search the drug task force
11 observed numerous baggies of -- with white residue in
12 the back bedroom. This back bedroom, from the
13 information they gathered, belonged to the Acosta
14 brothers.

15 They also observed a large amount of cellophane
16 wrappers with grease on it. From the knowledge of
17 these officers, they knew this was indicative of
18 wrapping a large amount of cocaine.

19 They continued their investigation. Mr. Ignacio
20 Acosta gave a statement to the police officers in which
21 he acknowledged that a friend had brought a Kilo of
22 cocaine from North Carolina and that he and his brother
23 were going to try to move the cocaine in Beaufort
24 County. They were looking to get, maybe, somewhere
25 around a thousand dollars for selling a Kilo of

1 Cocaine. The rest of the money was to go back to North
2 Carolina at the source of the kilogram of cocaine.

3 Mr. Perez also gave a statement to the officers at
4 the scene. He admitted that a friend of his from North
5 Carolina had given him the kilogram of cocaine and
6 showed him how to pack it in the engine of the truck.
7 Showed him why it was wrapped and covered with grease.

8 From all of this information, Drug Task Force
9 obtained a search warrant for this trailer and they
10 also brought the K-9 Units to the scene. While the
11 officers were still talking with these men, the dog
12 located a bag underneath the trailer that contained a
13 brick of cocaine that has been analyzed and came out to
14 nine hundred and ninety-seven grams positive for
15 cocaine.

16 Based on that information, the baggies in the back
17 bedroom being in plain view all around, but mainly
18 because of the full statements as far as being in
19 possession and control of that brick of cocaine, these
20 two were charged with trafficking cocaine over four
21 hundred grams.

22 Since that night nobody has given any further
23 information of any useful importance to the law.

24 Drive is in Beaufort County.

25 In total there were four people arrested, Your

1 Honor. Three of which are in front of you today. The
2 fourth person was a passenger in the truck. He has not
3 given a statement. At this time his charges are still
4 pending. I think that's all we need to put on the
5 record.

6 THE COURT: Mr. Perez, you've heard the facts as
7 stated by the Prosecutor as it relates to this case, do
8 you agree with those facts?

9 (through interpreter): Yes.

10 THE COURT: How do you plead to this charge,
11 guilty or not guilty?

12 (through interpreter): Guilty.

13 THE COURT: Mr. Acosta, you've heard the facts as
14 stated by the Prosecutor, do you agree with those facts
15 as well?

16 (through interpreter): Yes.

17 THE COURT: And are you, in fact, guilty of
18 Trafficking Cocaine, Twenty-Eight Grams or More but
19 Less than One-Hundred Grams?

20 (through interpreter): Yes.

21 THE COURT: And how do you plead to this charge,
22 guilty or not guilty?

23 (through interpreter): Could you repeat it, Your
24 Honor, please?

25 THE COURT: How do you plead to this charge?

1 (through interpreter): Guilty, Your Honor.

2 THE COURT: I find that there is a substantial,
3 factual basis for each of these defendant's plea to
4 these charges. That they have entered their plea
5 freely, voluntarily, knowingly, and intelligently.
6 They have had the advice of counsel with whom they
7 indicate they are completely satisfied. I will accept
8 their plea. Be happy to hear from you, Mr. Dirnbauer.

9 MR. DIRNBAUER: Your Honor, we just ask the Court
10 to honor the terms of the negotiated sentence and give
11 my client credit for the time served that he's served
12 to this point.

13 THE COURT: How much time has he done, Mr.
14 Dirnbauer?

15 MR. DIRNBAUER: Discussions with the Solicitor
16 have determined four hundred, sixty-one days.

17 THE COURT: Does your client wish to say anything?
18 (through interpreter): Yes.

19 THE COURT: I'll be happy to hear from you, Mr.
20 Perez.

21 (through interpreter): I would like to ask pardon
22 of the State for the offenses I have committed. And
23 I'm very repentant. That's all.

24 THE COURT: Based upon what I've heard here today,
25 Mr. Perez, you understand that the Court has to give

1 you twenty years?

2 (through interpreter): Yes.

3 THE COURT: You understand that was part of the
4 negotiated plea?

5 (through interpreter): Yes.

6 THE COURT: Anything further, Mr. Dirnbauer?

7 MR. DIRNBAUER: No, Your Honor.

8 THE COURT: All right, Mr. Lempesis?

9 MR. LEMPESIS: Thank you, Your Honor. We, too,
10 echo the sentiments of Mr. Dirnbauer and ask the Court
11 to hand down a judgement consistent with a negotiated
12 plea. Umm, also my client mentioned that he wanted to
13 at least say some kind words on behalf of his brother.
14 I don't know if it's necessarily appropriate or needed
15 but he did want to address the Court.

16 And lastly, for the benefit of the record I would
17 point out that I was recently appointed to this case
18 and if the offer would have been communicated, had I
19 been appointed originally, I came into it late and as
20 soon as the State resuscitated the offer I handed it
21 over to him so just for purposes of the record I point
22 that out.

23 THE COURT: Mr. Acosta,

24 (through interpreter): Yes?

25 THE COURT: Anything you want to tell me?

1 (through interpreter): Yes.

2 THE COURT: I'll be happy to hear from you.

3 (through interpreter): He's nervous. He says to
4 please have consideration on his brother because he was
5 not that involved in, in the case.

6 THE COURT: Anything further, Mr. Acosta?

7 (through interpreter): And I ask for forgiveness.

8 MR. LEMPESIS: Your Honor, the uh -- I'm sorry.

9 THE COURT: Go ahead.

10 MR. LEMPESIS: Your Honor, the four hundred and
11 sixty-one day count is also consistent with our
12 understanding.

13 THE COURT: Anything further from the State?

14 SOLICITOR: Just Your Honor, that there is the new
15 rule, you give substantial assistance after pleading
16 guilty there is a possibility to have that sentence
17 reduced. I have that for you. That is one of the main
18 reasons the charges were reduced to what they were.

19 THE COURT: You understand that, Mr. Perez?

20 (through interpreter): Yes.

21 THE COURT: Mr. Acosta?

22 (through interpreter): Yes.

23 THE COURT: Anything further from the State?

24 SOLICITOR: No sir.

25 THE COURT: From the defense, Mr. Dirnbauer?

1 MR. DIRNBAUER: Just one thing, I noticed that
2 you normally ask whether or not the defendants have
3 children. I don't think you asked Mr. Perez that. I
4 don't know if it would determine anything but he does
5 have children.

6 THE COURT: Thank you, Mr. Dirnbauer.

7 All right, on indictment 2009-GS-2346, the State
8 versus Ramon Atienzo-Perez, hereby committed to the
9 State Department of Corrections for a period of twenty
10 years. Given credit for the four hundred sixty-one
11 days.

12 On indictment 2009-GS-2341, State versus Ignacio
13 Sandoval-Acosta, hereby committed to the State
14 Department of Corrections for a period of seventeen
15 years. Given credit for four hundred sixty-one days
16 that he has done.

17 Good luck to both of you.

18 MR. DIRNBAUER: Thank you, Your Honor.

19 MR. LEMPESIS: Thank you, sir.

20 THE COURT: Thank you.

21 (Whereupon hearing concluded)

22 ----- END OF TRANSCRIPT OF RECORD -----
23
24
25

1 CERTIFICATE OF REPORTER

2 I, Deborah E. Everett, Court Reporter and Notary
3 Public for the State of South Carolina at large, do
4 hereby certify:

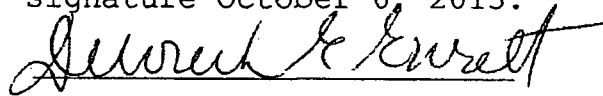
5 That the foregoing testimony/dialogue was
6 taken before me on the date at the time and location
7 stated on page 1 of this transcript; and that the
8 foregoing transcript of that testimony/dialogue is a
9 true, accurate, and complete record to the best of my
10 ability.

11 I further certify that I am neither related to
12 nor counsel for, nor employed by any party to the
13 investigation, nor am I financially interested in the
14 investigation.

15 The original of this transcript and any copy
16 of same is not certified, nor authorized for use by me,
17 to be true, accurate, and complete without my original
18 signature and stamp affixed hereto.

19 Witness my signature October 6, 2013.

20
21 **DEBORAH E. EVERETT**
22 **Notary Public, State of South Carolina**
23 **My Commission Expires 8/9/2022**



Deborah E. Everett

Court Reporter and Notary Public
State of South Carolina at Large
My Commission Expires:

24 August 9, 2022

25  ORIGINAL

FORM 5

11 NOV-28 PM 5:02
JEROME A. ROSENBAUM
CLERK OF COURT
BEAUFORT COUNTY, S.C.

mf 14 33

STATE OF SOUTH CAROLINA)

County of Beaufort)Ramon Atienzo-Perez)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

2011-CP-07-4997)

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution, P.O.
Box 205, Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Beaufort County
Court of General Sessions, Beaufort, S.C.
3. Name(s) of co-defendant(s) (if any) Idnacio Acosta, Paul Acosta
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009 GS 0702346
 - (b) n/a

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1-24-11 - 20 years
- (b) N/A
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel ineffective
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. NA
- ii. NA
- iii. NA
- iv. NA

(d) the date of each such disposition:

- i. NA
- ii. NA
- iii. NA
- iv. NA

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

- i. NA
- ii. NA
- iii. NA
- iv. NA

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

No

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

(a) which grounds have been presented:

- i. NA
- ii. NA
- iii. NA

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

- i. NA
- ii. NA
- iii. NA

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) Counsel ineffective
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? N/A
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

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

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

i. Michael Dinbarer SC Bar # 69047
 ii. _____
 iii. _____

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

i. Arraignment, plea, & sentencing
 ii. _____
 iii. _____

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

Vacate, Jury trial, or Resentencing

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

No

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, Ramon Atienzo Perez, 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.

Ramon Atienzo Perez

SWORN to and subscribed before me this 22ND
day of November, 2011.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

I, Ramon Atienza Perez, 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.

Ramon Atienza Perez
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of November 2017

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2011-CP-07-4997
	)	
Ramon Atienzo-Perez, #344636	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 28, 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 Beaufort County Clerk of Court. The Applicant was indicted at the November 2009 term of the Beaufort County Grand Jury for trafficking in cocaine, 400 grams or more (2009-GS-07-2346). The Applicant was represented by Michael Dinbaner, Esquire.

On January 24, 2011, the Applicant pled guilty to the lesser included offense of trafficking in cocaine, 28-100 grams. The Honorable D. Craig Brown sentenced the Applicant to confinement for a period of twenty (20) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina

Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
2. After-discovered evidence.

III.

The Respondent submits that the Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Respondent submits that the Applicant's claim that newly discovered or after discovered evidence exists is without merit. This allegation is not cognizable in the Applicant's post-conviction relief action. The Applicant waived his right to a jury trial. If the Court determines that the Applicant knowingly and voluntarily pled guilty, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). Furthermore, this contention is vague and general in its terms. There are no specific allegations of the nature of the evidence. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had." Hayden, Id. The Court should summarily dismiss this allegation.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on the issues of ineffective assistance of counsel.

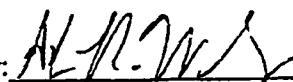
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

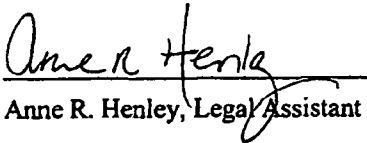
Aug. 6, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2011-CP-07-4997
	)	
RAMON ATIENZO-PEREZ, #344636	)	
	)	
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:

Ms. Carol A. Miller, Esquire
 PO Box 1306
 Beaufort, SC 29901

DATED this 6th day of August, 2012


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT) CASE NO.: 2011-cp-07-4997

RAMON ATIENZO-PEREZ,)
)
 PLAINTIFF,)
)
 VS.)
)
 STATE OF SOUTH CAROLINA)
)
 DEFENDANT.)

POST CONVICTION RELIEF HEARING

held before the Honorable Deadra L. Jefferson
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Beaufort County Courthouse
 Beaufort, South Carolina
 on Monday, August 26, 2013, Commencing at 10:55 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: Carol A. Miller, Esquire
Attorney at Law
Post Office Box 1306
Beaufort, South Carolina 29901

FOR THE DEFENDANT: Ashleigh R. Wilson, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

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EXHIBITS

[None]

Atienzo-Perez vs. State of South Carolina
Post Conviction Relief Hearing
August 26, 2013

PROCEEDINGS

1
2 THE COURT: This is Ramon Perez versus The South
3 Carolina, 2011-CP-07-4997. It's before the Court on
4 an application for post conviction relief, filed on
5 November 28th of 2011, alleging ineffective assistance
6 of counsel.

7 MS. MILLER: Yes, Your Honor.

8 THE COURT: He was sentenced to twenty years
9 on January 29th, it looks like, of 2011, by Judge
10 Brown -- January 24th of 2011 -- to the lesser offense
11 of trafficking cocaine.

12 If the interpreter could raise his right hand
13 for me, please, to be sworn.

14 [Whereupon, the interpreter is duly sworn by the
15 Court as follows: do you solemnly swear or affirm
16 that the translation you make will be true and
17 accurate, that you will interpret and translate from
18 English to Spanish and Spanish to English the
19 questions asked of the witnesses and the answers
20 received of the witnesses and that you will omit no
21 part of the testimony or add to any testimony]

22 THE INTERPRETER: I do, Your Honor.

23 THE COURT: If you would state your full name
24 for the record.

25 THE INTERPRETER: Alfrado Ayala, Junior.

Atienzo-Perez vs. State of South Carolina
Post Conviction Relief Hearing
August 26, 2013

1 THE COURT: And if you could spell your last
2 name for the court reporter.

3 THE INTERPRETER: A-Y-A-L-A.

4 MS. WILSON: Your Honor, could he repeat his
5 first name?

6 THE COURT: Alfrado.

7 MS. WILSON: Alfrado. Thank you.

8 THE COURT: You're welcome.

9 Okay. You may take your seat.

10 The applicant is represented by Carol Miller.

11 The State is represented by Ashleigh Wilson.

12 Is the applicant ready to proceed?

13 MS. MILLER: Your Honor, Carol Miller,
14 representing the applicant.

15 THE COURT: Yes, ma'am.

16 MS. MILLER: And I have provided the Court a
17 copy of the memorandum of law in support of
18 application of post conviction relief, and in that we
19 are seeking a new trial.

20 In this case -- this is one of those cases that
21 was referred to by Sam Bauer earlier where we have
22 been informed that there is no transcript of the case
23 that exists.

24 It appears that the South Carolina Court of
25 Appeals, in State vs. Ladson, unequivocally clear on

Atienzo-Perez vs. State of South Carolina
Post Conviction Relief Hearing
August 26, 2013

1 that matter, in that when there is no transcript, no
2 record can be recreated with the amount of specificity
3 for a meaningful review.

4 Your Honor, in that case, the Ladson case, it
5 was more than -- it was only ten months. In this case
6 it's been over two years since that hearing date. The
7 transcript is unavailable, through no fault of the
8 State. They have attempted to get the transcript but
9 it's not available.

10 A meaningful reconstruction of that hearing with
11 all the necessary parties, everything that was said to
12 the defendant, the interpretation of what was said to
13 the defendant, to this non English-speaking defendant,
14 is critical to understand.

15 The Ladson Court found that the completeness was
16 unavailable when they tried to recreate it and that
17 they had --

18 THE COURT: Yeah. But isn't the remedy to
19 recreate the record? And until we reach a -- I guess
20 a benchmark where everybody is unavailable, you don't
21 get to the relief in the case --

22 MS. MILLER: Right.

23 You cannot recreate a record of something that
24 happens two and a half --

25 THE COURT: Well, we do it all -- we do it all

Atienzo-Perez vs. State of South Carolina
Post Conviction Relief Hearing
August 26, 2013

1 the time. Records are recreated all the time. Due to
2 natural disasters and other things, records are
3 destroyed, stuff is stolen out of court reporter's
4 cars. I mean, it happens all the time. Records are
5 recreated all the time.

6 What you need to tell me is that you can't find
7 everybody that was present at that time to recreate
8 the record. The interpreter should be available, the
9 solicitor, the trial they -- the judge, everybody
10 should be available to recreate that record.

11 MS. MILLER: And that is -- it's impossible to
12 recreate the record.

13 THE COURT: No. It's not impossible if you have
14 everybody.

15 MS. MILLER: Well, even if you try to create the
16 original record, they're not going to remember with
17 specificity --

18 THE COURT: I don't know if --

19 MS. MILLER: -- what happened two and a half
20 years ago.

21 THE COURT: I don't know until you try. I've
22 recreated a lot of records, and people have great
23 memories. If they're like me, they have them like a
24 steel trap. Things tend to come back to you.

25 I don't know. But until -- but the remedy is to

Atienzo-Perez vs. State of South Carolina
Post Conviction Relief Hearing
August 26, 2013

1 recreate the record. That is generally what the
2 Supreme Court and the Court of Appeals does, unless
3 you have some other precedent to tell me otherwise,
4 because the cases --

5 MS. MILLER: Your Honor, I do know that in the
6 one other case that you have in front of you, in
7 Gaines, they tried to recreate that record.

8 THE COURT: Yeah. But that's what you have to
9 do, you have to try, and then you get to the rest of
10 the remedy if you're unable to recreate it.

11 So what I need to know is, one, is it in fact
12 true that there's no record that exists?

13 MS. WILSON: Yes, Your Honor.

14 We've gotten a signed affidavit from Court
15 Administration that --

16 THE COURT: Who was the court reporter?

17 MS. WILSON: The same court reporter, Your
18 Honor.

19 THE COURT: Ms. Everett?

20 MS. WILSON: Yes, Your Honor.

21 THE COURT: And so what happened to her records?
22 Do we know?

23 MS. WILSON: We don't know, Your Honor.

24 And we've asked several times for it, Your
25 Honor, and I came upon --

Atienzo-Perez vs. State of South Carolina
Post Conviction Relief Hearing
August 26, 2013

1 THE COURT: Is this one of the ones subject to
2 the Supreme Court's order to her?

3 MS. WILSON: Yes, Your Honor.

4 I'm happy to present for you, and make a part of
5 the record, a signed affidavit from Court
6 Administration saying that they don't have those
7 transcripts, and as far as they know it can't be
8 produced, and also letters --

9 THE COURT: And Ms. Everett has said that she
10 doesn't -- not like the other case, she doesn't have
11 the tape, she just doesn't --

12 MS. WILSON: That's the same, Your Honor.

13 And I e-mailed and corresponded with her and Mr.
14 Bannon and, I mean, unless she wakes up one morning
15 and remembers everything that happened, Your Honor, we
16 would just ask that we just leave the record open in
17 the event that she finds it before you rule.

18 But other than that, as far as we know, it can't
19 be produced. And I want to make a part of --

20 THE COURT: Well, isn't the remedy to recreate
21 the record? How can I make a decision without a
22 record?

23 MS. WILSON: Your Honor, it's the State's
24 position that in lieu of any type of automatic
25 reconstruction, we just take testimony from all the

Atienzo-Perez vs. State of South Carolina
Post Conviction Relief Hearing
August 26, 2013

1 parties that were present and then you can -- we can
2 continue with a full hearing.

3 Your Honor, also, it's the State's position that
4 you don't necessarily have to have the transcript for
5 you to rule on a post conviction relief, because case
6 law says when determining the validity of a post
7 conviction relief claim regarding guilty pleas,
8 especially, this Court can consider not only the plea
9 transcript but also the testimony taken at the
10 hearing.

11 THE COURT: Yeah. But I don't believe anything
12 anybody tells me. I read the transcript. I mean, I
13 hate to sound so blunt but that's just -- that's the
14 only objective contemporaneous record I have.
15 Memories are hazy. People remember things that are
16 more beneficial to them. It's just human nature. I
17 like a record.

18 MS. WILSON: Okay.

19 THE COURT: I like to be able to read the whole
20 words contemporaneously recorded at that time. And
21 absent that, it's going to have to be recreated
22 because even if this PCR goes up on appeal, the Court
23 of Appeals is just going to send it back to recreate
24 the record. They're not going to make a decision
25 without a record. They always send it back to

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1 recreate the record. So you're going to have to
2 recreate it somehow.

3 MS. WILSON: Well, Your Honor, we can do that
4 here today. We have all the parties present.

5 MS. MILLER: Your Honor, I do not believe that
6 that can be done today.

7 THE COURT: Well, let me ask another quick
8 question. Well, why couldn't it be done today? We
9 don't have everybody here?

10 MS. MILLER: I don't believe we do. We don't
11 have the exact interpreter here --

12 THE COURT: Who was the interpreter at the time
13 of the guilty plea?

14 UNIDENTIFIED: Probably Augustine Martinez.

15 THE COURT: Steve -- probably or --

16 UNIDENTIFIED: Augustine Martinez.

17 THE COURT: Augustine Martinez?

18 MS. WILSON: Your Honor, I've spoken to
19 Mr. Martinez and he doesn't recall being in court that
20 day.

21 THE COURT: Well, it's easy to look back through
22 Court Administration's records, or either the clerk's
23 records, because somebody would have had a voucher
24 signed for having performed interpreter services on
25 the date of this plea.

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1 And maybe that's a good thing. You just made me
2 have a great thought. Maybe we need to add a line on
3 the sentence sheet, when we have interpreters now, so
4 we'll know exactly who was where.

5 MS. WILSON: Your Honor, it's also the State's
6 position that the inability to prepare a complete
7 verbatim of the transcript in and of itself does not
8 necessarily present a significant grounds for a
9 conviction. And that's also the Court's ruling in
10 State v. Ladson, which Ms. Miller is representing now.

11 MS. MILLER: I have the State v. Ladson --

12 THE COURT: What was he originally charged with?

13 MS. WILSON: Your Honor, the two gentlemen that
14 pled guilty before translators were his co-defendants.
15 So he's originally facing, I believe trafficking
16 cocaine 400 grams or more, up to a twenty-five year
17 minimum.

18 THE COURT: Okay. And he received a twenty-year
19 sentence in this case by pleading to the lesser
20 included?

21 MS. WILSON: Yes, Your Honor.

22 THE COURT: Have you explained to him that all
23 he's going to get out of this is a new trial and he
24 goes back to facing the mandatory minimum of twenty-
25 five years?

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1 MS. MILLER: We discussed that there was only
2 going to be a new trial that was going to be
3 available.

4 THE COURT: But have you explained to him the
5 consequences of that?

6 MS. MILLER: I'm not sure if he understood.

7 THE COURT: I think you need to fully explain
8 that to him, because oftentimes people think that by
9 getting post-conviction relief they're going to get a
10 re-sentencing. And that doesn't happen. He just
11 starts from square zero with a new trial with the same
12 exposure he had before, which is the mandatory minimum
13 of twenty-five years, which, as I understand it under
14 Truth and Sentencing is served day for day.

15 So you might need to have that conversation with
16 him and make sure that that's what he's trying to
17 accomplish. Because I can't re-sentence him, nor can
18 any other judge. And it puts him in quite a bit of a
19 disadvantageous position going back to square one.

20 And I don't know if he had any charges that were
21 nol-prossed as a result of this plea, as well, because
22 all of those come back. And I don't know if that puts
23 him in strike position or not, meaning LWOP or life
24 without the possibility of parol. I don't know if he
25 had other charges pending.

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1 Is his trial counsel present?

2 MR. DIRNBAUER: Yes, ma'am.

3 THE COURT: Mr. Dirnbauer; is that correct?

4 MR. DIRNBAUER: Yes, ma'am.

5 THE COURT: Did he have other charges that were
6 nol-prossed as a result of this plea?

7 MR. DIRNBAUER: No, ma'am.

8 THE COURT: This was the only thing that was
9 pending?

10 MR. DIRNBAUER: Yes, ma'am.

11 THE COURT: Okay. And do you know why the State
12 reduced his exposure?

13 MR. DIRNBAUER: Do I know why the State --

14 THE COURT: Uh-huh.

15 MR. DIRNBAUER: -- reduced his exposure?

16 THE COURT: Yeah. How did you-all come to these
17 negotiations?

18 MR. DIRNBAUER: Well, there were two solicitors
19 that were involved in this case. Actually, the
20 gentleman who's representing the court reporter is the
21 first solicitor. His initial offer was a twenty-year
22 plea, which Mr. Perez rejected. I then went --

23 THE COURT: I need you to stand up for me. I
24 can't hear you.

25 MR. DIRNBAUER: I'm sorry, ma'am.

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1 -- which Mr. Perez rejected. I went back to Mr.
2 Bannon to negotiate again. He offered seventeen
3 years, which Mr. Perez once again rejected.

4 At that point, I informed him that he had three
5 options: that he could either take the seventeen-year
6 offer; we could go to trial; or he could file a motion
7 to have me relieved as counsel. He filed a motion to
8 have me relieved as counsel, which was heard by Judge
9 Brown, who rejected his motion.

10 At that point, Greg Collins became the solicitor
11 over the case and we were proceeding towards trial
12 without any notion of a plea until I went back to them
13 and said is there any possibility we can get something
14 on the table.

15 Something that's pertinent to this case is he
16 confessed. There's a signed written confession. And
17 when we were reviewing the confession, the facts of
18 the confession, I didn't feel we would have much of a
19 chance to suppress the confession, which, hence, led
20 me to encourage a plea of guilty.

21 Now, I don't think he's ever been happy with the
22 amount of years that were offered to him. And he
23 mentioned that. But like I told him, I don't know
24 about the other incidents that he heard about where
25 people got lesser sentences, but they were not

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1 appearing here.

2 Mr. Collins did offer -- towards the end, he
3 asked if Mr. Perez would testify against his co-
4 defendants in consideration for a lesser plea and
5 Mr. Perez also rejected that as well.

6 THE COURT: So he almost is kind of the
7 architect of his own dilemma, by that point, is
8 basically what you're telling me?

9 MR. DIRNBAUER: Yes.

10 I mean, you know, I feel for him in a way. It's
11 a lot of years to look at. But, unfortunately, that
12 was consistent with the amount of years the other co-
13 defendants -- in fact, I believe it was Ignacio, got
14 seventeen years just before the plea because that was
15 the first time that that offer had been meaningfully
16 communicated to him.

17 And Ramon actually asked me at the trial, is
18 there any way I can get seventeen back. And, of
19 course, well, not at the trial, just before the guilty
20 plea, is there any way I can get seventeen back on the
21 table. And, of course, that wasn't available since he
22 had rejected it before.

23 THE COURT: And something else I was going to
24 ask you: does he have any other record?

25 MR. DIRNBAUER: Not that I was aware of.

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1 THE COURT: What were the facts as alleged at
2 the time of this -- what did they allege happened?

3 MR. DIRNBAUER: So Mr. Perez had a family in
4 Colorado. He was in the construction industry, which,
5 of course, in the late, you know, 2008, 2009,
6 collapsed. He was out of work. He related to me that
7 he had went to Indiana or Ohio -- I can't remember
8 which state -- but somewhere in the midwest to find
9 more work in the construction industry. That was
10 unsuccessful.

11 He then had a friend of his who worked in
12 Raleigh, North Charleston, in the construction
13 industry, as well, and who let him know that there was
14 a potential job for him. He went to Raleigh to
15 investigate that job, whereby he found that it would
16 be several more weeks before that job would
17 materialize.

18 My understanding was is that the house he was
19 staying at, there were some gentlemen from Beaufort,
20 South Carolina, who asked if he would like to make
21 some money. And, of course, he said -- I think it was
22 like \$1,000 -- he would like to make some money. And
23 the way that he was making the money, at least in the
24 confession and the allegations, was that he
25 transported 2.2 kilo of cocaine in the engine

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1 compartment of his truck from Raleigh to Beaufort.

2 My understanding was, too, that the other two
3 co-defendants, I think who were based in Beaufort,
4 came up to Raleigh and followed him back down to
5 Beaufort, I'm just guessing to make sure that the
6 product made it to Beaufort.

7 When they got to Beaufort, they were staying at
8 a hotel for a couple of days because they didn't have
9 the money to pay him until they sold off some of the
10 product. I think they were based out of a trailer,
11 whereby an informant tipped off the police that there
12 were drug transactions going on in that trailer. When
13 the police arrived, Mr. Perez was there along with the
14 other co-defendants. They found the cocaine under the
15 trailer, along with assorted drug paraphernalia in the
16 trailer itself.

17 And, quite frankly, when I did my Rule 5 letter
18 and got the discovery materials, I was reading through
19 the materials that came back to me. I was reading all
20 this. I'm like, oh, they don't really have anything
21 that ties him directly, don't have anything that ties
22 him directly, don't really have anything. And the
23 last page was his confession. So he was Mirandized
24 there. He confessed at the site -- at the site to a
25 Spanish-speaking detective. He signed his waiver of

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1 Miranda rights, which were in Spanish.

2 In my course of representation of him, I saw him
3 several times, at least four times, because I had to
4 communicate each plea offer to him. I saw him with
5 Augustine Martinez every time I went to see him in
6 jail.

7 We went through, extensively -- I went through
8 the way in which to challenge the voluntariness of the
9 confession. I didn't think that there was any
10 coercion. Obviously, giving it contemporaneously at
11 the site was a problem with that. He never testified
12 that he was under any -- I asked him if he was under
13 the influence of any drugs or alcohol when he gave his
14 confession and he said no. I asked about his mental
15 ability and mental reasoning, his education.
16 Basically, I didn't see any way to successfully
17 suppress the confession based upon my questions to
18 Ramon.

19 So I felt at that point that any plea offer we
20 could get, particularly since he was looking at a
21 maximum of thirty years, would have been a good plea
22 offer. Also, considering what would happen at a jury
23 trial, which is you have a person from outside the
24 Beaufort community who is -- has some immigration
25 status issues, which we advised him of the effect of

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1 his guilty plea on his immigration status. I felt his
2 chances at trial were very, very -- I had a better
3 chance of being elected Pope than he had of being not
4 guilty at that trial. Basically, a confession and the
5 fact that his co-defendants could have testified
6 against him, especially considering the question was
7 being asked by the solicitor if he -- anyone would
8 accepted a lesser sentence in exchange for testimony.

9 THE COURT: Let me ask: what is the newly-
10 discovered evidence that you alleged in your
11 application?

12 MS. MILLER: He alleged in his application that
13 there was other evidence that wasn't presented.

14 THE COURT: But you, in your memo, said there's
15 newly-discovered evidence. So I'm trying to determine
16 what is that?

17 MS. MILLER: I was waiting for the transcript to
18 go -- to speak to the defendant regarding the new
19 evidence.

20 THE COURT: It wouldn't be in the transcript,
21 would it?

22 MS. MILLER: No.

23 But I wanted us to have everything together with
24 me when I went to speak with him --

25 THE COURT: I got you. I see what you're

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1 saying.

2 Okay. I need you to explore with him, Ms.
3 Miller, whether he really wants this relief, as it
4 would put him back in the range of having a mandatory
5 twenty-five year sentence. And it's unlikely, based
6 on my experience, that the solicitor's office's
7 posture is going to change with him, because they're
8 just going to try the case.

9 MS. MILLER: May I have a few minutes in private
10 --

11 THE COURT: Yes.

12 MS. MILLER: -- with my --

13 THE COURT: Yes.

14 If you could discuss that with him. Of course,
15 the Court takes no position one way or the other.

16 The other thing that you need to explain to him
17 is that I cannot recreate the record. The trial judge
18 has to recreate the record, and the order has to come
19 from the Supreme Court to recreate that record, so
20 we're going to have to go back up the chain to figure
21 out how that's going to have to be coordinated.

22 So talk with him right quick and see what he
23 wants to do.

24 [Whereupon, a recess is taken from 11:13a.m. to
25 11:27 a.m.]

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1 THE COURT: Okay. Are you ready to go forward,
2 Ms. Miller?

3 MS. MILLER: Yes, Your Honor.

4 My client has informed me, even though he was
5 told about the possibility of facing at least the
6 minimum of twenty-five years in jail and the re-
7 institution of what he was originally charged with on
8 the indictment, which I believe was 400 grams of
9 cocaine, that he still seeks to proceed with a PCR.

10 THE COURT: Okay. What we're going to have to
11 do is I'm going to have to seek guidance from the
12 Supreme Court as to how we need to go forward. I know
13 that record is going to have to be reconstructed but I
14 don't have the authority to do that, so the order is
15 going to have to come from them.

16 And who was the trial judge originally?

17 MS. WILSON: It was Judge Brown, Your Honor.

18 THE COURT: Yeah. He's going to have to
19 reconstruct that record.

20 MS. WILSON: Your Honor, maybe Ms. Elliott can
21 speak more to it, but it's my understanding that in
22 the past we've been able to recreate the record for
23 purposes of a post conviction relief.

24 MS. MILLER: Of course, we would prefer to have
25 the transcript and if your contacting the Supreme

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1 Court would in any way result in obtaining the
2 transcript, that would be wonderful.

3 But what we've done in the past is when we have
4 missing plea transcripts, during the PCR hearing we
5 reconstruct the portions of that transcript that we
6 need to to address the issues that are being
7 presented.

8 THE COURT: How can I reconstruct a record I
9 never created?

10 It's my understanding that the trial -- at least
11 when I've had to reconstruct it, I've had to
12 reconstruct it.

13 MS. MILLER: When -- for direct appeal purposes,
14 when they come back for direct appeal purposes then we
15 actually -- the trial judges reconstruct.

16 THE COURT: Okay.

17 MS. MILLER: For PCR, what -- I know I had one
18 in Greenville with Judge Few. He asked -- Judge Short
19 was the trial -- was the plea judge. He asked Judge
20 Short to come in and testify.

21 And what we did in that case, we presented the
22 hearing -- the testimony we would have presented for
23 the PCR but then we also presented the witnesses'
24 recollection of what occurred during the guilty plea
25 process to reconstruct those portions that were

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1 pertinent to the PCR issues being alleged. Mainly
2 because in -- under all those old cases, Harris v.
3 Leek and the other cases, when we're ruling on a PCR
4 we're ruling not only -- the Court looks not only at
5 the trial transcript, but also the testimony presented
6 at the PCR hearing and --

7 THE COURT: Absolutely.

8 MS. MILLER: -- to make those rulings. But if
9 you're --

10 THE COURT: Well, then, you're saying they had
11 the trial judge come in and testify, as well?

12 MS. MILLER: We did.

13 I would not have asked Judge Short to come. He
14 was on the Appellate Court bench at that time. But
15 Judge Few contacted Judge Short and asked him to
16 testify. I don't know that we needed his testimony
17 because we had the testimony of the prosecutor and the
18 guilty-plea attorney, who had good recall of the
19 events and the ordinary -- and I think Judge Short
20 basically testified about his ordinary course of
21 practice and the plea questions that he asked.

22 And everyone recalled that nothing out of the
23 ordinary occurred during that plea.

24 So I guess some of this is going to depend on
25 what the allegations are in this case.

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1 But, again, if we could get that transcript, we
2 would love that, as well.

3 Your Honor, I believe it would be impossible to
4 recreate it here, at least, because we then -- we're
5 missing the other parties --

6 THE COURT: What other parties are we missing?

7 MS. MILLER: We're missing the trial judge.

8 And the interpreter was very vital to know
9 exactly what was said to the defendant and that he
10 understood everything going on.

11 THE COURT: Well, an interpreter is not a fact
12 witness. An interpreter only interprets. And I'm not
13 certain the interpreter is going to take the position
14 that they're able to testify, because the only thing
15 an interpreter does is repeat what we say in a format
16 that is understandable for the witness. I doubt an
17 interpreter is going to -- especially according to
18 their ethics rules, is going to come in and act as a
19 fact witness in recreating the transcript. I don't
20 know. I might be wrong.

21 You're nodding like you think I'm correct or I'm
22 incorrect.

23 THE INTERPRETER: May I speak, Your Honor?

24 THE COURT: Yes, sir. I need your guidance.

25 THE INTERPRETER: Because interpreters, as you

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1 said, we're repeating.

2 THE COURT: Not a fact witness.

3 THE INTERPRETER: And we're not assimilating
4 what is being said. I can remember some of the things
5 that went on, but I cannot remember word for word what
6 was said.

7 THE COURT: Uh-huh.

8 THE INTERPRETER: Just a general idea of what
9 was being said.

10 THE COURT: Because your only job is to
11 interpret what's being said --

12 THE INTERPRETER: Yes.

13 THE COURT: -- not to be a fact witness, not to
14 recall.

15 So I don't know that their testimony would be
16 germane anyway, because an interpreter is not going to
17 come here and say whether he understood it, whether he
18 -- you know, he may be able to testify as to whether
19 his interpretation was accurate and whether the
20 witness, or the applicant in this instance,
21 understood. But I don't think he's even going to
22 cross that line unless there's some indication that he
23 didn't understand. And if he did indicate he didn't
24 understand during any colloquy, he just simply would
25 have clarified what was being asked.

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1 But an interpreter is not a fact witness and
2 they will never act in that capacity. And I think
3 ethically they're precluded from acting in that
4 capacity.

5 So I don't know that that person's testimony
6 would be indispensable, because he wouldn't be able to
7 testify to anything.

8 MS. MILLER: Well, I was just about to say, I
9 know there have been --

10 THE COURT: Well, I can tell you, as serving on
11 the Access to Justice Commission and having attended
12 many interpreters' seminars across the country, their
13 ethics are going to preclude them from doing that.
14 And they want us to clarify their role in state court
15 because that's not -- you know, there's a public -- or
16 layperson's perception as to what their job is. But
17 that's not their job. Their only job is to interpret
18 what's being said. In other words, to put it in a
19 format where the person who is non-English-speaking
20 can understand and to repeat what that person is
21 saying. So that takes them out of the posture of
22 being a fact witness at all.

23 And so even if we were to call that person here,
24 the only thing he would be able to testify to is
25 whether he was there that day to interpret and did he

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1 accurately interpret what was being said. But he's
2 not going to be able to recall for us what was being
3 said, whether anybody was truthful, and as to what he
4 actually said or didn't say. I doubt he'll have any
5 recollection of it. He's not a fact witness and we
6 can't call him as such.

7 MS. MILLER: Your Honor --

8 THE COURT: Yes, sir. Ma'am. I'm sorry.

9 MS. MILLER: I apologize --

10 THE COURT: That's okay.

11 MS. MILLER: -- for interrupting.

12 The only thing the State might like to do at
13 this point is to have -- subpoena the court reporter
14 and have her present and have -- subpoena any audio
15 tapes that she might have --

16 THE COURT: Yeah. I don't know --

17 MS. MILLER: -- just to --

18 THE COURT: I don't know where she is.

19 I'm going to call Court Administration in a
20 minute myself.

21 I don't know where Ms. Everett is and I don't
22 know whether she's going to be within the subpoena
23 power of the Court. I don't know -- is she within
24 fifty miles?

25 MS. WILSON: No.

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1 It's my understanding that she is in the state
2 of South Carolina.

3 THE COURT: Yeah, but that's -- she's got to be
4 within fifty miles of this courthouse.

5 MS. WILSON: Well, Your Honor --

6 THE COURT: Yes.

7 MS. WILSON: -- this is where she was assigned,
8 so maybe she lives in the area. I don't --

9 THE COURT: I don't know. We don't know whether
10 she's still in Beaufort or not.

11 MS. MILLER: Everette: the name is somewhat
12 familiar.

13 THE COURT: She's no longer employed with Court
14 Administration. But I don't know where she's
15 currently living.

16 But we're going to take a brief recess, because
17 I need to call Court Administration and see what's
18 going on --

19 MS. WILSON: She has a Beaufort address, Your
20 Honor.

21 THE COURT: -- with that particular transcript.
22 Huh?

23 MS. WILSON: She has a Beaufort address.

24 THE COURT: I don't know that she's going -- in
25 her current posture if she's going to remember

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1 anything anyway.

2 Okay. We'll be at ease for a moment.

3 [Whereupon, a recess is taken from 11:36 a.m. to
4 11:47 a.m.]

5 THE COURT: I talked to Court Administration
6 just to verify and to double-check, and there is
7 absolutely nothing. There are no records, there are
8 no tapes. There's nothing. So that sort of puts us
9 back at square one.

10 I don't know if it would be necessary to have
11 Judge Brown come and testify. I don't know. You
12 know, that's why I keep notes of everything. I don't
13 trust technology. I always assume something is going
14 to break. But I don't know that his testimony is
15 necessary, in that we have both the applicant and both
16 -- plea counsel, as well as the State's counsel here.

17 So I guess we would need to forge ahead and see
18 how far we get with this and then I'll make a decision
19 after that as to what else we may need to do to
20 accomplish our --

21 MS. MILLER: Your Honor, for the record, I would
22 object to the re-creation especially as you, yourself,
23 just said. I don't believe we're creating --

24 THE COURT: We're not -- I'm not making any
25 attempt to recreate the record. I'm taking testimony

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1 as to --

2 MS. MILLER: Okay.

3 THE COURT: -- as to who was there. And then
4 I'll see where I am from that point.

5 I may still seek leave of the Supreme Court to
6 have them direct the trial judge to recreate the
7 record. And I'll make that decision when I'm done. I
8 think that it creates a bit of a quandary for me to be
9 in the posture of recreating a record and then having
10 to judge the credibility of that record. I think the
11 trial judge needs to recreate it and then have it as
12 an independent source for me to look at from a purely
13 logistical standpoint. I don't think I should be
14 recreating a record and then Judge Gergel the validity
15 of that record. I think it creates a credibility
16 quandary for me.

17 MS. WILSON: Your Honor, we're just simply
18 taking testimony for the post conviction --

19 THE COURT: I think we need to go ahead and take
20 the testimony. And then I'm going to seek leave from
21 the Supreme Court to see how we need to go about
22 recreating the record. And then I think the trial
23 judge needs to recreate the record and then I can
24 review that independently as part of this -- have that
25 supplement this record.

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1 MS. MILLER: Your Honor, would we be able to
2 reconvene, to be able to cross-examine, once I have
3 some re-creation --

4 THE COURT: I would imagine that you could be
5 present for the re-creation of the record. I won't
6 have any involvement in that. I would assume the
7 trial judge would have to schedule the recreating of
8 the record.

9 MS. MILLER: Well, what I mean is they're going
10 to be testifying now as to what happened, what they
11 say happened or --

12 THE COURT: They'll be available for you to
13 cross-examine. They're here.

14 MS. MILLER: Yes, they're here now. But when
15 they recreate and -- the judge may remember different
16 things and --

17 THE COURT: I don't know. You don't get to --
18 you don't get to cross-examine on a re-creation of the
19 record.

20 MS. WILSON: Your Honor, can we have the
21 applicant brought in?

22 THE COURT: Yeah. We need the applicant.

23 You don't get to recreate -- you don't get to
24 cross-examine on the re-creation of the record.
25 Everybody just testifies as to what they recall

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1 happened and then that summarized and becomes the
2 record, basically.

3 Now, I have recreated like Biggers hearings and
4 other things like that. But that's a little
5 different, because then you would have the direct and
6 the cross-examination. And then -- but I think when
7 you recreate something like that, you don't get to
8 cross-examine folk about what happened or what didn't
9 happen. I think they merely provide their recitation
10 of their recollection of what took place.

11 MS. MILLER: Because it may change with the
12 judge's input on what happened, though.

13 THE COURT: I don't know. I don't know that
14 he'll have any input, since he'll be presiding over
15 the re-creation.

16 MS. WILSON: And, Your Honor, before we begin
17 with just testimony on the merits, can we have the
18 applicant articulate what his allegation is? Because
19 it just says newly-discovered evidence.

20 THE COURT: I think he'll articulate it when --

21 MS. WILSON: Okay.

22 THE COURT: -- they call him to testify.

23 Is the State ready to proceed?

24 MS. WILSON: Yes, Your Honor.

25 THE COURT: Is the applicant ready to proceed?

Atienzo-Perez vs. State of South Carolina
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1 MS. MILLER: [No response]

2 THE COURT: Are you ready to proceed?

3 MS. MILLER: Yes.

4 I, again, of course, renew my objection --

5 THE COURT: I've noted it.

6 MS. MILLER: -- of going forward on this without
7 the record.

8 THE COURT: I've noted it, and overruled it, for
9 the record.

10 You may proceed with your first witness.

11 MS. MILLER: Yes. We would like to call the
12 applicant.

13 THE COURT: Sir, if you would come to the stand
14 to be sworn.

15 [Whereupon, Mr. Perez comes forward]

16 THE COURT: And we'll provide a chair for you,
17 Mr. Ayala.

18 MR. AYALA: Standing is fine.

19 THE COURT: Okay. That's fine. Whatever makes
20 you more comfortable.

21 THE CLERK OF COURT: If you would raise your
22 right hand, please.

23 [Whereupon, Mr. Perez is duly sworn by the clerk
24 of court as follows: do you swear to tell the truth,
25 the whole truth, and nothing but the truth, so help

Atienzo-Perez vs. State of South Carolina
Post Conviction Relief Hearing
August 26, 2013

1 you God]

2 [Through the interpreter]: Yes.

3 THE CLERK OF COURT: Okay. Have a seat.

4 [Whereupon, Mr. Perez takes the witness stand]

5 THE COURT: Sir, state your full name for the
6 record.

7 [THROUGH THE INTERPRETER]: Ramon Atienzo-Perez.

8 THE COURT: And please spell your last name for
9 the court reporter.

10 THE INTERPRETER: Your last name.

11 [THROUGH THE INTERPRETER]: A-N-T-I-E-N-T-I-Z-O.

12 THE COURT: And Perez, as well.

13 [THROUGH THE INTERPRETER]: P-E-R-E-Z.

14 THE COURT: Thank you.

15 You may proceed, Ms. Miller.

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Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 RAMON ATIENZO-PEREZ,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. MILLER:

6 Q. Mr. Perez, what were you initially charged
7 with??

8 A. [Through the interpreter] Trafficking 400 grams
9 or more.

10 Q. Okay. And what did you plead guilty to?

11 A. [Through the interpreter] What did I declare
12 myself guilty?

13 Q. No.

14 What was your plea agreement for? Do you
15 know?

16 A. [Through the interpreter] No. Which plea?

17 Q. What are you sentenced for now?

18 A. [Through the interpreter] Twenty years.

19 Q. Okay. And you stated in your application for
20 relief today that your counsel who defended you was
21 ineffective. What do you mean? What did he not do?

22 A. [Through the interpreter] He didn't do
23 anything. He didn't do anything. He didn't look at the
24 case from the beginning.

25 Q. Okay. How many times did you meet with him?

Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 A. [Through the interpreter] I don't remember.
2 Several.

3 Q. Okay. And did you discuss with him strategies?

4 A. [Through the interpreter] No.

5 Q. Did you provide him any witnesses that he didn't
6 look into?

7 A. [Through the interpreter] No.
8 That I provided witnesses to him?

9 Q. Did you give him any witnesses? Did you tell
10 him to look into certain people or certain --

11 A. [Through the interpreter] Concerning what?

12 Q. Well, did you ask him to look in and talk to
13 certain witnesses and he didn't do that?

14 A. [No response]

15 Q. Are you having trouble understanding --

16 MS. WILSON: Objection.

17 Q. [Ms. Miller] -- the questions?

18 MS. WILSON: Objection, Your Honor.

19 THE COURT: What's the basis of the objection?

20 MS. WILSON: She's leading the witness. She's
21 not --

22 THE COURT: I'm going to give her --

23 MS. WILSON: -- letting him finish.

24 THE COURT: I'm going to give her some latitude.
25 I think you're going to have to break down your

Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 questions a lot more simplistically for him to
2 understand what you're saying.

3 Q. [Ms. Miller] Are you having difficulty
4 understanding what we're saying?

5 A. [Through the interpreter] Yes. Somewhat.

6 Q. Okay. Did you ask your attorney to speak to
7 some people on your behalf to help you in your trial?

8 A. [Through the interpreter] When he came to see
9 me, I didn't ask him anything.

10 Q. Did you discuss with him what you wanted him to
11 do?

12 A. [Through the interpreter] No.

13 He didn't -- I can't discuss anything with him
14 because he didn't give me any options.

15 Q. He didn't give you any options? Did you ask him
16 for a trial?

17 A. [Through the interpreter] I didn't say
18 anything. He would ask me if we wanted to go to trial.

19 Q. And what did you say?

20 A. [Through the interpreter] No.

21 Because he didn't give me opportunity. He just
22 would hurry me up to sign.

23 Q. Okay. So are you saying that he wanted you to
24 plead guilty?

25 A. [Through the interpreter] Yes. Yes.

Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 He would push me to sign and he would not saying
2 anything except sign here.

3 Q. Okay. Did he explain what signing there would
4 do to you?

5 A. [Through the interpreter] He was asking me to
6 sign twenty years, and I understand what twenty years is.

7 Q. Okay. Did you understand that you could go to
8 trial?

9 A. [Through the interpreter] Yes.
10 But he would tell me not to go.

11 Q. Okay. Did he not do something that you asked
12 him to do?

13 A. [Through the interpreter] Something like I
14 asked him to do? Like what?

15 Q. Talk to witnesses, get more information from the
16 police?

17 A. [Through the interpreter] No.

18 I don't know anything about laws. I don't -- I
19 can't tell him what to do or which way to go, which
20 direction.

21 Q. Did you ask him to?

22 A. [Through the interpreter] Did I ask him -- did
23 he [phonetic] ask him what?

24 Q. To look into different matters.

25 A. [Through the interpreter] His options are --

Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 from the beginning, when he came to see me, he not say
2 anything. He just said sign. This is -- there's this --
3 there's this that is on the table, there's that that's on
4 the table; you need to sign; there's a confession, also.

5 Q. Is that the only thing he went over with you?

6 A. [Through the interpreter] Yes.

7 That's all he talked to me about.

8 Q. Okay. And did he tell you that by pleading
9 guilty, you gave up your right for trial?

10 A. [Through the interpreter] Yes.

11 He said if I signed -- if I sign, I would go do
12 my time.

13 Q. Okay. Were you, at the time you signed, under
14 the influence of any drugs?

15 A. [Through the interpreter] When I signed my
16 plea?

17 Q. Uh-huh.

18 A. [Through the interpreter] Se. No?

19 Q. Did you understand what you were signing?

20 A. [Through the interpreter] Not exactly.

21 Q. Not exactly.

22 Was it in English?

23 A. [Through the interpreter] What? My plea?

24 Q. Uh-huh.

25 A. [Through the interpreter] The paper?

Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 Q. Uh-huh.

2 A. [Through the interpreter] Yes.

3 Of course it was in English.

4 Q. Okay. Were you provided a Spanish copy?

5 A. [Through the interpreter] No.

6 Q. Okay. Did your counsel talk to you through an
7 interpreter?

8 A. [Through the interpreter] Yes.

9 Q. Okay. What do you think your counsel should
10 have done for you?

11 A. [Through the interpreter] Look at every avenue
12 from the beginning. We all have constitutional rights.
13 He didn't want to look at the case from the beginning --
14 from the moments his rights are being violated. When I
15 have to sign papers and -- blank papers -- when I had to
16 sign where I supposedly denied my rights.

17 Q. Now, what blank paper do you mean? Was that --

18 A. [Through the interpreter] When I signed them, I
19 was with the police in their vehicle.

20 Q. Was that your confession?

21 A. [Through the interpreter] I signed four -- I
22 signed four or five papers that I didn't understand what
23 they said, and at least two blank pages I signed for the
24 police.

25 Q. Now, the papers you didn't understand, those

Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 were in English?

2 A. [Through the interpreter] No.

3 The papers that I did not understand is
4 supposedly for I -- denying my rights. We've got to see
5 how the policemen are presented the question. You have a
6 right to be quiet. Do you understand that? You
7 understand that? Sign here. You have a right to an
8 attorney. Sign here.

9 How do I know that's not a play on their part to
10 have me deny my rights?

11 Q. Okay. And you signed -- you told your attorney
12 that you signed blank sheets?

13 A. [Through the interpreter] No.

14 I didn't tell him because the only thing he
15 would do when he would come is to, sign and sign and sign.

16 Q. Okay. Did he discuss you -- with you the
17 alleged confession or take it as a fact that was your
18 confession?

19 A. [Through the interpreter] No.

20 He never talked to me about a confession.
21 Talking about the police?

22 Q. Okay. So you never discussed the contents with
23 him?

24 A. [Mr. Perez] No.

25 Q. And he never discussed them with you to make

Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 sure that that was correct?

2 A. [Through the interpreter] No.

3 We never discussed that form.

4 Q. Okay. Now, in your application, what do you
5 mean by the additional newly-discovered evidence?

6 A. [Through the interpreter] I have read on
7 constitutional rights today. They're violating my
8 constitutional rights.

9 Q. Did you, at the time -- can you recall
10 everything that happened at the hearing when you pled
11 guilty?

12 A. [Through the interpreter] No.

13 I can't remember everything exactly.

14 Q. Do you remember specifically what was said to
15 you, as far as explanations by the judge?

16 A. [Through the interpreter] No.

17 Q. You're having difficulty even remembering it
18 today?

19 A. [Through the interpreter] Yes.

20 I don't remember exactly what the judge
21 said.

22 Q. Okay. Do you remember what your attorney said
23 when you were pleading guilty?

24 A. [Through the interpreter] Yes.

25 He would say what I had to say: yes, yes, say

Ramon Altienzo-Perez
Direct-Examination
By Ms. Miller

1 this, say that, say yes, say no.

2 Q. But you don't remember exactly what was said?

3 A. [Through the interpreter] No.

4 MS. MILLER: No further questions at this time,
5 Your Honor.

6 THE COURT: Any questions from the State?

7 MS. WILSON: Thank you, Your Honor.

8 THE COURT: You're welcome. You may proceed.

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Ramon Altienzo-Perez
Cross-Examination
By Ms. Wilson

CROSS-EXAMINATION

BY MS. WILSON:

Q. Mr. Atienzo-Perez, do you recall how many times you met with counsel before you pled guilty?

A. [Through the interpreter] No.

But there were several.

Q. Do you recall going over with him police reports?

A. [Through the interpreter] No.

Q. Do you recall going over any testimony from the witnesses?

A. [Through the interpreter] No.

Q. Do you recall going over any papers with your attorney?

A. [Through the interpreter] My -- like my discovery motion?

Q. Yes.

A. [Through the interpreter] Se. No.

To date, I don't even have it.

Q. Do you recall discussing any defenses that he could present for you at trial?

A. [Through the interpreter] No.

Just a paper that said twenty years.

Q. Once you received that paper that said twenty years, did you want to accept that?

Ramon Altienzo-Perez
Cross-Examination
By Ms. Wilson

1 A. [Through the interpreter] No.

2 Q. Did you give your attorney any potential
3 witnesses to investigate?

4 A. [Through the interpreter] No.

5 They never asked for any people of that nature.

6 Q. So it's your testimony that you discussed with
7 your attorney the plea offer from the State?

8 A. [Through the interpreter] Can you please
9 repeat?

10 Q. Sure.

11 Did your attorney tell you about the plea offer
12 of twenty years?

13 A. [Through the interpreter] Yes.

14 It was a negotiation that he was having that
15 they were going to give.

16 Q. And did you decide to plead guilty?

17 A. [Through the interpreter] I didn't have an
18 option.

19 Q. When you talked to the judge during your guilty
20 plea, did you tell him that you wanted to plead guilty?

21 A. [Through the interpreter] I did not want to
22 declare myself guilty, but the man was telling me what I
23 needed to say.

24 Q. Did your attorney talk to you about your right
25 to a jury trial?

Ramon Altienzo-Perez
Cross-Examination
By Ms. Wilson

1 A. [Through the interpreter] He told me that if I
2 didn't sign, we would go that way.

3 Q. When you spoke with your attorney, did you have
4 a translator?

5 A. [Through the interpreter] Yes.

6 Q. And using that translator, could you communicate
7 with your attorney?

8 A. [Through the interpreter] Yes, of course.

9 Q. Did you ever, during your plea, tell the Court
10 you didn't understand?

11 A. Yes.

12 Q. And did you understand what your attorney was
13 saying when he spoke with you?

14 A. [Through the interpreter] There was one
15 occasion that I didn't -- I didn't understand what he was
16 saying and I didn't understand what the judge asked.

17 Q. Did you ever speak up to tell the judge you
18 didn't understand?

19 A. [Through the interpreter] No.

20 Q. Isn't it your testimony today that you didn't
21 want to go to trial, you just wanted to do your time?

22 THE INTERPRETER: Can you repeat, please?

23 MS. WILSON: Sure.

24 Q. [Ms. Wilson] Is it your testimony today that
25 you did not want to go to trial, you just wanted to

Ramon Altienzo-Perez
Cross-Examination
By Ms. Wilson

1 complete your guilty plea time? You just wanted to do
2 your time?

3 THE INTERPRETER: He's asking me to please
4 repeat. Can you rephrase, please?

5 MS. WILSON: Sure. I sure can.

6 Q. [Ms. Wilson] Did you want to go to trial?

7 A. [Through the interpreter] When?

8 Q. When you rejected your twenty-year plea offer
9 initially.

10 A. [Through the interpreter] When they made the
11 plea, that's when he was telling me that -- to take the
12 plea. And I didn't want to go -- and I wanted to go to
13 trial.

14 Q. You did want to go to trial?

15 A. [Through the interpreter] When he told me to
16 sign?

17 Q. Yes.

18 A. [Through the interpreter] Yes.

19 Q. What did your attorney tell you about the paper
20 that you signed?

21 A. [Through the interpreter] The one for twenty
22 years?

23 Q. Yes.

24 A. [Through the interpreter] He didn't tell me
25 anything, just sign.

Ramon Altienzo-Perez
Cross-Examination
By Ms. Wilson

1 Q. And you knew when you signed you were accepting
2 twenty years?

3 A. [Through the interpreter] Yes.

4 Q. Did you tell the Court you were guilty?

5 A. [Through the interpreter] Yes.

6 That's what the man told me.

7 Q. Did you tell counsel you signed a blank paper
8 with the police?

9 A. [Through the interpreter] No.

10 Q. Do you recall the police telling you that you
11 could have an attorney?

12 A. [Through the interpreter] No. He said, you
13 have a right to an attorney.

14 Q. Did you tell your attorney that you gave a
15 statement to the police?

16 A. [Through the interpreter] No. No. He brought
17 it to me.

18 Q. Your attorney brought the statement to your
19 attention?

20 A. [Through the interpreter] Yes.

21 Q. And did you ever tell him that you didn't make
22 that statement?

23 A. [Through the interpreter] No.

24 We never talked about that.

25 Q. So you're saying that your attorney permitted a

Ramon Altienzo-Perez
Cross-Examination
By Ms. Wilson

1 statement, that allegedly you gave to the police, and you
2 didn't tell him that you didn't make the statement?

3 A. [Through the interpreter] No.

4 Q. Did you give a statement to the police?

5 A. [Through the interpreter] Yes. We talked.

6 Q. You spoke with police?

7 A. [Through the interpreter] Yes.

8 Q. Do you recall what you told him?

9 MS. MILLER: Objection. That's hearsay.

10 THE COURT: I'm sorry?

11 MS. MILLER: Hearsay objection. Hearsay.

12 THE COURT: Repeat the question. I'm sorry.

13 MS. WILSON: I asked him what did he say when he
14 spoke to the police.

15 THE COURT: It's not hearsay.

16 Sir, you may answer the question.

17 THE INTERPRETER: Ma'am?

18 Q. [Ms. Wilson] The question was what did you tell
19 police when you spoke with them?

20 A. [Through the interpreter] I cannot recall very
21 well.

22 Q. Are you guilty of this crime?

23 A. [Through the interpreter] No.

24 Q. Did you tell the Court you were guilty?

25 A. [Through the interpreter] Yes.

Ramon Altienzo-Perez
Cross-Examination
By Ms. Wilson

1 Q. Are you being truthful now or were you being
2 truthful when you told the Court you were guilty?

3 A. [Through the interpreter] I'm saying the truth
4 today.

5 MS. WILSON: Thank you.

6 THE COURT: Any redirect of the witness?

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Ramon Atienzo-Perez
Redirect Examination
By Ms. Miller

REDIRECT EXAMINATION

BY MS. MILLER:

Q. In your speaking with your attorney, did you feel that you could ask him questions?

A. [Through the interpreter] Yes.

Q. Okay. Did your attorney discuss with you going to trial?

THE INTERPRETER: Repeat what --

Q. [Ms. Miller] Preparing for trial.

A. [Through the interpreter] No.

He would say if you don't sign here, then you're going to go to trial.

Q. But he didn't discuss what he would do for you at trial or --

A. [Through the interpreter] No.

Q. Did he discuss discovery that he obtained from the police with you?

A. [Through the interpreter] No.

MS. MILLER: No further questions.

THE COURT: Sir, you may step down.

I assume the State had no further questions?

MS. WILSON: Nothing further, Your Honor.

THE COURT: You may call your next witness.

MS. MILLER: No further witnesses.

THE COURT: The State may proceed.

Ramon Atienzo-Perez
Redirect Examination
By Ms. Miller

1 MS. WILSON: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MS. WILSON: The State would call Mr. Michael
4 Dirnbauer.

5 [Whereupon, Mr. Dirnbauer comes forward]

6 THE CLERK OF COURT: Raise your right hand,
7 please.

8 [Whereupon, Mr. Dirnbauer is duly sworn by the
9 clerk of court as follows: do you solemnly swear to
10 tell the truth, the whole truth, and nothing but the
11 truth, so help you God]

12 THE WITNESS: Yes.

13 THE CLERK OF COURT: Okay. Have a seat.

14 [Whereupon, Mr. Dirnbauer takes the witness
15 stand]

16 THE COURT: Sir, If you would state your full
17 name for the record, spelling your name for the court
18 reporter.

19 THE WITNESS: Do you need the middle name, as
20 well? Middle name, as well?

21 THE COURT: You can give an initial if you want.

22 THE WITNESS: It's Michael L. Dirnbauer.

23 Dirnbauer is spelled D-I-R-N, as in Nancy, B, as in
24 boy, A-U-E-R.

25 THE COURT: You may proceed.

Ramon Atienzo-Perez
Redirect Examination
By Ms. Miller

1 MS. WILSON: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MS. WILSON: Good afternoon, Mr. Dirnbauer.

4 THE WITNESS: Hello.

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Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 MICHAEL L. DIRNBAUER,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILSON:

6 Q. How long have you been practicing law?

7 A. I graduated from law school in 2001 and --

8 Well, I should probably go through my work
9 history.

10 I spent two years, after I graduated, at the
11 South Carolina Court of Appeals as a staff attorney. And
12 after that I spent two months as a clerk to Judge Mark
13 Hayes. Then I taught law at Clemson for five years. I
14 did three years of private practice law and I was put on
15 the criminal appointment list.

16 The past two years, I now work at Gulfstream
17 Aerospace Corporation.

18 Q. So about how much experience have you had in
19 criminal law?

20 A. When I took Ramon's case?

21 Q. Yes.

22 A. He was my second case.

23 Q. And do you recall when you were appointed to
24 represent him?

25 A. The exact date?

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 Q. Or approximately. Approximately how long before
2 he pled guilty?

3 A. I was probably his attorney about a year before
4 he pled guilty.

5 For the first few months -- I had never dealt
6 with obtaining an interpreter before so there was a few
7 months after I was appointed where I was lining up the
8 interpreter before I could see him in June.

9 Q. And, ultimately, did you obtain an interpreter
10 and use the interpreter to communicate with the applicant?

11 A. Absolutely.

12 Q. And did you have any trouble -- did you feel
13 like you had any trouble communicating with him?

14 A. No.

15 Q. And about how many times did you meet with him
16 before he pled guilty?

17 A. I met with him at least four times. It may have
18 been as much as five. Every time that we had a plea or a
19 plea revision, I would meet with him. So, yeah, about
20 four or five times, at least.

21 Q. Did you file Brady or Rule 5 motions on his
22 behalf?

23 A. Absolutely.

24 Q. And did you review the discovery, that you
25 received, with him?

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 A. Yes.

2 I always brought it with me when I went to visit
3 him in jail.

4 Q. And can you tell us what was included in that?

5 A. What was included in that was his signed
6 acknowledgment of being Mirandized, which was in Spanish.

7 He also signed a waiver of his Miranda rights,
8 which was also in Spanish.

9 He represented to me that the detective who
10 questioned him at the site spoke Spanish.

11 I also remember that there were reports about
12 the events of the night, how there was an informant that
13 had tipped off the police that there was drug-trafficking
14 activity going on in the trailer where he was arrested and
15 apprehended. There were various paraphernalia. They
16 found the cocaine in the trailer below.

17 Also in that file was his confession.

18 Q. And did you review this confession with the
19 applicant?

20 A. Many, many times.

21 Q. And did he ever indicate that it wasn't his
22 statement?

23 A. Never.

24 Q. Did he confirm the comment -- did he confirm the
25 contents of the confession to you?

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 A. Yes.

2 Matter of fact, I knew more about it than was
3 contained in the confession, due to the things that he
4 told me in jail.

5 Q. When you were talking to him, did you ever talk
6 to him about ways that you could possibly get the
7 confession excluded?

8 A. I went in great detail with him over the
9 constitutional law regarding suppression of confessions.

10 I asked him several questions about the
11 circumstances under which he gave the confession, which,
12 as we know, we're looking for coercion, we're looking for
13 time that the police interviewed him, we're looking for
14 was he denied food, water, sleep. He responded no.

15 So when he responded no to that, then I started
16 to go down other avenues: was he impaired, as far as
17 alcohol or drugs. He said that he was not. He said that
18 he had smoked a little weed I guess a few hours prior to
19 that arrest but that it had no impact on his ability to
20 understand what was going on when he confessed.

21 I asked him about his education level, which he
22 said that he understood writing and reading and those
23 sorts of things.

24 I asked him -- I asked him just about every
25 question I knew to obtain information and facts that I

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 could use to possibly suppress that confession.

2 In my opinion, if we could not get that
3 confession suppressed, the likelihood of his success at
4 trial was very, very slim, particularly regarding the
5 circumstances of how he came to be in Beaufort, which was
6 an undocumented person who had never been in our community
7 before, in the Beaufort County community before. I did
8 not think the jury would be very sympathetic. I did not
9 look forward to a line of questioning that said, were you
10 lying when you gave the confession or are you lying now.

11 So to the extent that he's asserted that I
12 recommended that he take a plea deal: I always thought
13 that he should because I felt that he was at great risk to
14 at least receive the minimum penalty for trafficking 400
15 grams and possibly the thirty years, which was the maximum
16 penalty.

17 Now, if we want to go through the various pleas,
18 we can do that.

19 The initial solicitor who was assigned to this
20 case was Jim Bannon. Jim initially made a twenty-year
21 offer, which I communicated to Ramon. And he said, no, I
22 do not want to accept that, I want to go to trial. I told
23 him, I said, I will go back to the solicitor and see if I
24 can obtain a better offer on your behalf.

25 I went back to Jim. I made my argument as best

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 I could. He said, all right, Michael, I will proffer
2 seventeen years, twenty-eight -- I'm sorry -- pleading
3 guilty to twenty-eight to a hundred grams and a seventeen-
4 year sentence, negotiated sentence.

5 I went to Ramon with that offer and he still did
6 not want to accept that. At that point, I told Ramon he
7 had three options: one, he could accept the plea and go
8 for seventeen years; two, he could reject the plea and go
9 to trial; and, three, if he was dissatisfied with my
10 services as counsel, he could file a motion to have me
11 removed.

12 He chose the third option, to file a motion to
13 have me removed as counsel. So that motion was heard a
14 few months later, which Judge Brown denied.

15 At that point, we had no plea offer on the
16 table. Much to his dissatisfaction, I was still his
17 attorney, apparently, and we were headed on towards trial.

18 We were getting close to trial. I once again
19 saw him. I said, Ramon, you need to understand that your
20 chances of being not guilty in this trial are not good.

21 To the extent that he believes that I coerced
22 him into pleading guilty, I never coerced him. I
23 encouraged him, certainly, because I felt that that was
24 the best possible option for him, considering the evidence
25 that was against him.

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 At one point before trial, I went back to Gregg
2 Collins, who had now been assigned to be the solicitor of
3 this case. And I went to Gregg and I said, is there any
4 prospect of bringing a plea back into play. And he said
5 to me, he said, well, I'm especially interested in
6 offering a plea if Mr. Perez is willing to testify against
7 his co-defendants.

8 I went back to Mr. Perez and I made that offer
9 to him. I said, the solicitor will give you a reduced
10 sentence in exchange for your testimony against your
11 co-defendants. He said no. I asked him why he wouldn't
12 do it and he said, you know why.

13 At that point, I went back to Gregg and I said,
14 is there anything we can bring back on the table. Greg
15 came back to me. He said, I will offer you twenty years.

16 I re-communicated that offer back to Ramon. And
17 I had also spent an extensive amount of time talking to
18 him about what it meant as far as not speaking to
19 witnesses, not being able to cross-examine witnesses, the
20 right to remain silent, those sorts of things. He was
21 even advised of the impact that per dia would have on his
22 importation status. And at that point, he decided that he
23 would take the twenty-year plea.

24 When we got to his plea hearing -- his two co-
25 defendants pled in advance of him. One of his co-

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 defendants pled to seventeen years. Now, my understanding
2 as to why he was offered seventeen years was because due
3 to his codefendant's status of counsel -- his original
4 counsel had never spoken to his codefendant. So that was
5 really the first time that the solicitor had made a
6 meaningful offer of a plea to him, when he accepted the
7 seventeen years.

8 Ramon at that point looked at me in the
9 courtroom and said, is there any possibility of getting
10 the seventeen years back on the table. I said, no, that
11 was not an option that was available to us at that point.

12 I was at the hearing. Like I said, I had spent
13 time as a trial court clerk and I also spent time in the
14 South Carolina Court of Appeals, where we reviewed guilty
15 pleas and voluntariness of confessions. I do not recall,
16 during Judge Brown's colloquy, that there was anything
17 unusual or abnormal. I felt that all the constitutional
18 rights were said to, he acknowledged.

19 He was asked specifically -- I was particularly
20 curious about this, since he had made a motion to have me
21 relieved as counsel. He asked if he was satisfied with my
22 representation of him. Ramon said yes.

23 And I will have to say that listening to his
24 testimony here today is a completely different person than
25 the person I spoke to in jail, as far as his ability to

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 remember, his apparent befuddlement as to these
2 circumstances. I felt that -- when I was representing
3 him, at least with the conversation I had with him in
4 jail, that he was absolutely cognizant of everything that
5 was spoken to him and everything that went on.

6 More sympathetic I cannot be of the fact that he
7 received a lengthy sentence. And I wish that there had
8 been something I could do to get him a better plea deal.
9 I always felt that the issue with Ramon and my
10 representation was that he felt that there was something I
11 could do to get him a better deal than I got him.

12 I will say that his plea was in line with what
13 was offered to his co-defendants as in terms of sentencing
14 and time.

15 And I guess I've rambled on. I've answered
16 probably several questions you had.

17 Q. Did he want to discuss with you his version of
18 the facts?

19 A. Well, his version of the facts was what was in
20 the confession.

21 Q. And did you talk to him about any possible
22 defenses or lack thereof?

23 A. I talked to him about lack of defense, yes.

24 The only defense that we had was the ability --
25 basically, the way it broke down was this. The only real

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 testimony they had against him was the confession. His
2 co-defendants may have testified. I don't know. I know
3 that they were asked. But I didn't see a way to suppress
4 that confession and if I couldn't suppress that
5 confession, there was no way we were going to succeed at
6 trial. So that was the lack of defense.

7 We spent a great deal of time discussing his
8 confession, discussing the law behind confessions, because
9 I was trying to educate him as to a plea deal was in the
10 best interest considering the facts behind his confession.

11 Never, at any point in time, did he tell me that
12 he signed a blank sheet of paper for his confession.
13 Never did he deny any of the allegations that were
14 contained in that confession. And it wasn't like I only
15 spoke with him one time before we went to trial. I spoke
16 with him several times before we went to trial. And at
17 every point, every point of discussion, this was never
18 brought up. This is a complete revelation to me that he
19 signed blank pieces of paper.

20 I would surely have loved to have known that,
21 because that may have made my efforts to suppress his
22 confession a much greater possibility if I had known he
23 was signing twenty sheets of paper.

24 Q. Did he give you any potential witnesses or
25 people to investigate?

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 A. No.

2 Q. And what did your investigation in the case
3 entail?

4 A. It entailed a review of the Rule 5 materials
5 that were submitted to the solicitor's office.

6 It entailed me questioning him as to the facts
7 and events that occurred on that day.

8 And that was my investigation.

9 Q. Ultimately, when the applicant decided to plead
10 guilty, did you talk to him about the consequences of his
11 plea?

12 A. Yes.

13 That he was giving up his right to a jury trial,
14 he was giving up his right to confront witnesses, that
15 there were per dia implications for his status in the
16 United States for pleading and --

17 Q. Did -- go ahead.

18 A. I mean -- go ahead.

19 Q. I was just going to ask do you also recall the
20 Court advising him of those things.

21 A. Absolutely.

22 Q. And did he ever indicate he didn't understand
23 anything while the plea was taking place?

24 A. No.

25 Q. Did you ever tell him how to answer the

Michael L. Dirnbauer
Direct Examination
By Ms. Wilson

1 questions the Court was asking?

2 A. No.

3 Q. And do you think it was the applicant's decision
4 to plead guilty?

5 A. Yes.

6 Q. Was he under the influence, or do you feel like
7 he had any competency issues, that would have prevented
8 him from pleading guilty?

9 A. No.

10 Q. Thank you.

11 THE COURT: Any redirect?

12 MS. MILLER: Yes, Your Honor.

13 THE COURT: You may proceed.

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Michael L. Dirnbauer
Cross-Examination
By Ms. Miller

CROSS-EXAMINATION

BY MS. MILLER:

Q. Now, you were a public defender when you represented Mr. Perez?

A. No, I was not.

Q. You were not?

A. I was a civil attorney in the law office of Dean Bell, and I was placed on the criminal appointment list by Judge Mullen due to the lack of criminal defense attorneys that were available for appointment at the time in Beaufort County.

Q. Okay. So you were a civil attorney appointed on this case?

A. Yes.

Q. Okay. And where did you work at that time?

A. Law office of Dean Bell.

Q. Okay. And you had many other paying customers at that time, didn't you?

A. I did, yes.

Q. Okay. And can you recall exactly how many times you met with this client with all those -- with a large case load?

A. I appreciate your question.

Let me say that you heard that I work at Gulfstream Aerospace now.

Michael L. Dirnbauer
Cross-Examination
By Ms. Miller

1 Q. Uh-huh.

2 A. These criminal cases that I was appointed to,
3 with which there were several, became very important to me
4 because of the ramifications of making a mistake in these
5 criminal trials.

6 I spent a great deal of time, on every one of
7 the criminal trials that I was appointed to, to do the
8 legal research and to do the necessary steps I felt were
9 necessary to prepare me to make an effective defense.

10 The reason that I'm at Gulfstream Aerospace is
11 because I was on the criminal appointment list and I
12 decided to leave the practice of law because I did not
13 want to do those sorts of cases anymore. And I was
14 informed that if I was going to stay in this judicial
15 circuit, that I was going to do criminal appointment
16 cases.

17 Q. So you no longer practice as an attorney? You
18 gave up your --

19 A. I'm inactive.

20 Q. Okay. And --

21 A. But Ramon's case -- so what you're saying is
22 did he get attention from me because of paying customers.
23 I --

24 Q. About how many clients did you have at the time,
25 sir?

Michael L. Dirnbauer
Cross-Examination
By Ms. Miller

1 A. Oh, Lord. I probably had a caseload of twenty
2 or thirty from various family, domestic, bankruptcy, real
3 estate, whatever they were.

4 Q. Okay.

5 A. But I did speak with him many times, and with an
6 interpreter every single time. And that was because I
7 wanted to give the attention to the case that it deserved.

8 This was the most difficult case for me,
9 emotionally, to have.

10 Q. But you were not a practicing criminal attorney
11 at that time?

12 A. I was not.

13 Q. Okay. And were you upset when he made a motion
14 to have you be relieved as counsel --

15 A. No.

16 I wasn't upset by that at all. Matter of fact,
17 I made the suggestion to him, because I -- as I told -- as
18 I gave in original testimony, my original questioning, I
19 had presented him with the three options that I felt were
20 available because I felt that if he was that dissatisfied
21 with me as an attorney, that he should have an opportunity
22 to try and get an attorney that he felt better represented
23 him.

24 Q. So you felt he was dissatisfied with you?

25 A. Yeah. I absolutely do.

Michael L. Dirnbauer
Cross-Examination
By Ms. Miller

1 Q. And why do you believe that?

2 A. I believe he was dissatisfied because of the
3 plea deals that he was receiving.

4 Matter of fact, he made a statement to me one
5 time, when the seventeen-year plea had been rejected, that
6 -- and then --

7 So basically what happened was is the twenty-
8 year to seventeen-year. And then he said -- basically, he
9 said, well, what's the status. I said, there is no
10 status. And he said, well, I thought that you always got
11 three offers; you know, my understanding was. And I was
12 like, well, I don't know where you heard that from but
13 that's not the case here.

14 So, yeah, I certainly felt that he felt that I
15 wasn't doing my job in getting him a better plea than I
16 was offered by the solicitor's office.

17 Q. And it's your testimony that you were unaware
18 that he had signed a blank sheet of paper?

19 A. Yes, that is my testimony.

20 He never, at any -- we went over that
21 confession, in excruciating detail, and the law behind how
22 to suppress a confession and the facts that I needed to
23 ask him about suppression of a confession every time I
24 spoke with him, because that was a key issue in the case.

25 If he signed a blank sheet of paper, or if that

Michael L. Dirnbauer
Cross-Examination
By Ms. Miller

1 confession didn't represent what he -- his thoughts of the
2 facts, he never, ever, in any of those visits, mentioned
3 that to me.

4 Q. And but you don't recall -- do you recall at the
5 plea hearing the exact -- what was said exactly,
6 specifically, by the judge?

7 A. Like I said, I had spent time as a trial-court
8 clerk. I had spent time at the Court of Appeals.

9 I am familiar with the colloquy that is
10 typically given by a trial judge to defendants in guilty
11 pleas, and it was absolutely standard. There was nothing
12 -- so, in other words, there was nothing that stood out as
13 unusual. Everything was normal. Every question was
14 appropriate. He asked questions about -- he informed him
15 about his right to appeal at the end of it. I
16 specifically remember that.

17 I absolutely remember advising him on per dia.
18 I --

19 Q. Now, how many years had you been in civil
20 practice?

21 A. Three years.

22 Q. So at least for three years you probably didn't
23 hear too many guilty pleas being read?

24 A. No.

25 Q. Okay. And were you upset that -- or surprised

Michael L. Dirnbauer
Cross-Examination
By Ms. Miller

1 that Mr. Perez put down on his application today that you
2 were ineffective assistance of counsel?

3 A. No.

4 It didn't upset me. It doesn't -- I mean, it's
5 just part and parcel of the process of criminal
6 proceedings.

7 MS. MILLER: No further questions.

8 THE COURT: Anything further?

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Michael L. Dirnbauer
Redirect Examination
By Ms. Wilson

REDIRECT EXAMINATION

BY MS. WILSON:

Q. Mr. Dirnbauer, is there anything else you feel like you could have done in the applicant's case?

A. No.

Q. And despite the other clients that you had in your civil practice, did you give this case the attention you felt it needed?

A. I gave this case a lot of attention.

Q. And did you discuss the potential sentence that he was facing?

A. Absolutely.

Q. Did you discuss with him the nature of the charges and what the State was required to prove?

A. Yes. We ran through the trafficking elements.

Q. Did you discuss with him what evidence they had against him?

A. He knew about the confession, yes.

Q. And did you specifically sit down and discuss with him -- you testified, too, that you talked to him about his right to a jury trial. Did you also testify -- is it also your testimony that you spoke with him about his right to confront the witnesses against him at trial, the right to remain silent if he decided to proceed to trial?

Michael L. Dirnbauer
Redirect Examination
By Ms. Wilson

1 A. Yes.

2 I remember specifically reading as part of my
3 research and preparation of this case the types of
4 evidence or the types of things that needed to be told to
5 a criminal defendant in order for their -- to be
6 constitutionally valid.

7 Q. And do you also recall the Court talking to him
8 about it during his colloquy?

9 A. Yes.

10 MS. WILSON: Thank you.

11 THE COURT: Any further questions?

12 MS. MILLER: No, Your Honor.

13 THE COURT: Sir, you may step down.

14 [Whereupon, Mr. Dirnbauer is excused and exits
15 the witness stand]

16 THE COURT: Anything further from the State?

17 MS. WILSON: Just one second, Your Honor.

18 [Whereupon, Ms. Wilson reviews documents]

19 MS. WILSON: Nothing further from the State.

20 THE COURT: Is the counsel from the State here?
21 You-all don't plan to call him?

22 MS. WILSON: Unless you want him to testify --

23 THE COURT: I think for completeness of the
24 record, since he's here. Why waste him being here?

25 MS. WILSON: That's fine.

Michael L. Dirnbauer
Redirect Examination
By Ms. Wilson

1 Your Honor, the State will call Greg Collins.

2 THE COURT: Sir, if you would come to the
3 witness stand to be sworn.

4 [Whereupon, Mr. Collins comes forward]

5 THE CLERK OF COURT: Raise your right hand.

6 [Whereupon, Mr. Collins is duly sworn by the
7 clerk of court as follows: do you swear to tell the
8 truth, the whole truth, and nothing but the truth, so
9 help you God]

10 THE WITNESS: I do.

11 My name is Greg Collins. CO-L-L-I-N-S.

12 THE COURT: You may proceed.

13 MS. WILSON: Thank you, Your Honor.

14 THE COURT: You're welcome.
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Gregory Collins
Direct Examination
By Ms. Wilson

GREGORY COLLINS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q. Mr. Collins, about how long have you been
practicing law?

A. About eight years.

Q. And about how much of that has been in criminal
law?

A. Ninety-eight to ninety-nine percent.

Q. Were you the solicitor assigned to this case?

A. I was for a brief amount of time before the
resolution.

Q. And could you -- do you recall what the State's
evidence was against the applicant?

A. In my short stint with the solicitor's office,
typically they would give me a file a couple of weeks
before or a month before a term of court in preparation
for trial.

This case was one in which I was informed that
all the defendants had turned down the plea offers.

And, basically, the evidence they had, they had
a kilo of coke that was found underneath the trailer. The
police had gotten a tip. They went out there. There were

Gregory Collins
Direct Examination
By Ms. Wilson

1 a few people inside the trailer that they interviewed.
2 Through the interviews, they learned that I believe it was
3 this defendant drove down from North Charleston with the
4 kilo of coke in the block of the engine.

5 There were originally four people arrested. One
6 of the co-defendants I dismissed or nol-prossed as part of
7 the case because he was the passenger in this defendant's
8 truck and I didn't have any witnesses that testified that
9 he had any knowledge that the kilo of coke was there.

10 But that's kind of basically what I remember of
11 the case.

12 Q. Can you describe for the Court your plea
13 negotiations with the applicant's attorney?

14 A. When I started prepping for trial, I have to
15 look at the case and how much it's going to cost the State
16 to do a trial on this.

17 I learned that one of the co-defendants'
18 attorneys had never actually relayed the previous offer.
19 Mr. Dirnbauer explained about that. So I thought it was
20 only fair to put that offer back on the table for that
21 defendant.

22 As we were assessing the case, we had a very
23 strong case, I believe. However, with -- at that point in
24 time, we had three, possibly four, co-defendants that
25 would be going to trial with different interpreters for

Gregory Collins
Direct Examination
By Ms. Wilson

1 each defendant. And I felt that fifteen to twenty years
2 was a very long prison sentence, considering the fact that
3 the defendants weren't connected to any kind of gang
4 activity, weren't -- nobody believed they were big time
5 dealers. They just kind of got their hands on a kilo of
6 coke.

7 And I had to go to my boss and specifically
8 request that we put an offer back on the table for this
9 defendant and I felt that -- because I felt strongly that
10 he would take the offer if it was below the mandatory
11 minimum.

12 Mr. Dirnbauer was in constant contact with me,
13 once I got the case and we were preparing for trial, and
14 was adamantly asking for any kind of option other than
15 going to trial and to see if there was any kind of plea
16 deal that we could reach. And I finally was able to
17 convince my bosses to be able to put that offer on the
18 table to avoid a potentially lengthy trial with
19 interpreters and things of that nature.

20 Q. Do you recall what was offered?

21 A. Not specifically.

22 From listening to Mr. Dirnbauer, it kind of
23 refreshed my memory as far as the seventeen-year offer
24 originally.

25 But I believe the notes in the file, when I got

Gregory Collins
Direct Examination
By Ms. Wilson

1 them, said he had turned down -- turned down the offer and
2 that since the offer was rejected, there was no offer at
3 that point in time. So I guess the status of the case
4 when I got it was the instruction not to make an offer.

5 Q. Okay. And do you know if the applicant pled
6 guilty with his co-defendants on the same day?

7 A. All three of them pled on the same day.

8 I don't remember specifically what Judge Brown
9 said to each defendant. But along the same lines, I had
10 probably -- I only worked as a solicitor for six months
11 with the Beaufort County. All my other criminal
12 experience has been as a defense attorney, whether it was
13 the Richland County Public Defender's Office or in private
14 practice in Columbia. Over that time, I've represented
15 approximately 1500 criminal defendants, with a lot of
16 those going to guilty pleas.

17 And I honestly don't remember anything out of
18 the ordinary with Mr. Brown -- Judge Brown. I'm sorry. I
19 know him personally, too -- but with Judge Brown's plea
20 colloquy, usually he was very detailed. And I don't
21 remember anything out of the ordinary in this plea. And,
22 in fact, I was looking out for that because one of the
23 things I wanted to do as a solicitor was to make sure that
24 the case wouldn't come back on appeal or come back through
25 PCR, so we wanted to make sure all the details were taken

Gregory Collins
Direct Examination
By Ms. Wilson

1 care of. And now we don't even have a transcript, so I
2 guess I should have looked at that. But --

3 Q. So it's your testimony today that Judge Brown
4 asked the standard questions he normally asked?

5 A. As I said, I can't remember specifically.

6 All I can testify to is that I don't remember
7 anything out of the ordinary or anything that jumped out
8 as being unusual during this.

9 And I believe it was a group plea where all
10 three pled.

11 Q. And if you had noted something out of the
12 ordinary, would you have brought it to the Court's
13 attention?

14 A. Yes, I would have.

15 Q. And it's your understanding that Judge Brown
16 accepted the applicant's guilty plea?

17 A. Yes.

18 Q. Okay. Considering the applicant pled guilty
19 with his codefendants, were they all asked the same
20 questions during the guilty plea? Did he -- do you recall
21 how he proceeded?

22 MS. MILLER: Objection.

23 I believe that he testified he wasn't sure if
24 they all pled guilty at the same time, so he doesn't
25 know if --

Gregory Collins
Direct Examination
By Ms. Wilson

1 THE COURT: He said they pled guilty as a group.
2 That was his testimony. Overruled.

3 You may answer the question.

4 A. I believe it was a group plea. I'm not a
5 hundred percent sure exactly how it went down, but, again,
6 I believe it was a group plea where it would be the judge
7 would state the question and go from one defendant to the
8 next defendant to the next defendant.

9 I do remember that the interpreters did not have
10 the headphones, microphone, so it was -- everything that
11 was done was put on the record or attempted to be put on
12 the record. We had to say one sentence, stop, let the
13 interpreters explain it to the defendants, and then go for
14 another sentence. And I do remember it taking a while to
15 get through the plea.

16 MS. WILSON: Beg the Court's indulgence.

17 THE COURT: Uh-huh.

18 [Whereupon, Ms. Wilson reviews documents]

19 Q. [Ms. Wilson] You testified that you would have
20 brought to the Court's attention anything that was out of
21 the ordinary; is that correct?

22 A. Yes.

23 Q. And you would have brought to the Court's
24 attention if he didn't advise the applicant of his
25 potential charges?

Gregory Collins
Direct Examination
By Ms. Wilson

1 A. Advise --

2 Q. Potential sentences. I'm sorry. You would have
3 brought that to the Court's attention if you noticed it?

4 A. Yes.

5 But I don't believe he talked about the
6 trafficking over 400 grams, so it was just a plea to the
7 lesser.

8 Q. Right. Okay.

9 A. But, yeah. That would have been something I was
10 listening for.

11 Q. Would you also have been listening for him
12 advising him about his rights -- the defendants about
13 their right to a jury trial, right to confront witnesses,
14 and right to remain silent?

15 A. Yes. That would be the standard plea colloquy.

16 Q. Do you recall if you were given the opportunity
17 to present the facts of the case to the judge?

18 A. I don't remember specifically exactly everything
19 that was said.

20 I mean, that would be the normal course of a
21 plea. I would hope that I would notice if I wasn't given
22 a chance to present the facts.

23 Q. And it's your testimony that if the judge hadn't
24 informed the applicant about what the sentences were for
25 the charge set that he was actually pleading guilty, you

Gregory Collins
Direct Examination
By Ms. Wilson

1 would have brought that to his attention?

2 A. Yes.

3 If there had been something out of the ordinary,
4 that would have been something we would want to correct
5 and make sure that the record was clean.

6 Q. Okay.

7 A. Specifically with this case, since we were
8 talking about pretty severe sentences for all three co-
9 defendants.

10 MS. WILSON: Thank you.

11 MS. MILLER: Yes.

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Gregory Collins
Cross-Examination
By Ms. Miller

CROSS-EXAMINATION

BY MS. MILLER:

Q. But you don't recall exactly what the judge said?

A. No, I don't.

Q. Okay. You just believe that you probably would know if he had said something incorrect?

A. Yes.

And it's possible that there's minor details I could have been wrong. Without a record, we don't know for sure.

Q. Right.

Without a record you don't know specifically what was said or what wasn't said?

A. That's true.

Q. Okay. And it's your recollection that it was a group plea. But you can't recall for certain without a record; isn't that true?

A. That's true.

I haven't -- from what I remember, it was all three of them at the same time. But I'm not a hundred and ten percent sure on that.

Q. Okay.

A. If it wasn't a group plea, it was -- they were definitely done on the same day.

Gregory Collins
Cross-Examination
By Ms. Miller

1 Q. Okay. It's hard to recall two and a half years
2 ago, when you work in the solicitor's office or in the
3 public defender's office, all the cases; isn't that
4 correct?

5 A. Yes.

6 Q. Okay. Now, you were asked about Mr. Dirnbauer
7 and about pleas. But you don't know how many times
8 Mr. Dirnbauer spoke to his client, you just know he spoke
9 to you a few times; isn't that correct?

10 A. Yes.

11 MS. MILLER: Okay. No further questions.

12 THE COURT: Any redirect?

13 MS. WILSON: Nothing from the State, Your Honor.

14 THE COURT: Any objection to the witness being
15 excused? From the State?

16 MS. WILSON: No, Your Honor.

17 THE COURT: From the applicant?

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Any objection from the applicant?

20 MS. MILLER: [No response]

21 THE COURT: Any objection to the witness being
22 excused?

23 MS. MILLER: From him being excused? No, Your
24 Honor.

25 I have --

Gregory Collins
Cross-Examination
By Ms. Miller

1 THE COURT: Thank you, sir.

2 MS. MILLER: -- my continuing objection that we
3 created --

4 THE COURT: I think that we --
5 I'm not recreating the record.

6 MS. MILLER: Okay.

7 THE COURT: And any objections you've noted have
8 been preserved and I've already ruled on them.

9 MS. MILLER: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 [Whereupon, Mr. Collins is excused and exits the
12 witness stand]

13 THE COURT: Anything further from the State?

14 MS. WILSON: No witnesses from the State, Your
15 Honor.

16 THE COURT: Okay. What I'm going to do is I'm
17 going to take the matter under advisement.

18 I assume there is no rebuttal testimony;
19 correct?

20 MS. MILLER: No, Your Honor.

21 THE COURT: I'm going to take the matter under
22 advisement to determine if the plea record needs to be
23 recreated, and then the time for that process if that
24 becomes necessary, and then we'll go from there. And
25 I'll be in touch to let you know what guidance I get

Gregory Collins
Cross-Examination
By Ms. Miller

1 from -- as to how we need to complete the matter.

2 MS. MILLER: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 MS. WILSON: Thank you.

5 [HEARING CONCLUDES AT 12:59 P.M.]

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Gregory Collins
Cross-Examination
By Ms. Miller

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable Deadra L. Jefferson, on Monday, August 26, 2013.

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

Dated this 10th day of May, 2013.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Ramon Atienzo-Perez, #344636,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-07-4997

ORDER OF DISMISSAL

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Carol A. Miller, Esquire
Ashleigh R. Wilson, Esquire
Michael L. Dirnbauer, Esquire
August 26, 2013
Susan "Mia" Perron

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 28, 2011. The Respondent made its Return on August 6, 2012. An evidentiary hearing into the matter was convened on August 26, 2013 at the Jasper County Courthouse. The Applicant was present at the hearing and represented by Carol A. Miller, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Michael Dirnbauer, Esquire, and former assistant solicitor Gregory Collins, Esquire, also testified at the hearing. This Court had before it the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto. At the time of the hearing, the court reporter could not locate the guilty plea transcript. At the close of the hearing, on August 26, 2013, this Court

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took the matter under advisement in order to give the court reporter time to locate the guilty plea transcript. On October 14, 2013, the guilty plea transcript was located and the Court was provided a copy of the transcript, which it reviewed prior to its ruling and the issuance of this Order. The Court provided a copy of the transcript to counsel. Subsequently, on November 7, 2013 the Court issued a form Order denying the application and directing the Assistant Attorney General to provide the Court with a proposed Order within fifteen (15) days. The Order and a copy of the transcript were sent to the Beaufort County Clerk of Court for filing in the Applicant's record.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the November 2009 term of the Beaufort County Grand Jury for Trafficking Cocaine Greater than 400 Grams (2009-GS-07-2346).¹ Michael Dirnbauer, Esquire, represented the Applicant. The Applicant pled guilty to the lesser included offense of Trafficking Cocaine 28-100 Grams-First Offense.² Pursuant to a negotiated plea agreement, the Honorable Craig D. Brown sentenced the Applicant to confinement for twenty (20) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

¹ The offense of Trafficking Cocaine Greater than 400 Grams is a violent, serious felony punishable by "a term of imprisonment of not less than twenty-five [(25)] years nor more than thirty [(30)] years with a mandatory minimum term of imprisonment of twenty-five [(25)] years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars [(\$200,000.00)]." S.C. CODE ANN. § 44-53-370(e)(2)(e) (2012).

² The offense of Trafficking Cocaine 28-100 Grams- First Offense is a violent, serious felony punishable by "a term of imprisonment of not less than seven [(7)] years nor more than twenty-five [(25)] years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars [(\$50,000.00)]." S.C. CODE ANN. § 44-53-370(e)(2)(b)(1) (2012).

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1. Ineffective assistance of counsel.
2. There exists evidence of material facts, not previously presented and heard that requires vacation of the conviction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

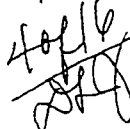
At the evidentiary hearing, the Applicant testified he was initially charge with Trafficking Cocaine Greater than 400 Grams. He testified Counsel did not do anything and did not look into his case from the beginning. He testified he met with his attorney several times, although he could not remember exactly how many times they met. He testified that he and his attorney never reviewed the discovery, police reports, witness statements or any other papers and never discussed any strategy or defenses, nor did his attorney look into witnesses. The Applicant testified that at all times he met with his attorney they spoke with the assistance of a translator. He further testified that he felt he could ask questions of his attorney. The Applicant further testified he had difficulty understanding his attorney. He testified his attorney never gave him any options, did not ask him any questions, did not discuss anything with him, and rushed him to plead guilty. He further testified that he did not give his attorney any witness leads to investigate. The Applicant clarified that he and his attorney never discussed trial because his attorney never gave him any options and hurried and "pushed" him to sign. The Applicant testified he and his attorney discussed the twenty (20) year plea offer and he ultimately pled guilty because his

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attorney told him not to go to trial.

The Applicant testified he understood what a jury trial was and that he could go to trial and that by pleading guilty, he would give up his right to a trial, but was told by his attorney not to go to trial. He testified he was told to sign a confession and the sentencing sheet and he understood he would be getting a twenty (20) year sentence. The Applicant claimed that he "somewhat" did not understand the plea sheet because it was in English. The Applicant testified he was not under the influence of any substance or suffering from any mental deficits at his guilty plea, but has no recollection of what the judge explained, what his attorney said at the plea, and does not remember the exact words used. The Applicant testified that his attorney told him how to answer the judge's questions during his guilty plea and that on one occasion he did not understand his attorney and he did not understand and did not know what the judge said, but did not speak up and tell anyone.

The Applicant testified he was told that there was a confession in his case, but he never spoke with his attorney about the confession's contents or veracity. The Applicant testified further his attorney should have "looked at" the confession and that he gave a statement to police, but did not recall what he told police. He testified he could not recall what he told the police but that the police had him sign several blank papers stating he could have an attorney. He testified that he signed four (4) to five (5) papers written in English and that he was not provided a Spanish copy, but that he never told his attorney that police had him sign blank papers. The Applicant also testified that he told his attorney that he wanted to go to trial when he signed the sentencing sheet, but that he knew he was agreeing to twenty (20) years imprisonment at that time. He further testified that he knew the negotiations and plea were pursued on his behalf. He also testified that he did not want to go trial and just wanted to do his time. Lastly, the Applicant

A handwritten signature in dark ink, appearing to be "H. J. [unclear]", written over a horizontal line.

testified the newly discovered evidence in his case violated his constitutional rights.

Plea counsel testified he has been practicing law since 2001. He testified he was a civil attorney on the criminal appointment list at the time. He testified that at the time of this appointment he had twenty (20) to thirty (30) clients. He testified that he is now employed in the aerospace industry and currently on the inactive list. He testified he hired an interpreter and had no trouble communicating with the Applicant. He testified he was appointed to represent the Applicant approximately one (1) year prior to his guilty plea. He testified he met with the Applicant at least four (4) or five (5) times, asked all questions regarding attacking the veracity of the Applicant's confession, and spent a great deal of time trying to develop an effective defense for the Applicant. He testified that he went over the Applicant's constitutional rights, range of penalty, elements of the offense and potential defenses. He testified he filed Brady and Rule 5 motions on the Applicant's behalf and discussed all discovery, including information on the informant and all other evidence, with the Applicant at the jail.

Counsel testified he spoke with the Applicant about the lack of a defense because he saw no way to suppress the Applicant's confession, although he had reviewed the confession many times and spent a "great deal" of time going over the confession with the Applicant. He testified he asked the Applicant about his education and the Applicant indicated he could both read and write. He testified he asked the Applicant about the circumstances surrounding the confession and the Applicant indicated he was not impaired when he gave the statement. He testified the Applicant never indicated the confession was false and confirmed the content of the confession as his version of the facts. Counsel also testified the Applicant never told him he signed a blank confession form. He testified the Miranda warning and waiver signed by the Applicant was in Spanish and the Applicant was questioned by police in Spanish. Additionally, Counsel testified

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he asked all the questions he could in order to suppress the confession and advised his client that if he was unable to suppress his confession, the likelihood of the Applicant's success at trial was slim to none. Counsel also divulged that he always thought the Applicant should take a plea deal because the Applicant was at risk due to his confession and undocumented status. He further testified that he advised the Applicant that there was no legal basis for the suppression of his confession. He further testified that the Applicant never denied the validity of his confession during their evaluation of the case. He further testified that there was no evidence in his investigation of the case that the Applicant ever signed a "blank" sheet of paper at his confession for the police investigators. He testified ultimately it was the Applicant's decision when faced with the alternatives to plead guilty. He further testified that he had no concerns about the Applicant's competency to stand trial. He also testified that the Applicant was not suffering from any mental disabilities or under the influence of any intoxicants at the time of the plea. Counsel denies ever "telling" the Applicant what to say at the plea in response to the Judge's questions.

Counsel testified he entered into plea negotiations with the State and the Applicant was originally offered a negotiated plea to twenty (20) years imprisonment. He testified he communicated the offer to the Applicant and the Applicant rejected the offer and said he wanted to go to trial. Counsel testified the State then offered a negotiated plea to Trafficking Cocaine 28-100 Grams with a seventeen (17) year sentence. He testified he communicated the plea offer to the Applicant, who rejected the offer.

Counsel testified he advised the Applicant that he had three (3) options going forward—plead guilty, go to trial, or relieve him as counsel. Counsel testified the Applicant's motion to relieve counsel was denied. Counsel testified that the Applicant's motion did not upset him or compromise his diligence in representing the Applicant. Counsel testified the Applicant was

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dissatisfied with him mainly because of the plea offers he was receiving from the State. He also testified the Applicant believed the State always made three (3) plea offers. He testified he told the Applicant there was a great risk of conviction at trial. He testified at one point in the Applicant's case there were no pending plea offers and the Applicant's case was headed to trial.

Counsel testified he went back to the State a third time and the State was interested in a plea offer in exchange for the Applicant's testimony against his co-defendant. Counsel testified he communicated the offer to the Applicant and the Applicant refused to testify against his co-defendant. Counsel testified he was then able to obtain the negotiated twenty (20) year plea offer from the State a second time. He testified he communicated the offer to the Applicant, spoke with him about his right to a jury trial, his potential sentence, the nature of the charges he was facing, his constitutional rights, and immigration status. The plea court also advised the Applicant regarding his immigration status and collateral consequences as a result of the plea. Counsel testified the Applicant requested the original seventeen (17) year offer be "put back on the table" and he told the Applicant he would not be able to plead to the original seventeen (17) year offer as it was no longer available. He testified the Applicant was cognizant of everything they discussed and never said he did not understand. Counsel further testified that the Applicant was not under the influence during his plea and that he did not tell the Applicant to answer the Court's questions in a certain way. Counsel also testified that the Applicant's plea was in line with his co-defendant's plea offers and that the Applicant's version of the facts was in line with his confession. During his testimony, Counsel maintained that he reviewed the Applicant's confession in "excruciating" detail every time he met with the Applicant, as well as the law on suppression because it was critical to the case. Counsel further testified that he never subjected the Applicant to any form of coercion. However, he testified he did encourage the Applicant to

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take the offer as it was his best possible option under the circumstances. He testified that he always wished he could have gotten a better plea deal for the Applicant but the solicitor was not willing to offer anything more.

Former Assistant Solicitor Gregory Collins was also present and testified he has been practicing law for eight (8) years and spent ninety-eight (98%) to ninety-nine (99%) percent of his career in criminal law. He testified he was the assistant solicitor assigned to prosecute the Applicant's case. He testified a kilogram of cocaine was found underneath a trailer. He testified the case was initiated by a confidential informant tip. He testified police learned the Applicant drove from North Carolina with the cocaine in a car engine block. He testified originally four (4) co-defendants were arrested in association with the drugs, but one case was *nolle prossed*. He testified that in his evaluation of the case the minimum penalty was too steep considering there was a lack of gang activity and involved misguided defendants. As a result, he testified, he convinced his bosses that it was in the interest of judicial economy to make a lower offer, thus the inception of the seventeen (17) year offer. He testified the Applicant rejected the original seventeen (17) year offer resulting in instructions to him that there were to be no further offers made. Collins testified he was in constant communication with the Applicant's attorney, felt the plea offers would be accepted, noted the plea offers in the file, the Applicant ultimately pled guilty in a group with his three (3) co-defendants, and that the plea colloquy was "very detailed." Collins testified that, had there been anything unusual about the Applicant's guilty plea proceeding, he would have brought it to the judge's attention. He further testified that there were interpreters present for each defendant and the plea was time consuming so as to ensure each defendant understood the colloquy.

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Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

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

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. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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 117-18, 386 S.E.2d at 625

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(citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel provided credible testimony, while the Applicant’s testimony was not credible. Counsel provided credible testimony that he conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel testified he discussed the pending charges, range of penalty, the elements of the charges and what the State was required to prove, the Applicant’s constitutional rights, the Applicant’s version of the facts, and possible defenses or lack thereof.

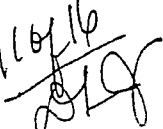
Regarding the Applicant’s claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant’s attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev’d on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel’s representation did not fall below an objective standard of reasonableness.

This Court finds most persuasive the Applicant’s statements during his guilty plea that he understood his lawyer, was completely satisfied with Counsel’s representation, that he felt Counsel did all he could, and that he had no complaints about Counsel’s representation. (Tr.

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20:8-25; 21:1-25). This Court finds that Counsel's representation did not fall below an objective standard of reasonableness. This Court further finds Counsel utilized the services of an interpreter and was able to communicate effectively with the Applicant. Counsel's ability to communicate effectively with the Applicant is reflected in the Applicant's statement to the Court during his guilty plea that he understood his talks with his attorney. (Tr. 20:25-21:1). This Court also finds credible Counsel's testimony that he was never told by the Applicant that he signed a blank form while being questioned by police. This Court finds nothing in the record indicates the Applicant signed any blank forms or advised his attorney of such.

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, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). 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) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). 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. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See 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

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may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

A defendant knowingly, freely, voluntarily, and intelligently pleads guilty when the defendant has a full understanding of the consequences of his plea and the charges against him. Boykin, 395 U.S. at 243–44, 89 S. Ct. at 1712. Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 73–74, 97 S. Ct. 1621, 1629–30 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347, 350 & n.1 (4th Cir.1975), *overruled on other grounds*, United States v. Whitley, 759 F.2d 327, 331 (1985).

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. The record reflects the Applicant was advised of the charge and range of penalty he was facing (Tr. 12:3–6; 12:12–17; 14:10–23; 15: 8–14, 17–19; 16: 7–20), as well as the Applicant's potential enhancement exposure (Tr. 15:1–5). The court advised The Applicant he was pleading guilty to a violent offense, which would impact his parole eligibility. (Tr. 15:1–14). The Applicant was advised of his constitutional rights (Tr. 18:10–25) including the right to a jury trial (Tr. 18:12–

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16), his right to remain silent (Tr. 18:18-21), and his right to confront his accusers (Tr. 18:16-18). The Applicant also told the court that he was aware he was giving up these rights by pleading guilty. (Tr. 18: 10-25; 19:1-8). The Applicant was advised that his guilty plea could impact his immigration status and result in deportation. (Tr. 16: 23-25; 17:7-11, 14-19, 22-25; 18:1). The Applicant stated he was not promised anything, coerced or threatened by anyone to plead guilty (Tr. 22:3-6; 9-12; 15-18) and that he was accurate and truthful in his answers (Tr. 24:12-15). The Applicant stated his guilty plea was given freely and voluntarily (Tr. 23:12-15; 20-22; 27:10-12) and that he had no matters to make the court aware of (Tr. 19:11-25; 20: 1-5). The Applicant also told the court he had not been treated for alcohol abuse, drug abuse, or mental illness (Tr. 11:9-11), was not under the influence of drugs or alcohol within the past twenty-four (24) hours (Tr. 11: 14-17), and did not suffer from any physical, emotional or nervous problems that would keep him from understanding the proceedings. (Tr. 11:20-24). The court discussed the Applicant's negotiated plea (Tr. 12:21-24; 13:3-13; 14:10-17; 28:24-25; 29:1-5), which the Applicant asked the court to accept (Tr. 14:20-23). The Applicant was advised of his right to appeal. (Tr. 22:21-23:3). The Applicant told the court that he had enough time to decide to plead guilty and was not rushed (Tr. 23:6-9) and that he understood the proceedings through the assistance of his interpreters (Tr. 23:25-24:3). The record reflects that the Applicant's charge was reduced based on the Applicant's cooperation. (Tr. 30:14-20). Lastly, the Applicant agreed with the facts as presented by the State during the guilty plea (Tr. 27:6-9); apologized to the State for his actions (Tr. 28:19-23); and told the Court he had no questions regarding the nature of his plea (Tr. 24: 6-9).

This Court finds and the record reflects the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court does not find credible the

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Applicant's assertion that he was told by Counsel how to respond to the Court's questions. This Court finds there was ample support in the record for the plea judge to find that the Applicant's plea was freely, voluntarily, knowingly, and intelligently made.

This Court finds the Applicant has failed to carry his burden of proving Counsel's performance was deficient in any manner or that his guilty plea was not entered freely or voluntarily. This Court also finds the Applicant has failed to carry his burden of proving but for Counsel's performance he would not have pled guilty. Specifically, this Court finds the Applicant provided no testimony expressing his interest in proceeding to trial.

Newly Discovered Evidence

The Applicant also alleges evidence exists not previously presented and heard that requires vacation of his conviction and sentence. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action "if there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. CODE ANN. § 17-27-20(4) (1962).

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. CODE ANN. §17-27-45(c) (1995).

In order for an Applicant to obtain a new trial on the basis of newly discovered evidence, the party requesting the new trial "must show that the evidence: (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C.

610, 611-12, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 329, 256 S.E.2d 737, 739 (1979)). This Court finds the Applicant's allegation of newly discovered evidence is wholly without merit. At the evidentiary hearing, the Applicant provided no new evidence. The Applicant's claim that his constitutional rights were violated does not constitute newly discovered evidence and the Applicant's claims do not meet the requirements outlined in Hayden v. State. See id.

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. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The 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. Therefore, all other allegations 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 occurring before or during his guilty

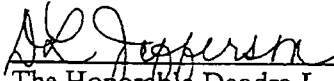
plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 5th day of Feb., 2014


 The Honorable Deadra L. Jefferson
 Presiding Judge, 9th Judicial Circuit


 At Chambers

WITNESSES

Rice/BCSO

DOCKET NO. 2009GS0702346

The State of South Carolina

County of Beaufort

Defendant

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

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

November Term 2009

ARREST WARRANT NUMBER

347998

THE STATE

VS.

Ramon Atienzo- Perez

ACTION OF GRAND JURY
True Bill

Ramon Atienzo- Perez
Forfeiture of Grand Jury NOV 16 2009
Date:

Indictment for

Drugs / Trafficking in cocaine, 400 g or more

Defendant

Witness:

SC Code: 44-53-0370(e)(2)(e)
CDR Code:0281

C.C.C. PLS. and G.S.

VERDICT

Foreperson of Petit Jury
Date:
INDICT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2009GS0702346

At a Court of General Sessions, convened on November 19, 2009, the Grand Jurors of Beaufort County present upon their oath:

Drugs / Trafficking in cocaine, 400 g or more

That in Beaufort County, South Carolina, on or about October 20, 2009, the Defendant, Ramon Atienzo- Perez, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase; or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of 400g; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


Solicitor

STATE OF SOUTH CAROLINA

7-25 yr

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
 STATE VS.
Ramon Atienzo- Perez
 AKA: _____
 Race: H Sex: M Age: 32
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2009GS0702346A/W#: J347998Date of Offense: 10/20/2009S.C. Code § : 44-53-0370(e)(2)(e)CDR Code #: 0281

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADSTO: Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offensein violation of § 44-53-0370(e)(2)(b)1 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. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.
 ATTEST: Greg Collins 77010 Ramon Atienzo Perez Michael Dinkbush 69647
 SC Bar# Defendant Attorney for Defendant SC Bar#
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; 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. 461 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 _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	— \$100	\$ 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	\$ 25
§ 14-1-213 (Drug Court Surcharge)	— \$150	\$ 150
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	— \$5	\$ 5
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 8.90
TOTAL		\$ 288.90

Clerk of Court/ Deputy Clerk

Court Reporter: Deborah Fisher

SCCA/217 (06/2010)

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 Condition Discharge - Court
 \$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.
Presiding Judge D. CampbellJudge Code: 2160Sentence Date: 1-24-11