

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

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S.C. Supreme Court

LEONARD JARVIS ROPER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001678

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 2009-GS-10-1616
2009-GS-10-1617
2009-GS-10-1618
2009-GS-10-1619
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2009-GS-10-1621

STATE OF SOUTH CAROLINA)
-vs-) TRANSCRIPT OF RECORD
JARVIS ROPER,) November 19, 2009
Defendant.) Charleston, South Carolina

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Stephanie Linder, Assistant Solicitor
Attorney for the State

Alex Apostolou, Esquire
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 THE COURT: All right. Are you Jarvis
2 Leonard Roper?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Mr. Roper, let's see.
5 You got a number of charges, it looks like, you're here
6 for, so let's go through them one by one.

7 Indictment 2009 GS-10-1621 is distribution of
8 cocaine in proximity of a school. That carries a
9 sentence of up to ten years in jail. You want to plead
10 guilty to that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Indictment 2009
13 GS-10-1617 charges you with trafficking cocaine. That
14 carries a minimum of 7 to 30 years. It looks like the
15 state is going to let you plead guilty to trafficking
16 cocaine, 10 to 28 second, which is 5 to 30 years. You
17 want to plead guilty to that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Indictment 2009 GS-10-1616,
20 trafficking cocaine, 10 to 28, second is 7 to 30. Again,
21 it looks like they'll let you plead to trafficking, 10 to
22 28, second, 5 to 30 years. You want to plead guilty to
23 that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Indictment 2009

1 GS-10-1619, another trafficking, 10 to 28 second, and
2 that isn't 7 to 30 years, but they'll let you plead
3 guilty to trafficking, 10 to 28, second, 10 to 28 second
4 offense, 5 to 30 years. You want to plead guilty to
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Indictment 2009 GS-10-1618 is for
8 trafficking cocaine, 28 to 100 grams, second, 7 to 30
9 years. They're going to let you plead guilty to
10 trafficking 10 to 28, 5 to 30 years. You want to plead
11 guilty to that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. And, finally, 2009
14 GS-10-1620 trafficking 28 to 100, second, 7 to 30 years.
15 They'll let you plead guilty to trafficking 10 to 28
16 second, 5 to 3 years. You want to plead guilty to that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So all of your trafficking
19 charges were originally 28 to 100 grams second, 7 to 30
20 years. All of them are letting you plead down to 10 to
21 28 grams second, which is 5 to 30. So you want to plead
22 guilty to all of those?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Plus the proximity charge?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right.

2 Now, you have pled guilty, or are pleading
3 guilty, to charges that are all strike offenses. You
4 understand in this state that we have crimes that if you
5 get enough of them you go to jail for the rest of your
6 life. We call those strike offenses. We use a baseball
7 analogy. You get so many strikes you're out. Three
8 strike offenses are serious offenses, and if you get
9 three of those, you're out. You go to jail for the rest
10 of your life without the possibility of parole.

11 Two strike offenses are called most serious.
12 You get two of those, you go to jail for the rest of your
13 life without the possibility of parole.

14 All of these charges that you're pleading
15 guilty to today are three strike offenses. Since they
16 all carry out over a period of time, it looks like
17 about -- stretched out over three months, you could today
18 be facing life without the possibility of parole;
19 however, I assume the state isn't going to seek life
20 without the possibility of parole today, but you now have
21 maxed out on strikes today, so if you ever get convicted
22 of another strike offense, you'll go to jail without the
23 possibility of ever getting out.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do, sir.

1 THE COURT: All right. Still want to plead
2 guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Also, all of these
5 are considered violent so that affects your parole
6 eligibility. Do you understand that? You have to serve
7 at least a third of your sentence actually on these
8 strike offenses. There is no parole?

9 THE ASSISTANT SOLICITOR: Yes, Your Honor, no
10 parole.

11 THE COURT: So it doesn't really matter
12 whether or not you're violent or nonviolent. That
13 doesn't affect your parole eligibility because you don't
14 have parole eligibility. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, you have the right to a jury
17 trial, and if you want a jury trial, you stop me at any
18 time in this process and we will then arrange for you to
19 have a jury trial. The state has to then present enough
20 evidence to convince 12 jurors you're guilty beyond a
21 reasonable doubt. All 12 have to agree you're guilty in
22 order to convict you, and, if convicted, you have the
23 right to appeal.

24 You can challenge the admissibility of the
25 state's evidence, put up evidence of your own, testify,

1 if you want, and if you don't want to testify, the judge
2 will tell the jury they're not to hold that against you
3 while they're deliberating. Do you understand all those
4 rights?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you still want to plead
7 guilty today?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And are you pleading guilty to
10 each of these charges because you're guilty of each of
11 these charges?

12 THE DEFENDANT: Yes, I'm guilty.

13 THE COURT: Are you under the influence of
14 any drugs or alcohol today?

15 THE DEFENDANT: No.

16 THE COURT: Do you have any physical, mental,
17 or emotional conditions that keep you from understanding
18 what you're doing here today?

19 THE DEFENDANT: No, sir.

20 THE COURT: You're standing next to your
21 lawyer, Mr. Apostolou. Are you satisfied with his
22 representation?

23 THE DEFENDANT: Yes, I am, sir.

24 THE COURT: Do you need any more time with
25 him?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. You and he sat down
3 and talked about this case before you got here today; is
4 that right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And he told you about the
7 evidence that the state has against you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And he told you about what the
10 law is on these charges?

11 THE DEFENDANT: Yes, he did, sir.

12 THE COURT: All right. You discussed whether
13 or not to go to trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you decided after those
16 discussions that you didn't want to go to trial; is that
17 right?

18 THE DEFENDANT: No, sir.

19 THE COURT: So you don't want to call
20 witnesses on your behalf?

21 THE DEFENDANT: No, sir.

22 THE COURT: You don't want to put up a
23 defense?

24 THE DEFENDANT: No, sir.

25 THE COURT: You don't want to get up and tell

1 the jury your side of the story?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. You waive all those
4 rights. You don't want to do any of that, you want to
5 plead guilty today instead of going to trial; is that
6 correct?

7 THE DEFENDANT: That's correct, sir.

8 THE COURT: All right. That's your decision
9 and your decision alone?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Anybody promise you
12 anything or threaten you to get to you plead guilty other
13 than the state has allowed -- or has agreed to a
14 reduction in these charges?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What did they promise you in
17 that?

18 THE DEFENDANT: I'm sorry.

19 THE COURT: So nobody has promised you
20 anything or threatened you to get you to plead guilty
21 other than they reduced the charges.

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. How old are you?

24 THE DEFENDANT: Thirty-four, sir.

25 THE COURT: How far did you get in school?

1 THE DEFENDANT: Went to college, two years of
2 college.

3 THE COURT: Where at?

4 THE DEFENDANT: At Trident Tech, sir.

5 THE COURT: Do you have a job?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What do you do?

8 THE DEFENDANT: I'm in the cleaning business.

9 THE COURT: Are you married?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do have you children?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: How many?

14 THE DEFENDANT: Four.

15 THE COURT: And how old are they?

16 THE DEFENDANT: Fifteen, twelve, sixteen,
17 two.

18 THE COURT: Okay. Mr. Apostolou, does this
19 gentleman understand what he is doing when he waives his
20 right to a jury trial?

21 MR. APOSTOLOU: He does, Your Honor.

22 THE COURT: Does he understand what he's
23 doing when he pleads guilty?

24 MR. APOSTOLOU: He does, Your Honor.

25 THE COURT: Do you agree with the decision?

1 MR. APOSTOLOU: I do, Your Honor.

2 THE COURT: Did you explain to him strike
3 offenses?

4 MR. APOSTOLOU: We covered that subject in
5 depth, Your Honor.

6 THE COURT: Did you talk to him about no
7 parole?

8 MR. APOSTOLOU: Yes, Your Honor, we did.

9 THE COURT: All right. I find that his plea
10 is freely, voluntarily, and intelligently made. What
11 would the state like to tell me about this?

12 THE ASSISTANT SOLICITOR: Thank you, Your
13 Honor. May it please the Court, on September 10 of 2008
14 in the area of 1601 Harborview here in Charleston County,
15 SLED and the city were working a case, an investigation,
16 and the defendant distributed two ounces of cocaine to a
17 confidential informant who was working under their
18 direction and control.

19 About a week later on September 16, 2008 at
20 484 Savannah Highway here in Charleston County, again,
21 SLED and the city were working an investigation, and the
22 defendant sold one ounce to a confidential informant.
23 Later, on October 10, 2008, 415 Meeting Street, which is
24 the Burris Liquor Store here in Charleston County, the
25 defendant again sold the confidential informant 54.67

1 grams of cocaine, and he was working for SLED at that
2 time, and that happened within one half mile of Fraser
3 Elementary School at 63 Columbus.

4 On October 22, 2008, again at Burris at 415
5 Meeting Street here in Charleston County, SLED was
6 working the same investigation, and the confidential
7 informant bought two ounces of cocaine from the
8 defendant. Finally, November 12, 2008, 415 Meeting
9 Street, Burris again, the defendant sold another ounce of
10 cocaine to a confidential informant who was working under
11 the direction and control of SLED and CPD.

12 As far as a prior record, he has a '95
13 possession of crack and possession of scheduled
14 substance, and, Your Honor, we are asking for a
15 substantial sentence, and I have three individuals
16 here -- or, two individuals here from SLED who have come
17 down for this me, including Lieutenant Frank O'Neill, who
18 has been leading up the plea, and he would like to be
19 heard as to sentencing at the appropriate time.

20 THE COURT: Okay. What would you like to
21 tell me?

22 THE WITNESS: Your Honor, law enforcement
23 considers Mr. Roper a kingpin. Numerous entities and
24 police departments in this area have been investigating
25 Mr. Roper for some time, North Charleston, Charleston

1 City, and Charleston County. Mr. Roper's network runs
2 from James Island, which he controls, throughout the
3 whole Charleston area.

4 During the investigation, Mr. Roper is a
5 person that we couldn't buy small amounts from. We had
6 to buy ounce plus amounts from him because he is a major
7 player.

8 We spent over \$10,000 of state buy money.
9 This is not something that we like to do, but we had to
10 do in this case. It was necessary. It's quite a bit of
11 funds in this day and time with our budget it's not
12 something that my supervisors really wanted me to do, but
13 we considered Mr. Roper that big a target.

14 During this investigation, we spent endless
15 man hours, surveillance hours, more than just an average
16 street buy. We consider him a threat. You know,
17 throughout the investigation, to say he was only arrested
18 one other time, well, he is one of the smarter drug
19 dealers, kingpins that we've dealt with, and that is why
20 he hadn't been arrested until this time.

21 I respectfully request that he receive the
22 maximum, Your Honor, and as part of the plea, I would
23 like the state to be reimbursed for at least the state
24 funds that we spent on the trafficking buys. Thank you,
25 Your Honor.

1 THE COURT: Okay.

2 THE WITNESS: Yes, sir. I'm Major Miles,
3 South Carolina Law Enforcement Division. I worked under
4 Lieutenant Frank O'Neill. I was the lead case agent
5 under him on Mr. Roper's case. I would just like to back
6 up what Lieutenant O'Neill said. This was -- I know the
7 amount of buys went over about a four-month period, but
8 we had about five to six months of endless surveillance
9 on this operation, and a lot of entail coming in that
10 Mr. Roper was moving large quantities of cocaine in and
11 out of state from the Georgia area and have been
12 contacted by federal authorities on his working in those
13 kingpins out of that area.

14 A lot of work went into him, and I doubt this
15 was -- I know they were speaking previous about his
16 previous offense, but I would just like to go back what
17 lieutenant said. I think after following him through
18 that five to six-month period, he was very smart in all
19 his actions. That is all I have, sir.

20 THE COURT: Okay. Anything further from the
21 state?

22 THE ASSISTANT SOLICITOR: No, Your Honor.

23 THE COURT: Mr. Apostolou?

24 MR. APOSTOLOU: Thank you, Your Honor. As
25 Jarvis told you, Your Honor, he's 34 years old. He was

1 actually born in Tennessee, but he's lived whole his life
2 in Charleston. You can see from the courtroom, Your
3 Honor, that he has a ton of family in the area. He has a
4 ton of family here today to support him. He told you he
5 is married. He is married to this beautiful young lady
6 here, Nadia Roper. Together they have two children, and
7 Jarvis has two children from a previous relationship.

8 Judge, I have a letter from his previous --
9 the mother of his other child, just talking about what a
10 wonderful father he is. May I approach the Court, Your
11 Honor?

12 THE COURT: Uh-huh.

13 MR. APOSTOLOU: That was the oldest child.
14 That child has some development issues, and that child
15 has come to live with Jarvis and Nadia into their house,
16 and he has another child that is here in Charleston that
17 he supports that lives with his mother, and together he
18 and Nadia have a six-year-old and a two-year-old, Judge.

19 As far as school, Jarvis told you he attended
20 two years of college. His wife graduated from Charleston
21 Southern, and he actually has a master's degree in
22 business administration. So they are a very well
23 educated family and successful family. Jarvis is a
24 businessman here in town. He started a car detailing
25 business called It's All in the Shine, and that was his

1 first business he started. He started that at the
2 beginning of this decade, and he does car detailing. He
3 works hard. He did a lot of work himself and he built
4 that up, and then he opened up a record label, called
5 Dirty Water Entertainment that does promotions and does
6 artists and actually has several artists put records out.

7 He's very active in that, and together with
8 his wife, they have a business called Spic and Span
9 Cleaners, and this business, Your Honor, goes into the
10 local businesses at night, cleans out the offices, and
11 Jarvis and Nadia are very hands on in that business.
12 They've had a lot of employees, but a lot of the work
13 they actually do themselves, Judge.

14 You can see all of the family that he has
15 here. One of the gentlemen that is here is his pastor
16 from his church. I'm a criminal defense lawyer. I'm a
17 firm believer that good things come out of bad
18 situations. These incidents happened over approximately
19 a year ago. Some of them happened over a year ago, and I
20 think the pastor -- and I know several of the family
21 members want to address the Court about this situation,
22 at the appropriate time, but I know his pastor wants to
23 talk about all the good things that he's seen in Jarvis
24 and all that Jarvis has done.

25 Judge, there's a lot of charges before you.

1 What I would like to talk about is the way the charges
2 unfolded. Jarvis's previous record is a simple
3 possession of cocaine from 1995. He did one year -- he
4 got a one-year sentence suspended on one-year probation.
5 What happened was this individual, this confidential
6 informant that was a friend of Jarvis's, had dinner at
7 his house, the families have been together -- what
8 happened was this individual got arrested.

9 He started working with SLED, and they made
10 several sales. It was never a situation where he was
11 arrested, got out, and continued to deal drugs, Judge.
12 What happened was the sales went. The confidential
13 informant would call him. Sometimes Jarvis didn't have
14 anything, and they wouldn't have a sale. And the
15 confidential informant would keep calling, and then a
16 sale would take place, and then a couple weeks would go
17 by and another one would go by.

18 SLED was privy to this and they were watching
19 this, but Jarvis wasn't privy to this, so all of these
20 sales occurred and then he got arrested. Since he was
21 arrested, and then he was charged with all of the five
22 offenses, so basically a gentleman that's never spent
23 more than a day in jail -- I guess he spent a day in jail
24 when he got arrested in 1995, but basically he's never
25 spent a day in jail, all of a sudden he get arrested in

1 December of last, year and he's looking at all of these
2 charges. He's looking at the possibility of life without
3 the possibility of parole, without ever having the
4 benefit of probation or any of that stuff, so all of a
5 sudden, now he's facing all of these charges.

6 One of the hardest things when somebody comes
7 to see you is to explain to them about mandatory minimum
8 sentences. Obviously, these sentences have five year
9 mandatory minimum. They are all strikes. I told Jarvis
10 that after he gets out of prison, and he knows he's
11 obviously going to prison today, after he gets out of
12 prison, basically, any offense is going to be a life
13 without the possibility of parole offense, so that is not
14 going to be an issue, what happens to him in the future.
15 This is his one and only chance.

16 He has all of these strikes. He has the
17 mandatory minimum on all of these sentences. I would
18 like to talk briefly about the charges, if I may, Judge.

19 Two of the sales that Jarvis made -- and all
20 of this was made to the same confidential informant, same
21 confidential informant was the one that was calling him
22 and trying to set up these deals -- all of these
23 sentences, or two of these sentences, he sold less than
24 28 grams, Judge. So the proper charge for that would
25 naturally be the charge that he's pleading straight up

1 on, and those are second offenses as well. He's pleading
2 to a second offense, his first offense being the '95
3 simple possession, Judge.

4 Even though there are numerous charges, they
5 are in the same time period. They were all occurring
6 before he got arrested. Since he's been arrested, he's
7 had absolutely no trouble with anybody, no arrests or
8 anything to that effect. As far as paying back
9 restitution to the Courts, we've agreed to that. That is
10 not a problem. He lost a Chevy Tahoe. When he was
11 arrested, he was in a vehicle.

12 We didn't fight the forfeiture. We handed it
13 over. No problem. We will gladly repay them. There was
14 a search warrant issued on his house, Judge. That search
15 warrant found less than a gram of cocaine. It didn't
16 find any guns.

17 When he was arrested, he didn't have
18 possession of any guns. There is no weapons at all
19 involved in this case at all, and, you know, anybody that
20 is seriously involved in the drug business has a tendency
21 to have drugs in their house and has a tendency to be
22 around weapons. That was not the case in this situation
23 at all. He's gladly forfeited the cash. That's not a
24 problem, the car.

25 In addition to that, Judge, as you know, he's

1 going to be on two years of community service when he
2 gets out of prison, so that's an extra layer of
3 supervision that going to be on top of him. What we're
4 asking for you to do, Judge, is to give him the mandatory
5 minimum. It's 85 percent time. He spent one month in
6 jail, so at the bare minimum, he's going to spend over
7 four years. He's got a two-year-old and a six-year-old
8 and a 15-year-old.

9 When he comes out of prison, Judge, his son
10 is going to be 20, 10, and 6, and his other son is going
11 to be 16 years old. So it's going to be a tremendous
12 hardship for his family. It's going to be a tremendous
13 hardship for his children. When you're in these kind of
14 situations and you're sentencing an individual, you're
15 sentencing a father, you're sentencing a whole family,
16 and a lot them are here in the courtroom, Judge.

17 They would like to talk about the kind of
18 person that Jarvis is, and I know whenever it's
19 appropriate, you would like to hear from, them and I
20 think Jarvis may want to speak to you briefly.

21 THE COURT: All right. You got, on each of
22 the charges, the trafficking charges, you got a mandatory
23 minimum. 50,000 fine as well. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you also have a mandatory

1 \$10,000 fine on the -- it's an and or, \$10,000 fine on
2 the cocaine charge, so I don't have to fine you on that,
3 but the trafficking all have mandatory \$50,000 fines, in
4 addition to the mandatory minimum jail times.

5 Okay. You still want to plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. All right. Who wanted to
8 say something on his behalf?

9 THE WITNESS: Good afternoon. My name is Lee
10 Pressley. I'm his deacon at his church. And Jarvis,
11 ever since he came to my church, he got involved very
12 quickly. He sang on a male choir with us. He helps us
13 with our youth boys, helping us out with car washes and
14 everything like that. He just was -- is a well-rounded
15 gentleman in our church.

16 Dealing with the charges here today, he can
17 turn his life around. It's not too late, and by doing
18 everything with us in the church, we will help him. We
19 will help him. And I just wanted to please say to the
20 Court today, just to let everyone know that when he's
21 coming down to deal with Mr. Jarvis, we are with you, the
22 church is with you, and we will continue to pray with
23 you. We mean that, and just have mercy on him. Thank
24 you.

25 THE COURT: Yes, ma'am. Your name?

1 THE WITNESS: I'm Vera Roper, and I'm
2 Jarvis's mother and Jarvis Roper is a decent young man.
3 He's a good son, he's a good father, and he's a good
4 husband. And I don't understand all these charges
5 because I'm not in your realm, but I know Jarvis is not
6 kingpin.

7 Jarvis don't have any money. Jarvis don't
8 even know how to shoot a gun. Jarvis don't be around
9 people or any of those things. I may sound excited right
10 now and overwhelmed and I am because Jarvis is a good
11 boy, and that is my boy, and God is going to bless him
12 and God is going to take care of him, and all of this is
13 going to be behind him.

14 Jarvis is a good boy, and I love you, Jarvis.
15 He cook, he clean, he do everything because I taught him.
16 He may got have caught up in this worldly stuff. He may
17 have got caught up, but that is all right, Jarvis.
18 You're going to win. You're going to prevail because
19 you're a good boy. All the thing they're saying about
20 you, we know it's not true. They always seems to put the
21 people in jail who belongs in jail. I don't even want me
22 to say all these things, but I can't help it. You're a
23 good boy, Jarvis. You're going to be all right. You're
24 going to be all right, Jarvis.

25 THE COURT: Okay. Thank you. Yes, ma'am,

1 your name?

2 THE WITNESS: Nadia Roper. Jarvis Roper is
3 my husband, and I just wanted to tell you, Your Honor,
4 that, first of, all we're not proud to be in front of you
5 today because Jarvis was raced better than this. You can
6 see the support and everything that he has from his
7 family and we're behind him 100 percent, but I just want
8 to tell you a little bit about the man that I know and I
9 love and my partner.

10 The man that stands you before you, Your
11 Honor, is the man that taught me how to cook. He was the
12 man that encourage me when I was in college, taking 21
13 credit hours a semester. He helped me study, and when he
14 couldn't help me study, he gave me the feeling I could
15 make it through. He encouraged me to go to school and
16 continue my education and get a master's degree, and once
17 I did that, Your Honor, and when I had a child, he prayed
18 for a daughter and he was the first person to say that
19 his princess was here.

20 The man who stands before you is the man that
21 took care of me hand and foot when I had emergency
22 gallstone surgery and hernia surgery. This is the man
23 that chaperones his daughter on field trips, Your Honor.
24 He goes out -- he went out of his way to catch a T-shirt
25 out of a cannon at a Riverdog game. He stuck his hand in

1 a cow's mouth just so he she would be proud and just
2 happy with everything else. He took in his elder son, a
3 15-year-old who was on track to get a certificate,
4 meaning that he, you know, he wouldn't have a high school
5 diploma at the end of his 12 years in school, but his dad
6 attended every meeting to make sure that he could become
7 diploma eligible once he finished 12th grade.

8 He signed him up for organized sports. He
9 knew that he never played so, he worked with the coach
10 every day to find the right position for his son so he
11 could come home at night and be proud. This is the man
12 who gets on the floor every night to play their version
13 of football. It's called hike the ball to daddy.

14 Your honor, my husband is truly a good man.
15 I'm sorry that we're here. We should never be here, but
16 we are. We're sorry, and we just ask for the Court's
17 mercy. We ask for the Court's mercy.

18 THE COURT: Okay. Yes, sir?

19 THE WITNESS: Yes, sir. My name is Reverend
20 Joseph Palfor. I'm a pastor, and I'm also his uncle.
21 And, like I said, the man that is standing here today is
22 a totally different man from what we are hearing. He is
23 a family man, and he is a church-going man. He comes to
24 my services, he and his wife and kids come there, and
25 praise God and praise the Lord.

1 Like I said, Jarvis helps out in the
2 community. He'll go out of his way to help people. His
3 grandfather is here. He'll come there on a Saturdays and
4 Friday nights and just what his grandfather asks him,
5 anything, he'll stretch out and do it. And like his
6 mother had said, as far as kingpin money, I don't know
7 about it, because he tax ate everybody in the family for
8 his lawyer and for this here charges.

9 If he had some money, I am quite sure it
10 would have materialized by now. But like I said, even
11 for his donation to the church, he is stretching himself
12 and his family just to give \$10, or \$20, to say he's
13 paying a tithe or dues.

14 If he had the same kind of money, I'm quite
15 sure he would have been putting the money somewhere.
16 They say he's a kingpin. Like I said, I'm a pastor, so
17 I'm not in the their world, but there should be a money
18 trail somewhere. They talk about all the stuff that he
19 done. There should a money trail somewhere.

20 You know, I'm just saying, the man I know
21 that is standing there, he's a family man, a community
22 man, and everything else, you know, and the leniency that
23 you could find in your heart we pray for.

24 THE COURT: All right. Yes, sir?

25 THE WITNESS: My name is Elijah Jameson.

1 Jarvis is my send oldest grandson. He and his mother was
2 raised up in my house, and how he got mixed up in this, I
3 do not know. But I know he is innocent of a lot of these
4 charges. Thank you.

5 MR. APOSTOLOU: And Jarvis would like to say
6 something.

7 THE COURT: I was getting ready to ask you.
8 Mr. Roper, what would you like to say?

9 THE DEFENDANT: Yes, sir. I'm just
10 exhausted, Your Honor. I really am. This year has been
11 the worst year of my life. I've never, ever been through
12 anything like this. This experience is tremendous. I
13 have hurt so many people in my family, pretty much
14 disgraced my family. It's just right now I'm just really
15 standing in front of you because I can't believe I
16 allowed myself to be in this situation, Your Honor.

17 Since I came home this year, I've been to
18 church every Sunday. I put my faith in God. I started
19 worshipping him, and it was just really rough, Your
20 Honor. It's just hard right now, and just not being able
21 to see my kids when I left to come here this morning. I
22 didn't want to let my daughter go. My son is too young
23 to understand, but by the time he plays football, I know
24 he's going to be daddy, daddy, daddy, and right now it's
25 just that I'm so lost for words. I got so much emotion

1 right now that is running through me right now, and I'm
2 just really, really apologetic, just to be standing here
3 in front of you.

4 I been a model citizen. I help out, whatever
5 I can do with anybody who asks me, my grandparents, my
6 parents, it doesn't even matter. I'm just a normal guy,
7 Your Honor, that made an awful decision. And I am at
8 your mercy and at the Court's mercy.

9 THE COURT: All right. Well, I don't know
10 what to make of all this. I've got state law enforcement
11 sitting here telling me you're a drug kingpin, and I've
12 got these folks telling me that you're one of the best
13 people they know and you're an upstanding member of the
14 community.

15 I don't know if you're heeding a double life
16 or what, but you have stepped into a big one, that's for
17 sure, multiple charges, and as much time as you're
18 facing, it could even be worse than it is, because,
19 obviously, they could have asked for life without parole
20 just because these are all spread out over a period of
21 time.

22 You know, difficult situation. Well, here is
23 what I'm going to do: On the cocaine, the PWID charge,
24 that's ten years on that one. The rest of them, it's 20
25 years and a \$50,000 fine on each of them. They'll all to

1 run concurrent. You'll get credit for any time you've
2 served. Good luck to you.

3 - - -

4 (Whereupon, the proceedings were concluded.)

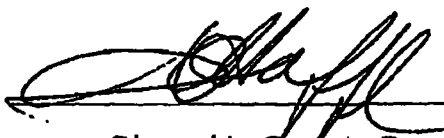
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 19th of November 2009.

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

August 6, 2012


Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Leonard Jarvis Roper

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

v.

State of South Carolina

2012 - CP - 10 - 3597
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2012 JUN - 1 PM 4:41
JULIE J. ARTHUR
CLERK OF COURTINSTRUCTIONS - 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
2. Name and location of Court which imposed sentence Charleston
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-10-01617 Trafficking cocain 10-28 grams, 2nd offense
 - (b) 2009-GS-10-01621 Pwid/District. Drug in Proximity of school cocaine
 - (c) 2009-GS-10-01620 Trafficking cocaine 10-28 grams, 2nd offense
 - (d) 2009-GS-10-01618 Trafficking cocaine 10-28 grams, 2nd offense
 - (e) 2009-GS-10-01619 Trafficking cocaine 10-28 grams, 2nd offense
 - (f) 2009-GS-10-01616 Trafficking cocaine 10-28 grams, 2nd offense

Revised 3/2003

5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 20 years-concurrent with all other sentences imposed by the Court
 - (b) 10 years- concurrent with all other sentences imposed by the Court
 - (c) 20 years- concurrent with all other sentences imposed by the Court
 - (d) 20 years-concurrent with all other sentences imposed by the Court
 - (e) 20 years-concurrent with all other sentences imposed by the Court
 - (f) 20 years-concurrent with all other sentences imposed by the Court
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty x
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. Court of General Session- 9th Judicial Circuit motion to reconsider sentence
 - ii. Court of Appeals (2011-UP-257)
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Denied by the Honorable Roger M. Young Circuit Court Judge 9th Circuit
 - ii. Direct Appeal Dismissed
 - iii. _____
 - (c) the date of each such result:
 - i. December 14, 2009
 - ii. June 1, 2011
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. None
 - ii. Court of Appeals (2011-UP-257)
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Not Applicable
 - (b) Not Applicable
 - (c) Not Applicable
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) 4th Amendment Violation
 - (c) Violation of Due Process Rights
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) See attached addendum
 - (b) See attached addendum
 - (c) See attached addendum
12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? Yes, Motion to reconsider Sentence.
 - (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? Motion to reconsider
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. Motion to reconsider sentence
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:

i. Charleston County 9th Judicial Circuit

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. December 14, 2009

ii. _____

iii. _____

iv. _____

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

i. Not Applicable

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. Not Applicable

ii. _____

iii. _____

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

i. Not Applicable

ii. _____

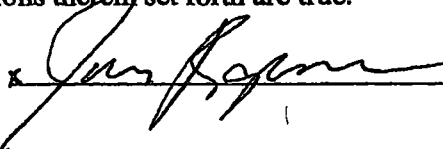
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Not the proper forum for the issues to be addressed.
- (b) _____
- (c) _____
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? Not Applicable
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, Lanelle Durant
- (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. Alex Apostolou, 215 East Bay Street, Suite 505-F, Charleston, SC 29401
- ii. Lanelle Durant 1330 Lady Street, Columbia, SC 29201
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Alex Apostolou (plea and sentencing)
- ii. Lanelle Durant (direct appeal)
- iii. _____
19. State clearly the relief you seek in filing this application:
- For the guilty plea sentenced to be vacated and additionally Mr. Roper would pray for his case to be reversed and remanded to the lower court
20. Are you now under sentence from any other court that you have not challenged?
- NO

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, Leonard Jarvis Roper, 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.



SWORN to and subscribed before me this 5th
day of May, 200.

V (L.S.)
Notary Public

My Commission Expires: 11-16-12

Standard of Review

In *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), the Supreme Court set forth a two-part test for evaluating claims of ineffective assistance of counsel. The first part of the test requires that a defendant show that his counsel's performance was deficient and that it fall below an objective standard of reasonableness.

The second part of the test requires that a defendant show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The second part of the *Strickland* test has also been referred to as the "prejudice" requirement.

In *Hill*, the Supreme Court held that in the context of determining the voluntariness of guilty plea that is entered upon the advice of counsel, the first half of the *Strickland* test would require an inquiry into whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. Simply put, the first inquiry is whether trial counsel's advice was deficient.

According to *Hill*, the "prejudice" requirement of the *Strickland* test focuses on whether counsel's deficient performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty, but would have insisted on going to trial.

The Petitioner claims the following grounds in support of his petition for his post conviction relief hearing. The Petitioner alleges that trial counsel rendered ineffective assistance of counsel in his representation of the petitions. The Petitioner is aware that at the Post Conviction relief hearing in this matter that he has to prove the following:

- 1.) the trial attorney failed to render reasonable effective assistance under prevailing norms and
- 2.) that prejudice resulted from the trial lawyer's ineffective performance.

The Petitioner alleges that trial counsel failed to render effective assistance of counsel based on the following reasons. Trial counsel failed to investigate the Petitioner's case. The Petitioner further alleges that trial counsel did not conduct any investigation of any sort in his case. The Petitioner additionally, alleges that the trial counsel failed to interview witnesses, failed to review or supply a copy of the discovery to the Petitioner. The Petitioner alleges that if the trial counsel would have did the above referenced action in his Defense of his case, that petitioner would have taken his case to trial instead of accepting a plea deal. The lack of investigation, client communication and meeting with the client prejudice his decision as to whether to be tried by a jury or make an informed and voluntary decision to take a plea deal. "Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial." *Bennett*, 371 S.C. at 203-04, 638 S.E.2d at 675. In resolving PCR issues relating to guilty pleas, it is proper to consider the guilty plea transcript as well as the evidence at the PCR hearing. *Id.* at 204, 638 S.E.2d at 675. In the Petitioner's case it is clear from the guilty plea transcript that when the Honorable Judge Young asked the Petitioner if anyone had promise or threatened the Petitioner to get him to plead guilty. (Page 8, Line 11-22), that there was some confusion as to whether or not such actions occurred. The Petitioner initially answered in the affirmative to this question but later answered in the negative. It is not clear from the record if the Petitioner and his trial attorney at this time had a side bar to discuss the manner in which the Petitioner was to answer the question therefore a hearing must be heard to elicit

testimony from the Petitioner and his trial attorney to determine the circumstances that surround this matter.

Additionally, the Petitioner argues that his trial counsel failed to object to improper statements that were made at his guilty plea. I refer you to Page 11, Lines 22 to Page 12 line 25, where one of the State witness described the Petitioner as a "king pin" and improperly brought up alleged prior bad acts by the Petitioner, where there was no prove as to the validity of the allegations that the witness made before the Court. Trial counsel at the guilty plea failed to object to this mischaracterization of the Petitioner therefore, the issue could not be addressed at Petitioner's direct appeal.

ISSUE (A) WAS PLEA COUNSEL INEFFECTIVE FOR ADVISING APPLICANT TO PLEAD GUILTY BASED ON ERRONEOUS SENTENCING ADVICE?

Facts

Applicant asserts he was denied the effective assistance of counsel when counsel erroneously advised applicant if he did not plead guilty he would be subjected to a sentence of life without parole under the LWOP statute. During the plea colloquy the following was recorded:

Coming directly after counsel made the following factual statement to the plea Judge, as was recorded:

Mr. Apostolou : that had happened was this individual, this confidential informant ("CI") that was a friend of Jarvis's, had dinner at his house, the families have been together – what happened was this individual got arrested.

He started working with SLED, and they made several sales. It was never a situation where he got arrested, got out, and continued to deal drugs, Judge. What happened was the sales went. The confidential would call him. Sometimes Jarvis didn't have anything, and they wouldn't have a sale. And the confidential informant would keep calling, and then a sales would take place, and calling, and then a couple of weeks would go by and another one would go by.

Sled was privy to this and they were watching this, but Jarvis wasn't privy to this, so all of these sales occurred and then he got arrested. Since he was arrested, and then he was charged with [all] of the

five offenses, so basically a gentleman that's never spent more than a day in jail. (Tr.p.16, L.5-23).

As was seen from counsel's statement above, Counsel and the Plea Judge were factual aware of this bring a typical "continuous course of conduct", and that LWOP was not applicable to the instant matter, thus rendering counsel's sentencing advice erroneous and the applicants guilty plea involuntary.

DISCUSSION

Applicant asserts counsel was ineffective for failing to research and investigate the facts and law surrounding the events that led to erroneous sentencing advice by counsel. In *Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989) (new trial granted where incorrect parole eligibility advice induced plea).

As was seen supra during the plea colloquy, the Plea Judge told Applicant he could receive life without parole, which is known as LWOP under S.C. Code §17-25-45 for sentencing enhancement under the three strike law, recidivist statute. Statutes which are art of the same legislative scheme should be construed together. Construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each on given effect, if it can be done by any reasonable construction, *State v. Alls*, 330 S.C. 528, 500 S.E. 2d 781 (1998). Furthermore, the court should not consider the particular clause being construed in isolation, but should be read in conjunction with the purpose of the whole statute and the policy of the law, *S.C. Coatsal Council v. S.C. Ethics comm.*, 306 S.C.C 41, 44, 410 S.E.2d 245, 247 (1991).

Our Supreme Court has previously recognized that the predecessor to §17-25-45 (17-25-40) and 17-25-50 must be construed together. See *State v. Stewart*, 275 S.C. 447, 452, 272 S.E.2d 628, 631 n.2 (1980) (recognizing that section 17-25-50 must be read in conjunction with 17-25-40, the predecessor to section 17-25-45).

The Court has also recognized that 17-25-40 and 17-25-50 are part of the overall, legislative scheme for recidivist sentencing. See, also *State v. Muldrow*, 259 S.C. 414, 192 S.E.2d 211 (1972) (statute directing trial court to treat as one offense any number offenses committed at time so closely committed in point of time that they may be considered as one offense is applicable for purpose of sentencing under recidivist statute),

Legare v. State, 333 S.C. 275, 509 S.E.2d 472 (1998) (recognizing that 17-25-50 is part of the recidivist statute), also see Continuous Course of Conduct discussion, Stat v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (S.C.2003).

Applicant asserts that he was not subjected to three strikes. The Plea Judge erred and Counsel was ineffective for giving erroneous sentencing advice. As is seen here, but for counsel's erroneous advice Applicant would not have pled guilt but would have insisted on going to trial. Applicant's plea should be considered involuntary and the case should be remand for new trial.

ISSIE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO RESEARCH THE LAW AND ELEMENTS OF ENTRAPMENT TO PREPARE AN ADEQUATE AND COMPLETE DEFENSE THAT DENIED APPLICANT HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE REPRESENTATION?

Pertinent Facts

During the pleas colloquy the following facts were recorded:

Mr. Apostolou: What happened was this individual, this confidential informant, that was a friend of Jarvis's, had dinner at his house, the families have been together-- what happened was this individual got arrested.

He started working with SLED, and they made several sales. It was never a situation where he got arrested, got out, and continued to deal drugs, Judge. What happened was the sales went.

The confidential informant would call him. Sometimes Jarvis didn't have anything, and they wouldn't have a sale. And the confidential informant would keep calling, and the sales would take place, and then a couple of weeks would go by and another one would go by. [Tr.p.16, L.5-17].

Two of the sales that Jarvis made -- and all of this was made to the same confidential informant Was the one "calling him and trying" to set up these sentences, he sold less than 28 grams, Judge. [Tr.p.17, L.19-24].

As was recorded it was the confidential informant who was initially arrested and began to work for SLED, in an attempt to work off charges. Counsel failed to investigate the confidential informants' background and prior record of his previous arrest that led to the confidential informant to "continually entices Applicant to supply him with drugs. Sled was privy to the confidential informants' predisposition [Tr.p.16, L.18-19]. As is seen supra counsel was aware of the factual background of the case but failed to research

the law and elements of entrapment that denied Applicant his sixth Amendment right to counsel and the right to a complete and adequate defense.

DISCUSSION

At the heart of effective representation is the independent duty to investigate and prepare, *Goodwin v. Balkom*, 684 F.2d 794, 805 (11th Cir.), cert. denied ____ U.S. ____, 103 S.Ct. 1798. Therefore, undoubtedly "strategy" can not include the failure to conduct reasonable investigation in the facts and law of the case. A defense attorney has a duty to perform a reasonable investigation, *Ard v. Catoe*, 642 S.E.2d 500, 597 (2007)

Preparation and investigation must be more than perfunctory. Counsel has an affirmative duty to conduct appropriate investigation, both factual and legal, *Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir.), cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defenses has often results in finding that the defendant was denied adequate representation. See *Goodwin v. Swenson*, 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of the attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panoply of issues – to which the defendant, a layman, will be oblivious, *Garland v. Cox*, 472 F.2d 875, 879 (4th Cir.).

Under the Due Process Clause of the Fourteenth Amendment, Criminal prosecutions must comport with the prevailing notions of fundamental fairness to require that a complete defense, *California v. Trombetta*, 467 U.S. 479, 485 (1984).

The facts portrayed in this case reveal that it was the "confidential" informant who kept calling Applicant to "initiated" contact with the Applicant and enticed Applicant to supply the confidential informant with cocaine ands MDMA. The confidential informant and SLED set up the location and lures Applicant to 415 Meeting St, for the transaction of MDMA that resulted with Applicant being charged with the proximity of a school indictment. (emphasis supplied).

The affirmative defense of entrapment is available where there is the conception and planning of an offense by an officer, (CI working for SLED), and his procurement of it's commission by one who would not have perpetrated it except for trickery, persuasion,

or fraud of the officer, or associate, *State v. Johnson*, 295 S.C. 215-16, 367 S.E. 700. Although it is a well settled principle of law that the defense of entrapment is not available to a defendant exhibiting a predisposition to commit a crime independent of State inducement and influence, *Johnson, supra*. Thus entrapment consist of (2) lack of predisposition, *Matthews v. United States*, 108 S.Ct. 883.

In the instant matter the guilty plea transcript attempt to set this incident forth as a reverse sting where SLED sent forth a CI to "continually" proposition and entice Applicant to enter into multiple drug transactions. The transcript reveals it was the "CP" who kept calling Applicant to initiate drug transactions. In this matter Applicant does not have to disprove predisposition, as predisposition [may] only have become a jury question absent counsel's erroneous advice. The central issue now is, whether or not Applicant's plea is involuntary based on ineffective assistance of counsel, and that, but for counsel's erroneous advice Applicant would not have pled guilty but would have instead insisted on going to trial, *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366 (1985).

Applicant asserts that had counsel investigated and researched the law and elements of entrapment, Applicant would not have pleaded guilty but would have insisted on going to trial. Applicant's plea should be vacated and remand for a new trial.

The Petitioner further alleges that his Fourth Amendment Rights and Due Process Rights were violated therefore he could not make an informed, voluntary waiver of his rights at the guilty plea. The Petitioner alleges that if defense counsel investigated the issues in the case and fully preparing for a trial, that at trial there a substantial likelihood that the illegal substances could have been suppressed as fruit of the poisonous tree. If there was a suppression hearing and if trial counsel would have forced the Stated to present and relevant evidence, including the identity of the confidential informant, which the case would have been properly disposed of at this juncture. Therefore, trial counsel's actions prejudice the Defendant and violated his Fourth Amendment and Due Process Rights. In the Petitioner's case there was also a video that the State sought to introduce

on their case in chief at trial. The Petitioner argues that the trial counsel should have objected to the use of the video, the video was in poor condition and the actually person alleged to be in the video were unable to be made out. Due to the fact that trial counsel was not prepared for any motions or suppression hearing in the Petitioner's case, this was not done.

Additionally, the Petitioners argues that trial counsel only meet with the client on few occasions not enough time for them to effectively prepare for trial. Also, that trial counsel did not inform the Petitioner of lesser included offenses of the charges that were pending against him at the time. That the trial attorney called the Petitioner the morning of the trial and told him that he could get him a specific sentence, but that the Solicitor was making no offers in the case. The Petitioner at this time was told that he had two hours to make it to court clearly not enough time to make an informed or voluntary decision as to go to trial or take a plea deal. Petitioner alleges that the trial attorney did not go over his constitutional rights and the rights that he would be giving up if he took a plea deal. It is known fact that, "a criminal defense attorney has a duty to perform a reasonable investigation. *Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 597. "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum; counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Id.* at 331-32, 642 S.E.2d at 597. As a result of trial counselor failure to adequately investigate the petitioner's case his due process rights were violated. Trial counsel as the legal representative of the Petitioner action fail far below the standard of care that he should have undertaken in zealously represented the Petitioner.

CONCLUSION

WHEREFORE, based on the foregoing counsel's performance was deficient, rendering ineffective representation and Applicant's guilty plea involuntary.

THEREFORE, the Applicant respectfully prays this Court will vacate the sentences and conviction and remand this case for a new trial.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2012-CP-10-3597

Leonard Jarvis Roper, #338094,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 11, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the March 2009 term of the Charleston County Grand Jury for five counts of trafficking cocaine- 28-100 grams (2009-GS-10-1616, -1617, -1618, -1619, -1620) and possession with intent to distribute cocaine within the proximity of a school (2009-GS-10-1621). Applicant was represented by Alex Apostolou, Esquire.

On November 19 2009, the Applicant pled guilty to five counts of the lesser included offense of trafficking cocaine 10-28 grams- 2nd offense and the proximity charge as indicted. Applicant was sentenced by the Honorable Roger M. Young to confinement for a period of 10 years for the proximity charge and 20 years and a \$50,000 fine on each of the trafficking charges. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. The Applicant was represented by Lanelle Durant, Esquire, of the Office of Appellate Defense who filed a brief pursuant to Anders v. California on the Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal on June 1, 2011. State v. Roper, 11-UP-257 (S.C. Ct. App. filed 6-1-11).

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records. 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.
 - a. Failure to investigate the Petitioner's case.
 - b. Failure to object to improper statements that were made at the guilty plea.
 - c. Advised the Applicant to plead guilty based on erroneous sentencing advice.
 - d. Failure to research the law and elements of entrapment to prepare an adequate and complete defense that denied Applicant his 6th amendment right to effective representation.
2. 4th Amendment violation.
3. Violation of due process rights.

III.

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 Applicant alleges a denial of due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on the issue of ineffective assistance of counsel and that all other allegations be summarily dismissed.

[Signature on the following page.]

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: AL R. WK

ATTORNEYS FOR RESPONDENT

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January 23, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-3597

LEONARD JARVIS ROPER, #338094

Applicant,

Vs

AFFIDAVIT OF SERVICE BY MAIL

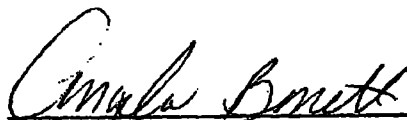
STATE OF SOUTH CAROLINA,

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:

**Joenathan S. Chaplin, Esquire
4511 N. Main Street
Columbia, South Carolina 29203**

DATED this 23rd day of January, 2013


Angela Bennett, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Leonard Jarvis Roper,	)	
	)	
	)	
v.	)	Case No. 12-CP-10-3597
	)	
State of South Carolina,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 21, 2013, before The Honorable Deadre Jefferson in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Jonathan Chaplain, Esq.
 Nichole L. Singletary, Esq.
 Edmond Givens, Esq.
 Appearing for Applicant

Ashleigh Wilson, Assistant Attorney
 U.S. ATTORNEY'S OFFICE
 P O Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

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Hearing of May 21, 2013

Before The Honorable Deadra Jefferson

1 (DEFENDANT PRESENT)

2 THE COURT: This is the case of
3 Leonard Jarvis Roper versus the State of
4 South Carolina. 12-CP-10-3597.

5 It is before the court on an application
6 for post-conviction relief filed on June 1st,
7 2012. The State filed its return on January
8 25th of 2013. The Applicant is represented by
9 Jonathon Chaplain. Let me check your
10 associate's name -- Nicole L. Singletary.
11 Are you counsel with Mr. Chaplain as well?

12 MR. SINGLETARY: Yes, ma'am.

13 THE COURT: And Edwin Givens.
14 The State is represented by Ashleigh Wilson.

15 The attorney representing Mr. Roper
16 at the time of his plea was Alex Apostolou.

17 Are there any other witnesses other
18 than the applicant and his counsel?

19 MS. SINGLETARY: Yes, Your Honor.
20 We will be calling Nadia Roper to the witness
21 stand.

22 THE COURT: All right. Are y'all
23 ready to proceed?

24 MS. SINGLETARY: Yes, Your Honor.
25 We are.

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1 THE COURT: Call your first
2 witness.

3 MS. SINGLETARY: At this time we
4 call Jarvis Roper to the stand.

5 (WITNESS TAKES STAND)

6 LEONARD JARVIS ROPER, having been
7 sworn to tell the truth, and nothing but the
8 truth, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SINGLETARY:

11 Q. Mr. Roper, where are you currently
12 housed?

13 A. At Lieber Correctional Institution.

14 Q. Could explain to the court why you
15 are currently housed there?

16 A. Because of my guilty plea on
17 trafficking cocaine.

18 Q. And what was the sentence that was
19 actually given you in that guilty plea?

20 A. A sentence of eighty-five of twenty
21 years.

22 Q. You received a sentence of twenty
23 years?

24 A. Yes.

25 Q. And that is an eighty-five percent

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1 offense?

2 A. Yes.

3 Q. And who represented you at that
4 guilty plea?

5 A. Alex Apostolou.

6 Q. Now, let's talk about the reasons
7 why we are here today. We are here for what
8 is called a post-conviction relief. You
9 understand that?

10 A. Correct.

11 Q. What are you actually asking the
12 court for in this post-conviction relief?

13 A. I am asking the court for the guilty
14 plea, for the time that I was supposed to
15 receive during the time of my sentencing.

16 Q. And you're asking the court to
17 actually reverse the guilty plea; is that
18 correct?

19 A. Yes.

20 Q. Now, let's talk about the repre-
21 sentation of your trial counsel. Did you
22 retain your trial counsel?

23 A. Yes.

24 Q. When did you actually retain trial
25 counsel?

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1 A. It was a couple of months after I
2 got released from bond.

3 Q. Okay. And how long would you say
4 that trial counsel actually represented you
5 prior to the guilty plea?

6 A. I'd say approximately seven to eight
7 months.

8 Q. So seven to eight months, trial
9 counsel was your attorney?

10 A. Correct.

11 Q. And during those seven to eight
12 months, how many times would you say that you
13 actually met with trial counsel?

14 A. About five times.

15 Q. All right. And in those five times,
16 could you tell me what did -- what you and
17 your trial counsel actually discussed?

18 A. We discussed the case that was
19 presented against me.

20 Q. The court wasn't there and I wasn't
21 there, so be a little more specific. In
22 these occurrences that you had with trial
23 counsel, did you review the discovery in the
24 case?

25 A. No, not at that time.

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1 Q. You said not at that time.

2 A. No, not during the time that I got
3 sentenced.

4 Q. So are you saying that you discussed
5 the discovery prior to the plea date or after
6 the plea date?

7 A. Prior to.

8 Q. How much times prior to the plea
9 date did you and trial counsel actually go
10 over the discovery?

11 A. Actually, I don't think that we ever
12 did. He e-mailed it to me and I read it,
13 then I called him back with comment about it.

14 Q. Okay. So it is your testimony that
15 trial counsel e-mailed you discovery?

16 A. Yes.

17 Q. But you never sat down and went over
18 the evidence with trial counsel?

19 A. No.

20 Q. That being said, could you explain
21 to the court that with you reviewing the
22 discovery that trial counsel e-mailed to you,
23 once you looked at it, what were your
24 thoughts about the evidence that the State
25 was alleging that they had against you?

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1 A. They didn't have much against. They
2 didn't have any against me.

3 Q. Okay. Now, let's go over, uh, your
4 interpretation of what the case that the
5 State had against you was about?

6 A. Meaning, exactly?

7 Q. Meaning once you went over
8 discovery, what were any thoughts or any
9 concerns that you had about the State's case?

10 A. Well, the thoughts that I had about
11 the State's case was based on what the CI was
12 saying, what the CI was about. The case
13 against me on that point, they didn't have
14 any real evidence against me as far as no
15 money, no drugs were found. The situation
16 there, the video that was inclusive (sic)
17 that, uh, == sound, wire, sounds spoken about
18 drugs or anything.

19 Q. Let me back up.

20 A. Um-humm.

21 Q. You said that there was an
22 informant.

23 A. Correct.

24 Q. Did you talk to your attorney about
25 doing a Motion to reveal who the confidential

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1 informant was?

2 A. No.

3 Q. Did you discuss with your attorney
4 about the credibility of that confidential
5 informant?

6 A. No.

7 Q. And you said that there were no
8 drugs -- no drugs that were actually
9 confiscated.

10 A. Yeah.

11 Q. Explain that to me.

12 A. Well, when we -- when they said that
13 they had finds and everything against me,
14 they didn't find anything on my person at
15 all. Even the day that they ended the
16 investigation against me, they didn't find
17 any cocaine.

18 Q. So on the day that you were
19 arrested, you had no drugs in your
20 possession.

21 A. No cocaine.

22 Q. Well, -- you had no cocaine in your
23 possession.

24 A. (Affirmative nod).

25 Q. And, now, in your discovery were

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1 there any drug analyses for these previous
2 buys that you were actually charged with?

3 A. Yes, there was.

4 Q. Did you go over that with your
5 attorney?

6 A. No. No, I didn't.

7 Q. Did you ask your attorney to go over
8 that information with you?

9 A. No.

10 Q. Did your attorney attempt to go over
11 that information with you?

12 A. No.

13 Q. Given the fact that you were
14 actually facing a substantial amount of time,
15 did you think that -- or did you think that
16 your attorney should have went over this
17 information with you?

18 A. Yes.

19 Q. Do you think that your attorney
20 should have done a Motion to reveal the
21 confidential informant?

22 A. Yes.

23 Q. Do you think that your attorney
24 should have did an independent investigation
25 as it relates to the drugs, analyses in this

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1 case?

2 A. Yes.

3 Q. During the seven to eight months
4 that the attorney represented you, did you
5 ever receive any offers from the State?

6 A. No.

7 Q. So is it correct for me to say that
8 your attorney never came to you with any type
9 of plea offers?

10 A. Not until we had -- until the week
11 of the hearing.

12 Q. The week of the hearing?

13 A. (Affirmative nod).

14 Q. Are you referring to the guilty
15 plea?

16 A. (Affirmative nod).

17 Q. And what was the offer that was
18 given to you the week of the guilty plea?

19 A. That I was to do five years.

20 Q. Explain that. Explain that you were
21 supposed to get five years.

22 A. Yes. He called me the morning
23 before I was supposed to enter the guilty
24 plead, that I was to get five years. We
25 decided on that.

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1 Q. So are you telling this court that
2 your attorney told you that you were going to
3 receive five years if you plead guilty to the
4 offenses?

5 A. Correct.

6 Q. Now, let me ask you this. In
7 preparing for this guilty plea or in either
8 preparing for a trial, did your attorney ever
9 go over your Constitutional rights?

10 A. No.

11 Q. Did your attorney ever go over the
12 enhancement statute?

13 A. No.

14 Q. Do you understand what the
15 enhancement statutes are?

16 A. Yeah.

17 Q. Did you understand what the
18 enhancement statutes were at the time of your
19 plea?

20 A. No.

21 Q. Did you ever ask your attorney to
22 actually see the private investigator?

23 A. No.

24 Q. Now, did you actually speak to your
25 attorney about your rights of taking the

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1 witness stand or to not take the witness
2 stand?

3 A. No.

4 Q. Did you actually talk to your
5 attorney about subpoenaing any witnesses to
6 come and testify on your own behalf at a
7 trial?

8 A. No, I didn't.

9 Q. Now, you stated earlier that you and
10 your attorney met approximately five times.
11 Is that correct?

12 A. Correct.

13 Q. In those five times that you met,
14 can you estimate hour-wise or minute-wise how
15 much time y'all spent together, total?

16 A. Forty-five minutes to an hour.

17 Q. With all five times or each
18 individual time?

19 A. Each individual time.

20 Q. And that forty-five minutes to an
21 hour, what did you and your attorney discuss?

22 A. We -- well, basically he was telling
23 me what the officer was saying against me;
24 and I was pretty much contradicting, you
25 know, about the things that was going on and

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1 the things that was said about me. I really
2 didn't agree with a lot of things that was
3 happening.

4 Q. What specifically didn't you agree
5 with?

6 A. Well, they were saying about the
7 different encounters that the CI had dealing
8 with the drugs situations and all, and I -- I
9 was disagreeing on pretty much everything.

10 Q. So is it fair to say that you were
11 disagreeing on the facts of the case as set
12 out by ---

13 A. Correct.

14 Q. And the statements, if any, that
15 were given by the confidential informant?

16 A. Correct.

17 Q. Is it correct to say that you
18 brought this to the attention of your
19 attorney?

20 A. Correct.

21 Q. And as a result of bringing those
22 differences to the attention of your
23 attorney, what did your attorney do, if
24 anything?

25 A. Well, not much -- to be honest with

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1 you.

2 Q. When you are referring to "not
3 much", are you referring to the fact -- what
4 are you referring to?

5 A. I am referring to that he didn't
6 really, uh, basically believe me, the things
7 that I was saying and the things that I was
8 telling him.

9 Q. And as a result of that, you feel
10 that your attorney did what?

11 A. Well, didn't do the -- didn't do
12 things towards investigating the case, didn't
13 do a lot of things that he could have done to
14 find out about my case. Didn't bring me down
15 each step, to show we where each alleged
16 thing happened, going over what they were
17 claiming, things like that.

18 Q. Now, let me ask you this. Do you
19 think that your attorney did an adequate job
20 in representing you?

21 A. No.

22 Q. And to sum it up, why do you feel
23 that your attorney did not do an adequate job
24 representing you?

25 A. Well, because I didn't -- for one,

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1 we didn't discuss anything about the plea.
2 We didn't discuss anything about trial. A
3 lot of things were just very inaccurate. As
4 far as us going through the whole process, we
5 never discussed things page by page or we --
6 we never really were on the same page with a
7 lot of things.

8 Q. All right. Mr. Roper, you did plead
9 guilty, didn't you?

10 A. Yes.

11 Q. Tell this court -- are you telling
12 this court that this -- that your trial
13 attorney didn't investigate, he didn't go
14 over the discovery with you, so why did you
15 plead guilty?

16 A. I pled guilty due to the fact that I
17 was uncomfortable with the situation as far
18 as my representative (sic). So we -- where
19 we came to the agreement on the plea deal, I
20 took the plea just because I didn't want to
21 go to trial based on the fact that we didn't
22 do our homework, we didn't do no
23 investigation, we didn't do, you know, a lot
24 of things that we needed to do for trial. So
25 I didn't want to go into trial without having

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1 all those things together and get something
2 that I really didn't want. So when he came
3 -- when they discussed about the five years,
4 I agreed to that because I just figured that
5 was soon enough for me and my wife and my
6 kids. I just went along with that.

7 Q. You're telling this court that your
8 trial attorney said that the plea offer was
9 for you to receive a sentence of five years?

10 A. Correct.

11 Q. Not six years?

12 A. (Negative gesture).

13 Q. Correct?

14 A. Correct.

15 Q. Not ten years?

16 A. Correct.

17 Q. Not twenty years?

18 A. Correct.

19 Q. And you're saying that you pled
20 guilty based on that?

21 A. Correct.

22 Q. Now, when you pled guilty, you know
23 that the trial judge, which was The Honorable
24 Judge Young, asked you certain questions.

25 A. Yes, he did.

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1 Q. And in the transcript of our plea,
2 he asked you 'are you pleading guilty freely
3 and voluntarily?'

4 A. Yes.

5 Q. Were you pleading guilty freely and
6 voluntarily?

7 A. Correct.

8 Q. Were you pleading guilty because you
9 wanted to plead guilty?

10 A. I plead guilty because I figured at
11 that time that it was the only option.

12 Q. And why was that the only option for
13 you?

14 A. I just felt like going to trial was
15 not the best option at that time with the
16 plea deal that we had.

17 Q. Did you go over all the evidence
18 that the State had against you with your
19 attorney?

20 A. (Affirmative nod).

21 Q. And at that point, you said 'yes.'

22 A. Yes.

23 Q. Was that correct?

24 A. Correct.

25 Q. You did go over all the discovery

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1 with ---

2 A. Well, I went through bits and pieces
3 with him at times, bits and pieces.

4 Q. But it is your testimony today that
5 you didn't go over the entire discovery?

6 A. No.

7 Q. And how did you receive discovery
8 again?

9 A. Through e-mail.

10 Q. And who e-mailed that discovery to
11 you? Again?

12 A. Alex Apostolou.

13 Q. But he never gave you a hard copy of
14 the discovery?

15 A. No, I never received any.

16 Q. And during that trial, the Honorable
17 Judge Young told you that you could actually
18 pick a jury, that you could take the jury
19 trial.

20 A. (Affirmative nod).

21 Q. And at that point you stated that
22 you did not want a jury trial.

23 A. Um-humm.

24 Q. Was that correct?

25 A. Correct.

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1 Q. You stated that you did not want a
2 jury trial?

3 A. Correct.

4 Q. So what has changed now?

5 A. It's change now, the fact that I
6 didn't get the five years that was agreed
7 upon.

8 Q. Now, let me ask you this. Let's go
9 back to the guilty plea. I want to ask you a
10 lot of the questions that the judge asked you
11 at the guilty plea.

12 A. Okay.

13 Q. But what happened that day?

14 A. What happened at the guilty plea is
15 that I didn't receive the minimum; I mean the
16 five that I'd signed on. Actually the
17 officers came in and the things that they
18 said had a lot of persuasion on the judge
19 ruling, by saying, uh, different things as
20 far as calling me kingpins and calling me,
21 uh, me -- you know, saying things that wasn't
22 true as far as me dealing, drug cases and
23 everything.

24 Q. Let me ask you this, did your
25 attorney inform you that the SLED officers

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1 was going to be at that guilty plea hearing?

2 A. No.

3 Q. To the best of your knowledge, do
4 you know if your attorney knew that the SLED
5 officers were going to be at that guilty
6 plea?

7 A. I don't know if he knew either.

8 Q. Okay. Did anything happen during
9 the guilty plea that, in your opinion, that
10 alarmed you as well as your counsel?

11 A. Yes, the SLED officers came.

12 Q. How were you brought to -- how were
13 you aware of the fact that your attorney was
14 shocked that these officers were there?

15 A. Because he came back and he told me
16 that he wasn't prepared for this, that he was
17 kind of shocked that they came, too. He was
18 like -- I want to tell you that he was on the
19 nervous side, too, because it was unexpected.

20 Q. Now, I know that you're saying that
21 these SLED officers made some very harsh
22 statements about you, referring to you as a
23 kingpin.

24 A. Um-humm.

25 Q. Referring to the past charges or the

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1 past offenses that ---

2 MS. WILSON: Your Honor, she is leading
3 the witness.

4 THE COURT: Sustained.

5 DIRECT EXAMINATION CONTINUED

6 BY MS. SINGLETARY:

7 Q. What were some of the things that
8 the SLED officers said at the guilty plea?

9 A. He said that I was a kingpin. He
10 said I was -- he said that I was bringing in
11 drugs from Atlanta, he said that I was doing
12 drugs -- bringing in drugs from Colombia,
13 things that was just absolutely false; that
14 my lawyer didn't actually object to. They
15 were just running down numerous things as far
16 as me being, uh, -- me doing a lot of things
17 in the Charleston area that wasn't true.

18 Q. Now, those statements that you just
19 testified to, that SLED said at your guilty
20 plea, were you ever charged with any of those
21 offenses?

22 A. No.

23 Q. And you stated that your attorney
24 did not object to those offenses?

25 A. Correct.

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1 Q. Do you know what a prior bad act is?

2 A. No.

3 MS. SINGLETARY: Beg the court's indul-
4 gence, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. SINGLETARY: (Sidebar with Mr.
7 Chaplain.)

8 DIRECT EXAMINATION

9 BY MR. CHAPLAIN:

10 Q. Mr. Roper, ---

11 A. Yes?

12 Q. You heard Attorney Singletary ask
13 you questions.

14 A. Correct.

15 Q. And just to finish up where we are
16 at this point, uh, I just want to get my
17 hands around the whole situation. You pled
18 in what month?

19 A. November.

20 Q. Did you have occasion to come to the
21 courthouse the month before?

22 A. Yes, I did.

23 Q. And what was the purpose of coming
24 to court the month before?

25 A. Actually, I really didn't know until

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1 I got here but it was supposed to be the same
2 as it was in November. But I didn't realize
3 that until I actually got here.

4 Q. So when you got here in October, you
5 were actually come in to do a plea then?

6 A. Not to my knowledge that day.

7 Q. Who came with you to court that day?

8 A. I came by myself.

9 Q. You drove?

10 A. Yes, I drove.

11 Q. So how did -- what happened on that
12 day?

13 A. Actually I sat down and I talked --
14 I spoke to Alex and asked him what was going
15 on. He was saying, you know, that it was
16 supposed to be a guilty plea. I said, 'about
17 what', you know, because we'd never discussed
18 what was -- what was supposed to happen that
19 day. I was kinda out of the loop; I didn't
20 know what was going on. He told me what it
21 was and I was, like, uh, why? What? 'We
22 haven't discussed this. What's going on?'
23 Basically.

24 Q. Okay. Then at that time did you
25 already have the discovery in the case?

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1 A. No, I did not have the discovery.
2 He showed me a book and I think that it was
3 discovery, the things that they had, that the
4 attorney had. She was going through it and I
5 flipped through it.

6 Q. Okay. So after -- so nothing
7 happened on that day?

8 A. No.

9 Q. So after that date, then did you
10 receive the discovery?

11 A. Yes.

12 Q. So after that date you then received
13 the discovery?

14 A. Yes.

15 Q. Then you called -- then what did you
16 do after you got the discovery?

17 A. I called Alex, I told Alex every-
18 thing -- as far as -- I was like, 'they don't
19 have anything against me.' I mean, 'all this
20 right here, this discovery, the informant, it
21 was not me.'

22 Q. Just a couple more questions. Was
23 there a video involved in your case?

24 A. Yes.

25 Q. Did you see the video?

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1 A. Yes.

2 Q. Are you on the video?

3 A. Talking on the video.

4 Q. Can you see yourself on the video?

5 A. No, I cannot see myself on the
6 video.

7 Q. So if the video was in here right
8 now, no one could see you on the video?

9 A. No.

10 Q. Okay. Supposedly the voice on the
11 video is you?

12 A. Um-humm.

13 Q. Okay. Now, what about these wire
14 taps.

15 A. Wire taps, yeah.

16 Q. Were any of the wire taps recorded,
17 video?

18 A. No.

19 Q. None of them were video?

20 A. No.

21 Q. Just conversations?

22 A. Yes.

23 Q. Okay. And during that conversation,
24 did you ever speak about drugs?

25 A. No.

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1 Q. You are -- when did you find out who
2 the informant was?

3 A. After I spoke to my attorney.

4 Q. When did you find out from your
5 attorney who the informant was?

6 A. When I met with him during the
7 process, during the trial, during the
8 process.

9 Q. So what month would you say that you
10 found out who the informant was?

11 A. Uh, -- (pause) -- probably in the
12 second or third month.

13 Q. Did you know the informant?

14 A. Yes.

15 Q. Did you provide any information to
16 your attorney concerning the credibility of
17 that informant?

18 A. Well, we spoke about his
19 credibility.

20 Q. What was?

21 A. I knew him, uh, he was pretty much a
22 liar. He'd do pretty much whatever it'd take
23 to get hisself out of a situation that he was
24 in.

25 Q. That was the conversation that you

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1 had?

2 A. Yes.

3 Q. And on some occasions when law
4 enforcement do these type of buys, there is
5 multiple confidential informants -- how many
6 confidential informants were there involved
7 in this case?...

8 A. One.

9 Q. So the same one that is supposedly
10 caught on the video with you ---

11 A. (Affirmative nod).

12 Q. --- was that same guy?

13 A. Um-humm.

14 Q. Then the other four wiretaps was the
15 same guy again?

16 A. Yes.

17 DIRECT EXAMINATION

18 BY MR. GIVENS:

19 Q. Mr. Roper, you said that you were
20 offered a five-year deal?

21 A. Yes.

22 Q. That's what was explained to you --
23 what was explained to you about that five-yes
24 sentence deal?

25 A. He came to me and he said that, uh,

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1 he -- he called me Thursday morning before I
2 came over here. That him and the solicitor
3 had agreed on five years, that I would
4 receive five years if I plea.

5 Q. Was it every explained to you that
6 the judge did not have to accept any type of
7 deal or arrangement?

8 A. No.

9 Q. If it was told to you and explained
10 to you that you could receive much more than
11 five years during the sentence, even though
12 there was a deal supposedly struck, would you
13 have pled?

14 A. No.

15 THE COURT: Any cross-examination of
16 the witness?

17 MS. WILSON: Yes, Your Honor. Thank
18 you.

19 CROSS EXAMINATION

20 BY MS. WILSON:

21 Q. Good morning, Mr. Roper.

22 A. Good morning, ma'am.

23 Q. Can you tell me again about how many
24 times that you met with you attorney before
25 you pled guilty?

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1 A. I met with him about five times.

2 Q. So you are saying that he did not
3 review discovery with you or that he reviewed
4 some.

5 A. He reviewed the very minimum of
6 discovery.

7 Q. Do you recall discussing any
8 possible defenses with him if you were to
9 proceed to trial?

10 A. No.

11 Q. Did you have any leads or potential
12 witnesses to investigate?

13 A. No.

14 Q. Okay. You said that you met with
15 him about five times, that you discussed the
16 case but that you didn't review discovery
17 until shortly before you pled guilty; is that
18 correct?

19 A. That's correct.

20 Q. But you did view a video of your
21 controlled buys with the CI, is that correct?

22 A. Yes.

23 Q. And you also received a hard copy of
24 your discovery from your attorney; is that
25 correct

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1 A. No.

2 Q. So you didn't receive a copy?

3 A. No.

4 Q. Let me rephrase that. Did you
5 receive an electronic copy of your discovery?

6 A. Yes.

7 Q. And you also testified that your
8 attorney didn't make any Motion to reveal the
9 identity of the confidential informant that
10 he should have. But didn't you know who the
11 confidential informant was?

12 A. Later on, yeah.

13 Q. So you found out who it was. You
14 knew who it was. Is that correct?

15 A. Yes, I knew who it was.

16 Q. So you didn't need a Motion to find
17 out who the confidential informant was,
18 because you already knew who it was?

19 A. Yes. I didn't need a Motion.

20 Q. You also testified today that you
21 reviewed the officers' statements with Mr.
22 Apostolou; is that correct?

23 A. Correct.

24 Q. Do you recall during your guilty
25 plea proceeding the State reviewing each of

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1 the facts of each event to you, told the
2 judge in your presence; is that correct?

3 A. Correct.

4 Q. And you didn't make any objection to
5 the facts that were presented by the State
6 during the plea, did you?

7 A. No, I didn't. I was following the
8 advice of my attorney.

9 Q. You also said here today that Mr.
10 Apostolou had failed to further investigate
11 your case. What would he had found if he had
12 further investigated your case?

13 A. He would have found that -- would
14 have found holes in the case, a lot of
15 untruths, things they claimed that couldn't
16 have possibly have happened during the time.

17 Q. Can you be more specific?

18 A. Yes, as far as the buys, the video,
19 the audio.

20 Q. And the video and audio, you'd
21 reviewed with your attorney; is that correct?

22 A. Correct.

23 Q. And you said that you got to talk to
24 him about five times about your case. Did he
25 seem knowledgeable about the State's

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1 evidence, to give you advice about the case?

2 A. He seemed knowledgeable.

3 Q. Did he ever contact you to try to
4 set up some discussions about the case?

5 A. Correct.

6 Q. And you're facing approximately five
7 trafficking cocaine charges; is that correct?

8 A. Correct.

9 Q. And the charges that you pled guilty
10 to, I believe were in the range of ten to
11 twenty-eight grams; is that correct?

12 A. Correct.

13 Q. So the State decreased your charges
14 for you to plead guilty, so you pled to what
15 is called a lesser-included offense; is that
16 correct?

17 A. Correct.

18 Q. So originally you were facing
19 trafficking cocaine in excess of twenty-eight
20 grams; is that correct?

21 A. Correct.

22 Q. So counsel done what you are saying
23 what you wanted him to do today, then you
24 wanted to proceed to trial and -- despite the
25 fact you were facing charges in excess of

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1 twenty-eight grams, you want to go to trial
2 on those?

3 A. Yes.

4 Q. And, so, were you advised of the
5 substance of the plea negotiations that Mr.
6 Apostolou was having with the State?

7 A. I was advised the week of.

8 Q. Do you recall the court advising you
9 as to what you could get as a potential
10 sentence on each of the charges that you pled
11 guilty to?

12 A. The Court, yes.

13 Q. So today, are you unhappy with your
14 sentence?

15 A. Basically yes. I am very unhappy
16 with it. To be honest with you, yes.

17 Q. So you want to go to trial, facing
18 five trafficking charges?

19 A. Correct.

20 Q. And you talked about the SLED agent,
21 how the SLED agent(s) came during the plea
22 and said that you were a kingpin. Do you
23 recall that?

24 A. Yes.

25 Q. Do you also recall your mother and

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1 your uncle speaking at the plea, on your
2 behalf?

3 A. Yes.

4 Q. You recall both of them saying that
5 'my son...' and my 'nephew isn't a drug
6 kingpin.' Do you recall them saying that?

7 A. Yes.

8 Q. Do you also recall your attorney
9 filing a Motion for reconsideration on your
10 behalf?

11 A. Yes.

12 Q. Do you recall the substance of that
13 Motion?

14 A. The substance of the Motion?

15 Q. Do you remember what it said?

16 A. I can't remember.

17 Q. So if I told you that it said that
18 he made an argument to the court that the
19 SLED agent's statement was improper and that
20 you weren't a kingpin, does that ---

21 A. He didn't make that.

22 Q. He didn't make that?

23 A. (Negative gesture).

24 Q. Okay. Beg the Court's indulgence.
25 So do you recall the Motion that he -- that

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1 he made a Motion, do you recall that?

2 A. He made a Motion to reconsider.

3 Q. To reconsider?

4 A. To reconsider, (affirmative nod).

5 Q. Do you recall that?

6 A. (Affirmative nod).

7 Q. Do you recall the substance of that
8 Motion being that the facts as recited
9 (sic) by the SLED agents, that you didn't
10 agree with those? Do you recall that
11 argument?

12 A. I didn't agree -- no, I didn't agree
13 with those.

14 Q. Do you recall Mr. Apostolou, in the
15 Motion, telling the court that you didn't
16 agree to them calling you a kingpin?

17 A. So ---

18 Q. If you don't recall, that's okay.

19 A. Actually I'm confused.

20 Q. Let me clarify. I'll show you ---

21 MS. WILSON: Your Honor, may I approach
22 the witness?

23 THE COURT: You may.

24 CROSS EXAMINATION CONTINUED

25 BY MS. WILSON:

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1 Q. Showing you the substance of the
2 Motion for reconsideration. This is an
3 addendum to the defendant's Motion for
4 reconsideration of sentence imposed, filed
5 December the 11th by Mr. Apostolou.

6 Just review -- let's see. Review this
7 section of the memo.

8 A. (Reviewing).

9 Q. Have you had enough time to review
10 it?

11 A. (Affirmative nod).

12 Q. Can you recall for the court, for
13 the record, what the substance of the Motion
14 for reconsideration was that Mr. Apostolou
15 filed, that portion?

16 A. Well, the portion that I read is
17 basically saying that Apostolou was pretty
18 much telling the trial judge that I was not a
19 kingpin.

20 Q. Do you also recall having an appeal
21 in this case?

22 A. Yes.

23 Q. Do you recall the substance of your
24 appeal?

25 A. As far as what happened with it?

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1 Q. What was the issue on appeal?

2 A. The issue of the appeal was that, uh
3 -- as far as ---

4 Q. Maybe I can help you.

5 A. Okay.

6 Q. Do you recall the appeal being that
7 your appellate counsel-- that she argued that
8 the court improperly considered the statement
9 of the SLED agent during your guilty plea?
10 Does that sound like it might be correct?

11 A. I don't remember that part being
12 correct.

13 Q. Okay. And so you also testified
14 that after you reviewed the video of the
15 controlled buy that you were able to identify
16 your voice on it but that you couldn't see
17 you in the picture; is that correct?

18 A. It wasn't my picture.

19 Q. But it was your voice?

20 A. (No verbal response).

21 Q. At this time when you were talking
22 with Mr. Apostolou about this case, did you
23 tell him that you wanted to go to trial?

24 A. Yes.

25 Q. Do you recall telling the judge that

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1 you wanted to plead guilty?

2 A. Yes, I remember.

3 Q. Do you recall telling him that you
4 were indeed guilty?

5 A. That was on the advice of my
6 attorney. Yes.

7 Q. But you told him that you were?

8 A. You also told the court that Mr.
9 Apostolou talked about the evidence against
10 you?

11 A. Can you repeat that?

12 Q. Did you also tell the plea judge
13 that you talked to Mr. Apostolou about the
14 law on the charges that you were facing?

15 A. Yes.

16 Q. Did you tell the plea court during
17 your plea that you and Mr. Apostolou had
18 talked about the law on your trafficking
19 charges, regarding your trafficking charges?

20 A. No.

21 Q. You don't recall that?

22 A. (Negative gesture).

23 Q. Do you also recall telling the trial
24 court, the plea court that you had discussed
25 the possibility of going to trial as opposed

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1 to talking a guilty plea, with Mr. Apostolou?

2 A. No.

3 Q. Do you recall telling the court that
4 you didn't want to go to trial?

5 A. No, I don't recall.

6 Q. Do you recall telling the court that
7 you didn't want to put up a defense?

8 A. No.

9 MS. SINGLETARY: Objection, Your Honor.

10 THE COURT: Basis.

11 MS. SINGLETARY: Your Honor, if the
12 counsel wants to reflect, uh, refresh our
13 client's memory, there's -- he doesn't have a
14 copy of the transcript.

15 THE COURT: Sure.

16 MS. SINGLETARY: So -- if she could.

17 MS. WILSON: May I approach Mr. Roper?

18 THE COURT: You may.

19 CROSS EXAMINATION RESUMED

20 BY MS. WILSON:

21 Q. I am handing you a copy of his (sic)
22 guilty plea dated November 19th, 2009,
23 (tendering).

24 A. (Reviewing).

25 Q. We are discussing pages six and

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1 seven. I will just start right here, page
2 six. Do you recall on Line 20 where the
3 court said, (reading):

4 "THE COURT: You are standing next
5 to your lawyer, Mr. Apostolou. Are you
6 satisfied with his representation?"

7 Do you recall that?

8 A. Yes.

9 Q. What was your response?

10 A. "Yes, sir."

11 Q. Do you also recall the court saying,
12 on the next line, (reading):

13 "THE COURT: Do you need any more
14 time with him?"

15 And what was your response?

16 A. "No, sir."

17 Q. Do you also recall, (reading):

18 THE COURT: All right. You
19 sat down and talked about this case before
20 you got here today, is that right.

21 DEFENDANT: Yes, sir.

22 THE COURT: He told you about
23 the evidence that the State has against you?

24 DEFENDANT: Yes, sir.

25 THE COURT: And he told you

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1 about what the law is on these charges?

2 DEFENDANT: Yes, sir.

3 THE COURT: Okay. Did you
4 discuss whether or not to go to trial?"

5 Then on Page 7, Line 14, what was your
6 response?

7 A. "Yes, sir."

8 Q. Then you also on Page 7, Line 15,
9 the Court said, (reading):

10 "THE COURT: And you decided after
11 you discussions that you didn't want to go to
12 trial.

13 DEFENDANT: No, sir.

14 THE COURT: So you don't want to
15 call any witnesses on your behalf?

16 DEFENDANT: No, sir.

17 THE COURT: You don't want to put
18 up a defense?

19 DEFENDANT: No, sir."

20 Those were your responses, is that
21 correct?

22 A. Yes, ma'am.

23 Q. And you were sworn to tell the truth
24 on that day?

25 A. I ---

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1 Q. Were you sworn to tell the truth?

2 A. I was under the advisement of my
3 attorney. Once we discussed about the five
4 years, I followed his lead. Everything that
5 I said 'yes, sir', 'yes, sir' to, I was
6 following his lead. I didn't contradict
7 anything that they asked me, because I was
8 advised from my attorney -- so I followed his
9 lead.

10 Q. So were you being truthful or
11 untruthful that day?

12 A. Well, at that point, once I entered
13 and signed the plea of five years, I was
14 advised to say 'yes' to most anything the
15 judge would ask me.

16 Q. So were you being truthful or
17 untruthful that day?

18 MS. SINGLETARY: Asked and
19 answered, Your Honor.

20 THE COURT: Overruled.

21 MS. WILSON: He didn't answer, Your
22 Honor.

23 THE COURT: Overruled. Answer the
24 question yes or no, then you may explain your
25 answer.

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1 CROSS EXAMINATION CONTINUED

2 BY MS. WILSON:

3 Q. Were you being truthful or
4 understand-truthful when you answered those
5 questions of the Court during your plea?

6 A. I was being untruthful.

7 Q. You were being untruthful?

8 A. Yes.

9 Q. Are you being truthful here today?

10 A. Yes, I am. Like I said, I was under
11 advisement of my attorney and that's, you
12 know, what he told me to say.

13 MS. WILSON: Thank you.

14 THE COURT: Any redirect?

15 MS. SINGLETARY: Yes, Your Honor,
16 just briefly.

17 THE COURT: Yes, ma'am.

18 REDIRECT EXAMINATION

19 BY MS. SINGLETARY:

20 Q. Mr. Roper, you were asked by oppos-
21 ing counsel whether or not you knew the
22 confidential informant.

23 A. Yes.

24 Q. --- in your case?

25 A. Correct.

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1 Q. What kind of person was that
2 confidential informant?

3 A. He was a guy that I knew, uh, -- I
4 knew for a long time.

5 Q. Let me ask you a question. The
6 confidential informant, was he a trustworthy
7 person?

8 A. No, he was not.

9 Q. Would that be the reason why you
10 would have brought that to the attention of
11 your plea attorney?

12 A. Yes.

13 Q. Now, so there was an issue as to the
14 reliability of that confidential informant;
15 correct?

16 A. Correct.

17 Q. Now, let's move on the Motion that
18 we have in this case. Counsel brought to the
19 court's attention that Mr. Apostolou filed a
20 Motion to reconsider ---

21 A. Yes.

22 Q. --- in your case, is that correct?

23 A. Correct.

24 Q. And the basis of that Motion to
25 reconsider was based on the comments that

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1 were made by the SLED officers; correct?

2 A. Correct.

3 Q. So when you saw that your plea
4 counsel actually did a Motion to reconsider
5 based on those comments that were made by the
6 SLED officers, how did you feel?

7 A. I thought that was appropriate
8 because when they came there, what they did
9 -- pretty much, to my opinion, persuaded the
10 judge in his ruling.

11 Q. But did your plea attorney object to
12 it on the record?

13 A. He did not. No.

14 Q. Now, let's switch to your direct
15 appeal in this case. Now, in your direct
16 appeal, as opposing counsel presented to the
17 court, the basis or your direct appeal was --
18 what?

19 A. Was the fact that the guilty plea
20 that I entered wasn't proved.

21 Q. Not that it wasn't proved. Let me
22 rephrase that question.

23 A. All right.

24 Q. Was the basis of your -- was the
25 basis of your direct appeal the comments that

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1 was made by the SLED officers?

2 A. Not the basis.

3 MS. SINGLETARY: Your Honor, may I
4 approach?

5 THE COURT: Yes.

6 MS. SINGLETARY: Your Honor, what I am
7 handing to Defendant Roper is his direct
8 appeal in this case.

9 REDIRECT EXAMINATION CONTINUED

10 BY MS. SINGLETARY:

11 Q. If I may direct you to page three,
12 the statement of issue of appeal. Please
13 read that and then summarize the basis of the
14 issue of your appeal.

15 A. (Upon review), it is basically
16 saying that my Constitutional rights by the
17 sentencing -- that the sentencing was a
18 disapporpritate (sic) sentencing due to the
19 information provided by SLED, the SLED
20 officers.

21 Q. Let me summarize this. So a Motion
22 for consideration (sic) was done based on the
23 comments made by the SLED officers, by your
24 plea counsel. True?

25 A. Correct.

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1 Q. Was that granted or was it denied?

2 A. Denied.

3 Q. Your direct appeal was filed based
4 on the statements that were made by the SLED
5 officers. Is that correct?

6 A. Correct.

7 Q. Was your direct appeal granted or
8 denied?

9 A. Denied.

10 Q. Did your trial counsel object to the
11 statements that were made by the SLED
12 officers at the trial, during the guilty
13 plea?

14 A. No.

15 Q. Now, I don't know if you remember,
16 but you have your transcript in front of you.

17 A. Right.

18 Q. Do you know whether or not the judge
19 accepted your guilty plea prior to the
20 comments of the SLED officers?

21 A. No, I don't.

22 Q. Let me direct you to Page 10, Line
23 9, read from Line 9 to Line 12.

24 A. (Reviewing).

25 Q. Could you tell me what the court, in

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1 essence, says at that point? What I am
2 asking is, at that point did the court accept
3 your guilty plea?

4 A. They are saying that they give that
5 plea was made freely, voluntarily, knowingly
6 and intelligently made -- yeah, they accepted
7 it.

8 Q Now, up to that point had any of the
9 SLED agents made any comments at all?

10 A. (Reviewing transcript), ---

11 Q. If I said that they hadn't, would
12 you agree with me?

13 A. Yes.

14 Q. Now, opposing counsel also asked you
15 about your family members speaking to the
16 judge, saying that you were not a kingpin.
17 In front of the judge that day. Do you
18 remember your family members speaking?

19 A. Yes.

20 Q. Now, your family members, are they
21 in law enforcement?

22 A. No.

23 Q. Are they an officer of the court?

24 A. No.

25 Q. But they just spoke because they

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1 were your family members?

2 A. Correct.

3 Q. Because they care about you?

4 A. Exactly.

5 Q. And because they love you?

6 A. Um-humm.

7 Q. Now, in your opinion, do you think
8 that the judge would take the word of law
9 enforcement officers over your family
10 members?

11 A. Yes.

12 MS. SINGLETARY: Beg the court's
13 indulgence, Your Honor.

14 REDIRECT EXAMINATION CONTINUED

15 BY MS. SINGLETARY:

16 Q. And you were asked whether or not
17 you were unhappy with your sentence, correct?

18 A. Yes.

19 Q. Why are you unhappy with your
20 sentence?

21 A. Because I pleaded to five years, and
22 I didn't receive it; when I could have took
23 it to trial.

24 Q. And do you think that you relied on
25 the words of your trial attorney to your

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1 detriment?

2 A. Exactly.

3 Q. And you understand that if the judge
4 was to grant your PCR today that you would go
5 back to the original charges that you had
6 prior to the time of your plea?

7 A. Correct.

8 Q. And you understand that at that
9 point that you could be looking at mandatory
10 minimums that are higher than five years?

11 A. Correct.

12 Q. You could be looking at mandatory
13 minimums of ten years?

14 A. Correct.

15 Q. But you would actually still like an
16 opportunity to go to trial?

17 A. Correct.

18 Q. And why is that reason? Why would
19 you like the opportunity to go to trial?

20 A. Why? Because I felt that I would
21 get a better sentence.

22 Q. And what about the work of your
23 attorney, Mr. Apostolou?

24 A. It wasn't to be my benefit.

25 Basically, to be honest with you, he just --

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1 it just wasn't proved by the job that he did.

2 Q. Have you ever been represented by
3 any other attorney before?

4 A. No.

5 Q. So this was your first experience
6 with having an attorney?

7 A. Yes.

8 Q. In your opinion, did Mr. Apostolou
9 treat your case as another attorney -- in
10 your opinion, if another attorney had had
11 your case, do you think that they would have
12 did a better job?

13 A. Yes.

14 MS. SINGLETARY: I have no further
15 questions, Your Honor.

16 THE COURT: Sir, just for clarity of
17 the record, do you understand that you would
18 not just be facing minimums of ten years if
19 the court granted this relief?

20 APPLICANT: Correct.

21 THE COURT: Do you understand that you
22 have several indictments, each of which have
23 a different incident date?

24 APPLICANT: Correct.

25 THE COURT: Do you understand that it

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1 is likely in this Circuit that the solicitor
2 would try you on each of those offenses until
3 they got a life without parole sentence?

4 APPLICANT: Correct.

5 THE COURT: Knowing that, you still
6 wish to seek relief in this case?

7 APPLICANT: Correct.

8 THE COURT: Any questions as the result
9 of the court's questions?

10 MS. SINGLETARY: No, Your Honor.

11 THE COURT: Ms. Wilson?

12 MS. WILSON: Nothing further from the
13 State.

14 THE COURT: Sir, you may step down.

15 (WITNESS STEPS DOWN)

16 THE COURT: Any further witnesses?

17 MR. CHAPLAIN: The Applicant would
18 call Nadia Roper.

19 (WITNESS TAKES STAND)

20 NADIA JOHNSON ROPER, having been sworn to
21 tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CHAPLAIN:

25 Q. Ms. Roper, what is your relationship

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1 to Mr. Jarvis Roper?

2 A. Jarvis is my husband.

3 Q. And y'all have kids?

4 A. Yes, we have two. He also has two
5 other kids.

6 Q. What is the ages of those kids?

7 A. Nine and five.

8 Q. Nine and five?

9 A. (Affirmative nod).

10 Q. Did you play an active role -- while
11 your husband was being represented by Mr.
12 Apostolou, did you -- did you, uh, -- did you
13 attend the meetings?

14 A. I can vividly remember attending two
15 of them but I wasn't at all of them.

16 Q. Where were those two meetings at?

17 A. They were both at the attorney's
18 office.

19 Q. Okay. When you were sitting in that
20 attorney's office, did they go into talking
21 about the case or were you removed from the
22 room when they talked about the case?

23 A. Well, the parts that I was on, it
24 wasn't -- it wouldn't in depth about the
25 case. It was just more or less like, you

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1 know, 'if we were to negotiate', 'this is
2 what we are trying to do.' It wasn't about
3 details and what they had on him, whatever.

4 Q. Were any numbers or anything like
5 that projected at that time, that you can
6 repeat?

7 A. What I can remember -- what I can
8 recall is him talking about another case
9 where the guy was pretty much facing the same
10 sentence timeframe as Jarvis is -- or was.
11 He was like, 'I was able to negotiate down to
12 five years or four years', or whatever that
13 guy got. But I know that guy's maximum was
14 like twenty-five. I don't know what he did.
15 But that's kind of what we went over.

16 Q. So it was a similar case and he was
17 explaining how the outcome -- how it could or
18 could not turn out?

19 A. Pretty much.

20 Q. Okay. So but as for -- as for him
21 telling about particularly the buys that
22 supposedly took place, were you part of any
23 conversation like that with your husband and
24 the attorney?

25 A. No.

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1 Q. Okay. So when -- when was the first
2 time that you knew that a plea was going to
3 be taking place in the month of November?

4 A. Pretty much the morning of is the
5 first time that I heard anything about an
6 actual number.

7 Q. Okay. Well, I am not here to hear
8 the words "pretty much", so I am going to
9 come back one more time: When did you know
10 that a plea was going to take place in
11 November?

12 A. November 19th, the morning of
13 November 19th.

14 Q. The morning of the plea?

15 A. Yes.

16 Q. How did you become aware?

17 A. Because Attorney Apostolou had
18 called Jarvis. We were sitting on the front
19 porch at his mom's house, and what he said
20 was that they had dropped the mandatory
21 minimum from seven years to five and that he
22 would get five, meaning that he would serve
23 four and a half and that would be it.

24 Q. Then what did Jarvis -- what did you
25 think about the offer?

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1 A. Based on what was presented to us --
2 I mean, we actually said 'well, our kids will
3 be ten and six by the time that you come
4 home.' You know, 'we will make do until you
5 get back.' We thought it was fair.

6 Q. So after hearing that, y'all left
7 and went to the courthouse?

8 A. Um-humm.

9 Q. Did you talk to Attorney Apostolou
10 at the courthouse?

11 A. No. What I can recall about the
12 courthouse is that we were sitting outside on
13 the bench and that when the SLED agents came
14 in, pretty much it was 'there's the SLED
15 officers.'

16 Q. Who said 'there's the SLED
17 officers'?

18 A. Attorney Apostolou.

19 Q. Okay. What does that mean, 'here's
20 SLED.'

21 A. He just seemed nervous, the fact
22 that they showed up. He said that it wasn't
23 normal for them to come to court.

24 Q. So even thought he may have been
25 nervous, or you think that he was nervous,

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1 y'all still went forward -- well, Jarvis at
2 that time, I guess y'all spoke. As a couple,
3 y'all were still going forward with the plea?

4 A. Yes. Based on what we knew at the
5 time, this was the first time that we'd ever
6 gone through anything like this, we thought
7 it was still fine.

8 Q. Let me clarify. The mandatory
9 minimum of five -- do you understand
10 mandatory minimums?

11 A. (Affirmative nod).

12 Q. You do?

13 A. (Affirmative nod).

14 Q. That means no matter what the judge
15 wanted to do or would like to do, that the
16 judge would have to start off with five
17 years. So there was no way that he was going
18 to go into the courtroom and plea, then go
19 back home.

20 A. Right.

21 Q. You knew that?

22 A. Right.

23 Q. That he would serve five years?

24 A. Right.

25 Q. At least five years?

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1 A. Right.

2 Q. So he -- that is how it worked?

3 a. Yes.

4 Q. Now, he could have gotten as much as
5 thirty years that day, were you aware of
6 that?

7 A. I thought that it was twenty-five,
8 but -- (pause).

9 Q. You knew that it was substantially
10 higher than five?

11 A. Right.

12 Q. Okay. So are you sure that the
13 attorney didn't say the mandatory minimum is
14 five and he could catch anything in between
15 five and thirty -- or whatever the high
16 number may have been?

17 A. I am positive that he didn't say
18 that, because he said that he would have to
19 serve four and a half and that he would get
20 credit for the time that he had already
21 served, which was like the month of December.

22 MR. CHAPLAIN: I have nothing further.

23 THE COURT: Any questions of this
24 witness?

25 CROSS EXAMINATION

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1 BY MS. WILSON:

2 Q. Good morning, Ms. Roper.

3 A. Good morning.

4 Q. You said that you met with Mr.
5 Apostolou and your husband approximately two
6 times.

7 A. Yes.

8 Q. Were any of those times at your
9 home?

10 A. There was a time at my house. I
11 didn't count that, I'd forgot about that one.

12 Q. So was it one time at your home and
13 one time at the office or one time at your
14 home and two times at the office?

15 A. It was two times at the office and
16 one time at his parents' house.

17 Q. So one time at his parents' home and
18 two times at the office?

19 A. (Affirmative nod).

20 Q. So actually you met with Mr.
21 Apostolou about three times?

22 A. Right.

23 Q. During that, he said that y'all
24 discussed the possibility of having a plea
25 negotiation and what was about to transpire,

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1 is that correct?

2 A. Correct. We ---

3 Q. But no specifics?

4 A. Right, yeah. No numbers.

5 Q. So you weren't present at two of the
6 meetings that your husband had with Mr.
7 Apostolou, is that correct?

8 A. Based on what my husband said yeah,
9 I wasn't at two. Yeah, that's when I met
10 with him, them, but there were other meetings
11 where I wasn't at, too.

12 Q. Did you know the substance of those
13 other meetings where you were not present?

14 A. Not really, no.

15 MS. WILSON: Thank you.

16 THE COURT: Any redirect of the
17 witness?

18 MR. CHAPLAIN: No, Your Honor.

19 THE COURT: You may step down.

20 (WITNESS STEPS DOWN)

21 THE COURT: The Applicant may proceed.

22 MR. CHAPLAIN: Your Honor, we have no
23 further witnesses at this time.

24 THE COURT: Does the State have any
25 witnesses?

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1 MS. WILSON: Yes, Your Honor. The State
2 would call Alex Apostolou.

3 THE COURT: You may proceed.

4 (WITNESS TAKES STAND)

5 ALEX APOSTOLOU, having bee sworn to tell
6 the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. WILSON:

10 Q. Good morning, Mr. Apostolou.

11 A. Hello.

12 Q. How many years have been practicing
13 law?

14 A. Ten years.

15 Q. Do you recall how much of that has
16 been criminal law?

17 A. All of it. I was a prosecutor for
18 a couple of years before I was a defense
19 attorney.

20 Q. Were you appointed or retained to
21 represent Mr. Roper?

22 A. I was retained.

23 Q. Do you recall how many times that
24 you met with him prior to his plea?

25 A. I think he's probably right, about

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1 five times total.

2 Q. Okay. Were you able to meet with
3 him as frequently as you would have liked?

4 A. No, I don't think that would be the
5 case. No.

6 Q. Why was that?

7 A. In my opinion, I think that we
8 should have met more. Mr. Roper had already
9 been on the plea docket before he retained
10 me. I knew from my discussions with the
11 State that there was some -- that they were
12 taking it as a very serious case, so I think
13 that we should have met more often.

14 Q. Why were you unable to meet more
15 with Mr. Roper?

16 A. In my opinion, I communicated that
17 this was a very serious matter and that we
18 needed to talk often about the case. In my
19 opinion, I don't think Mr. Roper came to meet
20 with me as much as I would like.

21 Q. Did you ever reach out to him and
22 try to communicate with him about the case,
23 since he wasn't coming to you?

24 A. I did. I called him, told him that
25 we needed to get together. I had some

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1 communication issues with him. I actually
2 went out to his parents' house, as his wife
3 testified, and met with him, his wife, his
4 parents and -- and discussed the fact that
5 this was a monster serious case and we needed
6 to have some aggressive discussions about how
7 to handle it.

8 Q. Did you file Brady or Rule 5 Motions
9 for Mr. Roper?

10 A. I did, yes.

11 Q. What did you receive from the State?

12 A. I received the evidence in the case.

13 Q. Could you be more specific? Did you
14 receive statements, videos or any reports?
15 Or all of those?

16 A. I received police reports, I
17 received video, I received several wiretap
18 conversations between the confidential
19 informant. I received all the file that the
20 solicitor had. In fact, I also met with the
21 solicitor in her office and looked at their
22 file.

23 Q. Did you review the discovery
24 material to Mr. Roper?

25 A. I sent it to him. As he testified,

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1 I sent it to him by e-mail. We had some
2 basic conversations about it.

3 Q. Prior to trial, did you talk to him
4 about the elements of the charges and what
5 the State was required to prove to convict
6 him of those trafficking charges?

7 A. Yes.

8 Q. Did he give you his version of the
9 other facts? Did y'all discuss that?

10 A. Yes.

11 Q. What was his version of the facts?

12 A. He felt that the credibility of the
13 confidential informant was a weak link in the
14 State's case.

15 Q. Did you discuss possible defenses?

16 A. Yes.

17 Q. Did you come up with anything that
18 y'all could have presented at trial?

19 A. Well, I think that by definition
20 that "confidential informant" has credibility
21 issues. So we talked about that.

22 Q. Could you briefly characterize what
23 the State's evidence was against Mr. Roper?

24 A. The State's evidence was that there
25 five buys, all with the same confidential

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1 informant. The precursor to those buys, the
2 calls from the confidential informant to Mr.
3 Roper were recorded by wiretap. Then the
4 confidential informant met with, I think, two
5 of the buys. Two of the buys, I think, were
6 controlled by SLED. Two of them, I think,
7 were controlled by the police department.
8 The confidential informant meets with the
9 police department, they're in a room, they
10 search him, no contraband. They give him
11 some controlled buy money. He meets with the
12 defendant, he comes back, doesn't have the
13 controlled buy money but has narcotics.

14 Q. Okay. Did Mr. Roper give you any
15 potential witnesses or leads to investigate
16 on his behalf?

17 A. No.

18 Q. What kind of investigation did you
19 do on the case?

20 A. I went through all the police
21 reports, I reviewed the video, reviewed the
22 wiretaps.

23 I actually did the preliminary in this
24 case. Mr. Roper had another attorney who did
25 the bond setting. I did the preliminary

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1 hearing. Then he didn't have counsel for a
2 little while, then he came in and retained me
3 as counsel. So I actually did the pre-
4 liminary hearing, as well. So I did have the
5 opportunity to question the police officers
6 in the case, as well.

7 I did go meet with the solicitor in her
8 office, go through the evidence. We got
9 discovery, started talking. The solicitor
10 told me she was going to place him on the
11 docket. I think that was in September, may
12 have been October. She's told me she was
13 going to place him on the docket. At that
14 time I told her that I could not get through
15 a colloquy with the judge, having not met
16 with him and gone through everything.

17 So we were always in negotiation with the
18 State. When I went to the solicitor's office
19 and met with her, my hope was to get an
20 offer. I mean, as a criminal defense
21 attorney, you get the best offer that you
22 can, you present it to your client and let
23 them make an informed decision.

24 So I was -- we were constantly
25 communicating. We were constantly in

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1 negotiation with the State, trying to get her
2 to come off the mandatory minimums.

3 Q. Did you communicate what your
4 communications with the State were to Mr.
5 Roper.

6 THE COURT: Someone's watch is
7 going off, or whatever that beeping is, it
8 needs to be turned off. Thank you. If
9 anyone has their cell phones on, they need to
10 turn it off -- not on vibrate, but off. Any
11 electronic device that goes off will be
12 confiscated, that's for anyone in the gallery
13 -- as well as counsel. Thank you.

14 You may continue.

15 DIRECT EXAMINATION CONTINUED

16 BY MS. WILSON:

17 Q. Did you continue to negotiate for
18 Mr. Roper?

19 A. Yes, ma'am.

20 Q. Did you receive an offer for a
21 guilty plea that he could plead guilty to, or
22 had there been offers before then; or was the
23 offer that he pled to the only offer?

24 A. The only offer that we ultimately
25 received was the one that was pled to.

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1 Q. Can you go through your discussions
2 with Mr. Roper about that plea offer?

3 A. The discussions that I had at that
4 plea offer were right up to the days before
5 the plea. We were able to get the State to
6 come down off mandatory minimum from twenty-
7 eight to one hundred to the ten to twenty-
8 eight category. My recollection of those is
9 that I communicated to him that the mandatory
10 minimum would be reduced from seven to five,
11 and the only offer is the one that he pled
12 to. The law has subsequently changed since
13 this, but I think that it was five to twenty-
14 five at that point.

15 Q. But you never told him that he was
16 going to plead guilty to five years?

17 A. I never told him that he was going
18 to get five years. No.

19 Q. And after you told him that, it was
20 his decision to plead guilty?

21 A. Yes.

22 Q. And did you ever -- did he ever seem
23 to indicate that he had an unclarity about
24 what the plea offer was?

25 A. Uh, -- there was -- a day before the

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1 plea, I believe that Nadia Roper, his mother,
2 -- the day before the plea, I had a
3 conference with -- actually I think that they
4 came into my office the night before the
5 plea. But there was a time where Nadia, his
6 mother, had called me and I had communicated
7 the offer -- once I'd gotten the offer from
8 the State of the reduction, I'd communicated
9 that reduction to Jarvis by telephone. Then
10 Ms. Nadia Roper, his mother, called me and
11 told me that she was the impression that he
12 thought that he was getting five years.

13 I called him back after that and had a
14 conversation with him that it wasn't a
15 guarantee of five years, that it was a range
16 of five to twenty-five.

17 Q. Did you talk to him about the
18 consequences of pleading guilty?

19 A. Yes.

20 Q. Did you advise him of his
21 Constitutional rights, like his right to
22 remain silent, right to a jury trial, his
23 right to confront his witnesses and things
24 like that?

25 A. Yes.

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1 Q. Did he ever indicate that he didn't
2 understand something?

3 A. No.

4 Q. Do you think that it was Mr. Roper's
5 decision to plead guilty?

6 A. Yes.

7 Q. Did he ever indicate that he didn't
8 want to go to trial?

9 A. No.

10 Q. Now, with regard to Mr. Roper's
11 allegation that you could have investigated
12 this case further, was there some additional
13 investigation that you could have done?

14 A. I don't know what it would have
15 been. We knew who the confidential informant
16 was, we knew his situation.

17 Q. So you know who the confidential
18 informant was?

19 A. (Affirmative nod).

20 Q. So you didn't make any Motions to
21 find out if they'd used a CI?

22 A. No.

23 Q. At one point during the plea there
24 was -- Mr. Roper is kinda of alleging that
25 there was confusion as to whether he was

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1 promised something or threatened to plead
2 guilty. Did you promise of threaten Mr.
3 Roper so that he would plead guilty?

4 A. No.

5 Q Are you aware if anyone else had
6 promised or threatened?

7 A. No.

8 Q. There is also an allegation about
9 you not objecting to the defendant being
10 referenced as a kingpin. But you do recall
11 -- do you recall during the plea when the
12 SLED agent said that?

13 A. Yes.

14 Q. And do you recall his other and his
15 uncle giving a statement to the court on his
16 behalf?

17 A. Yes.

18 Q. Do you recall them telling the court
19 that the defendant was never a kingpin?

20 A. Yes.

21 Q. Okay. Do you also recall filing a
22 Motion for reconsideration?

23 A. Yes.

24 Q. Can you tell the court what was the
25 substance of that Motion was?

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1 A. The substance of the Motion to
2 reconsider was that a plea agreement was
3 reached between the State, and then the SLED
4 officers, uh, -- he said things that I think
5 exacerbated the situation and we hoped that
6 the judge would reconsider the sentence in
7 light of those statements.

8 Q. What was the outcome of that Motion?

9 A. It was denied.

10 Q. While you didn't object to it during
11 the plea, your Motion for reconsideration
12 properly preserved the issue for appeal; is
13 that correct?

14 A. Well, that would be for the
15 appellate courts to decide, but I believe --
16 it was in the to reconsider.

17 Q. Are you aware of anything that
18 happened in his appellate proceeding?

19 A. I am aware that it was denied.

20 Q. While you said that you wished that
21 you had met with Mr. Roper a little more
22 frequently, do you feel like you had enough
23 time to talk to him about his plead and what
24 the court was expecting from him during the
25 plea?

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1 A. Yes.

2 Q. That he knew that he had to say that
3 he was guilty?

4 A. (Affirmative nod).

5 Q. That he was waiving his right to a
6 jury trial?

7 A. (Affirmative nod).

8 Q. His right to remain silent, his
9 right to confront witnesses; you talked to
10 him about all of that?

11 A. I did, yes.

12 MS. WILSON: No further questions.

13 THE COURT: Cross-examination.

14 CROSS EXAMINATION

15 BY MS. SINGLETARY:

16 Q. Attorney Apostolou, you stated that
17 at the time that you actually represented Mr.
18 Roper that you had been practicing for ten
19 years; is that correct?

20 A. No. I've been practicing for ten
21 years now. This was several years ago when I
22 represented Mr. Roper.

23 Q. At the time that you actually
24 represented Mr. Roper how long had you been
25 practicing?

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1 A. About six years.

2 Q. Had you ever had a case -- you
3 stated on direct examination that this was a
4 very serious case. I believe that you stated
5 on direct examination that it was a "monster
6 serious" case.

7 A. It was a serious case, yes.

8 Q. In trying to represent Mr. Roper,
9 had you represented anyone with a case that
10 was substantially similar to Mr. Roper's?

11 A. Yes, I had. Yes.

12 Q. And prior to his guilty plea, how
13 many trials had you actually done, that you'd
14 estimate?

15 A. Hummmm, -- ten?

16 Q. Were any of those trials drug
17 offenses?

18 A. Yes.

19 Q. And you were the defense attorney on
20 all of those trials?

21 A. Yes.

22 Q. And you stated that when you spoke
23 to Mr. Roper that you felt that -- or that
24 Mr. Roper related to you that the credibility
25 of the CI was very weak?

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1 A. Right.

2 Q. And with Mr. Roper relying that to
3 you, you didn't think that it was appropriate
4 to do a Motion to suppress the drugs based on
5 the credibility of the CI?

6 A. No. If Mr. Roper had indicated to
7 me that he wanted to go to trial, certainly I
8 would have made a Motion to suppress the drug
9 evidence, CI evidence.

10 Q. Did you ever bring that up to Mr.
11 Roper, did you ever let him know that that
12 was an option, for y'all to do a Motion to
13 suppress the drugs?

14 A. I believe that we did have that
15 discussion.

16 Q. You're not sure, but you believe
17 that you did?

18 A. Yes, I would say that, uh, -- I
19 would say that we did have as many
20 discussions as I would have liked to have
21 had, but I'd say that we did discuss the
22 options of going to trial and what we could
23 attempt to do at trial. In this particular
24 case, I think that we discussed the potential
25 of going to trial a couple of times.

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1 Q. So -- now, again, I want to go back
2 to you saying that Mr. Roper's case was a
3 case of monstrous magnitude. Now, typically
4 -- and you've -- you tell me if I am wrong.
5 If there's a case and it is of monstrous
6 magnitude, that means that you need to do
7 extensive research, extensive communication
8 with the client about the discovery in their
9 case; correct?

10 A. Yes.

11 Q. In order for you to come up with
12 some type of trial -- some type of strategies
13 for defenses for that case?

14 A. Correct.

15 Q. And you just stated that on five
16 different occasions that y'all talked about
17 the possibility of y'all going to trial.

18 A. No. I didn't testify that we talked
19 about the possibility of going to trial. We
20 met five times, total, in the course of my
21 representation.

22 Q. So how many times did y'all talk
23 about going to trial during those five times
24 that y'all met?

25 A. I don't know that specific number.

1 Q. Okay. But you also stated on direct
2 examination that while this was a case of
3 monstrous magnitude that you only had basic
4 conversations about the discovery; is that
5 correct?

6 A. We had conversations about the
7 discovery.

8 Q. So when you testified on direct
9 examination that it was just basic
10 conversation, was that correct or not?

11 A. I probably said that, yes.

12 Q. All right. Now, did you ever go to
13 the prosecutors on Mr. Roper's behalf and ask
14 them for a cap in this case?

15 A. Yes. We talked about it. My
16 original hope was to get an offer of
17 trafficking, first offense, in ten to twenty-
18 eight; which would have been a three to ten,
19 but it would not have an eighty-five percent
20 sentence.

21 Q. And the cap that you went to the
22 solicitor's and spoke about, what cap did you
23 request from the solicitor's office?

24 A. I do not recall specifics.

25 Q. Now, let me fast forward to y'all

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1 speaking about Mr. Roper's family member
2 testifying or during mitigation at the plea
3 saying that he wasn't a kingpin. Now, have
4 you ever in all the years that you've
5 practiced, have you ever in speaking to a
6 client told them that law enforcement members
7 credibility is judged to a higher standard
8 than some lay person's or a defendant's?

9 A. I have in my experience had conver-
10 sations with clients about the fact that law
11 enforcement probably is afforded the benefit
12 of the doubt in certain types of situations,
13 yes.

14 A. And would you agree with me that
15 Judge Young had already accepted Mr. Roper's
16 guilty plea prior to the SLED agents making
17 their comments at the plea?

18 A. I would agree with that, yes.

19 Q. And would you -- you heard Mr. Roper
20 testify and you heard his wife testify,
21 stating that they thought that you were kind
22 of caught off guard about the SLED agents
23 being there. Did you know that they were
24 going to be there?

25 A. I found out that the SLED agents

1 were going to be there when I got to court
2 that day. Ms. Lindler was actually the duty
3 solicitor, Assistant Solicitor in charge of
4 that case. She communicated to me that SLED
5 was furious that she'd reduced the charge,
6 that they were driving in from Columbia and
7 coming to the SLED.

8 Q. Oh, so the duty solicitor didn't
9 even know until that day that the SLED
10 officers were going to be there?

11 A. I believe that's correct, yes.

12 Q. So you as well as the solicitor --
13 would you say that both of you guys were
14 kinda caught off guard?

15 A. I would say that I was -- I don't
16 know that I'd had a case where SLED officers
17 had driven from Columbia for a plea.

18 Q. And you just stated that the SLED
19 officers were furious with the actual plea
20 offer that the duty solicitor gave you in
21 this case?

22 A. That's correct.

23 Q. Now, did anything happen at this
24 guilty plea where you and the duty solicitor
25 may have had a sidebar while the SLED

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1 officers was actually relating the facts to
2 the judge?

3 A. I cannot say for sure about that.
4 Like when the SLED officer was testifying,
5 did we have a word?

6 Q. Yes. When the SLED officer was
7 testifying, did you speak over to the duty
8 solicitor and speak to her?

9 A. I might have. That actually rings a
10 little bit of a bell.

11 Q. And I don't know if you remember
12 but, can you recall when you went over what
13 the purpose of your having that sidebar would
14 be -- with the duty solicitor was?

15 A. No. I can surmise that I wasn't
16 happy with the testimony from the SLED
17 officers. Really, what I'd hoped would
18 happen that day -- since I am under oath --
19 is that, uh, I -- I'd hoped to approach the
20 bench before we had the plea, just to talk to
21 the judge about it, to give him a heads up.
22 I knew that it was a volatile situation, that
23 there were a lot of people there, but
24 unfortunately the prosecutor wouldn't go talk
25 to the judge.

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1 Q. Now, let me ask you this. Did the
2 prosecutor ask for any specific time for Mr.
3 Roper to receive?

4 A. I believe that she said "substantial
5 time."

6 Q. What about the SLED agents?

7 A. They asked for the maximum sentence.

8 Q. Now, would you say -- would your
9 communication with that prosecutor prior to
10 that plea date, with SLED being there, would
11 you say that the prosecutor's tune, so to
12 say, changed when SLED was there to speak to
13 The Honorable Judge Young?

14 A. I knew from the onset of this case
15 that the prosecutor was, for lack of a better
16 term, having -- I knew that law enforcement
17 was involved in this case, and I knew that
18 she felt that law enforcement was interested,
19 highly interested, in this case.

20 Q. And -- let me just ask you one last
21 question on that point. Did law enforcement
22 threaten the duty attorney, as far as you're
23 aware of, regarding Mr. Jarvis' case? Mr.
24 Roper's case?

25 A. (No verbal response).

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1 Q. And when I say "threatened", did
2 they threaten to go to her superiors?

3 A. I don't know if I would use the term
4 "threatened." I know that in my
5 conversations with her that day that she felt
6 that she might have some communication from
7 SLED and her superiors about the reduction in
8 the charge.

9 Q. So in essence, SLED was actually
10 running the plea, not the prosecutor?

11 A. I can't comment to that. I
12 personally would say that the prosecutor was
13 running the plea.

14 Q. Now, let me ask you this, and I know
15 that hindsight, being twenty/twenty is
16 exactly what it is, but at that guilty plea,
17 why didn't you object to the comments that
18 SLED made?

19 A. Well, that was a difficult situa-
20 tion. I was balancing a lot of different
21 factors there. But hindsight being
22 twenty/twenty, I wish that I had objected.

23 Q. And that was the basis for your
24 Motion to reconsider, wasn't it?

25 A. Correct.

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1 Q. Now,

2 A. In that situation, there's a lot of
3 different factors that you consider:

4 Does law enforcement have the
5 ability to present their case?

6 Yes.

7 Is the plea agreement between
8 the parties based on facts?

9 Yes.

10 Did law enforcement add things
11 in there?

12 Yes.

13 So that was the basis of my Motion to
14 reconsider, yes.

15 Q. And some of the statements that law
16 enforcement made, statements such as Mr.
17 Roper was a kingpin, and talking about prior
18 bad actions, was Mr. Roper ever convicted or
19 arrested for a lot of the things that SLED
20 stated on that day?

21 A. No.

22 MS. SINGLETARY: Beg the court's
23 indulgence, Your Honor, -- (sidebar with co-
24 counsel). No further questions, Your Honor.

25 THE COURT: Redirect?

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1 MS. WILSON: Briefly, Your Honor.

2 THE COURT: Um-humm, you may proceed.

3 REDIRECT EXAMINATION

4 BY MS. WILSON:

5 Q. Mr. Apostolou, it is correct that
6 you discussed the possibility of going to
7 trial with Mr. Roper?

8 A. Yes.

9 Q. And you also discussed the possi-
10 bility of if you were to proceed to trial
11 suppressing the drug evidence against him?

12 a. We discussed different options. I
13 told him that if we going into a plea that we
14 were -- that if we were going to trial that
15 these were the types of things that we would
16 do, but that those were the types of things
17 that you may have to make decisions on to go
18 to trial. That if there is a plea offer and
19 you decide to go to trial because things
20 don't' go well for you at these Motions
21 hearings that you very likely are not going
22 to get another offer from the State.

23 Q. And after those discussions, was it
24 your advice to him to go to plea?

25 A. I don't advise my clients. I try to

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1 give them an informed decision if they ask my
2 opinions, what I think; but I don't advise
3 them. I try to let them have an informed
4 decision about all the consequences and
5 benefits.

6 Q. So is it safe to say that you put
7 all the evidence and all the options in front
8 of Mr. Roper and he decided to plead guilty?

9 A. That is my opinion, yes.

10 Q. Mr. Roper's counsel was talking
11 about how many times that you talked with Mr.
12 Roper and all that good stuff, did you have
13 any difficulty in getting in touch with Mr.
14 Roper?

15 A. Yes.

16 Q. Did that contribute to your
17 inability to meet with him more frequently?

18 A. Yes.

19 Q. You gave some testimony about that,
20 you know, the credibility of law enforcement
21 is sometimes given the benefit of the doubt
22 in certain situations. Did you also say that
23 during the day of Mr. Roper's plea? Is that
24 correct?

25 A. I tried to. I think that I did.

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1 Q. And they can also -- the court
2 during a plea can also consider evidence that
3 is presented by the State; is that correct?

4 A. Yes.

5 Q. And you said that in hindsight you
6 probably would have objected to that
7 reference during the plea?

8 A. Yes.

9 Q. But you also testified that at the
10 time you were balancing a lot of different
11 factors and that you didn't object, didn't
12 think that was a good thing to do?

13 A. Well, you try to balance those
14 factors. I felt like in mitigation that I
15 could head off some of what they were saying.
16 Yes.

17 MS. WILSON: Nothing further from the
18 State. Thank you, Mr. Apostolou.

19 THE COURT: Limited redirect (sic).

20 RECROSS EXAMINATION

21 BY MR. CHAPLAIN:

22 Q. Mr. Apostolou, I just wanted to
23 follow up on a couple of questions. You said
24 that you have been practicing law now for ten
25 years.

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1 A. Yes.

2 Q. At the time you'd been practicing
3 law for six years.

4 MS. WILSON: Objection, outside the
5 scope of my redirect.

6 THE COURT: It is outside the scope of
7 redirect.

8 RECROSS EXAMINATION CONTINUED

9 BY MR. CHAPLAIN:

10 Q. Mr. Apostolou, you stated that you
11 don't advise your clients, that you provide
12 information to them; is that correct?

13 A. Well, I try to provide information
14 to my clients, I try to give them all of the
15 facts of what is against them. I try to give
16 them what their alternatives are and what
17 their options are and ask them to make
18 decisions. If they want my input on what I
19 think that they should do, I'm more than
20 willing to give that to them; but ultimately
21 I try to -- I try to do my job to make sure
22 that it is an informed decision.

23 Q. In this particular situation, did
24 you give this client any information or any
25 advice on what he should do?

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1 A. In this particular situation, I
2 think that I did tell him that -- I think
3 what the ultimate situation was, you know,
4 he'd been on the plea docket prior to that,
5 in September and October. When he'd come to
6 the court -- you know I had communicated to
7 him and when he had come to the court, he'd
8 actually had communication with the
9 prosecutor. The prosecutor actually gave him
10 a talking-to, which included the possibility
11 of going to trial five times. That furthered
12 the possibility of a sentence of life without
13 the possibility of parole. So, you know,
14 that was in the conversation at that time.

15 Q But did you give him advice on what
16 he needed to do?

17 A. I think that I probably told him
18 that a plea would make sense in this
19 situation.

20 MR. CHAPLAIN: I don't have any
21 further questions.

22 THE COURT: Any further questions from
23 the State?

24 MS. WILSON: Nothing further from the
25 State, Your Honor.

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1 THE COURT: You may step down.

2 (WITNESS STEPS DOWN)

3 THE COURT: Anything further from the
4 State?

5 MS. WILSON: Nothing further from the
6 State, Your Honor.

7 THE COURT: Anything further from the
8 Applicant in rebuttal.

9 MS. SINGLETARY: None, Your Honor, at
10 this time unless except the court would like
11 -- if the court would like for arguments to
12 be made, at the appropriate time?

13 THE COURT: I would, but I would ask
14 that you keep them brief. As the fact
15 finder, I've listened to the testimony. You
16 may proceed.

17 MS. SINGLETARY: Thank you, Your Honor.
18 Your Honor, clearly based on the testimony of
19 our client, we feel that we have met our
20 burden based on the *Strickland* test.

21 We feel that our client has met the
22 burden that trial counsel was ineffective;
23 that his advice and his procedures fell below
24 the norm of any reasonable attorney. Based
25 on that, he was prejudiced.

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1 The prejudice that our client received is
2 that he detrimentally relied on the advice of
3 defense counsel, took the plea offer, was
4 sentenced to twenty (20) years.

5 Additionally, Your Honor, we feel that
6 trial counsel's lack of not objecting to the
7 prejudicial and prior bad acts ---

8 THE COURT: What prior bad acts are you
9 referring to? Because I've read the
10 transcript and there is cursory reference to
11 -- it appears that most of what they are
12 talking about are the deals that were
13 orchestrated, basically with the confidential
14 informant. There is some reference in "being
15 smart", having outwitted the police, having
16 been on their radar. But that's not a prior
17 bad act.

18 MS. SINGLETARY: Well, Your Honor,
19 that's what we are actually alluding to. The
20 fact that the SLED agent actually alludes to
21 the fact, based on those comments, that out
22 client has been a nuisance to the community
23 and has had this behavior that had occurred
24 previously but that because he was so smart
25 they were not able to catch him in the act at

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1 that time. So it would be our argument ---

2 THE COURT: They kinda of say that
3 about everybody, though; don't they?

4 MS. SINGLETARY: Yes.

5 THE COURT: We kinda know that. But
6 they don't allude to any specific prior bad
7 acts. When you're talking about bad acts,
8 prior bad acts, normally you're talking about
9 something specifically that they have not
10 been convicted of. I just didn't see that in
11 the record. I just was trying to make sure
12 that I didn't miss something.

13 MS. SINGLETARY: Yes, Your Honor, I
14 understand. Based on that, Your Honor, we
15 just ask for you to grant our client's post-
16 conviction relief in this matter.

17 THE COURT: Anything from the State?

18 MS. WILSON: Briefly, Your Honor. The
19 State asks that you deny Mr. Roper's
20 application for post-conviction relief. Not
21 only has he failed to show that defense
22 counsel was ineffective, but he also has not
23 proven that any prejudice resulted from Mr.
24 Apostolou's representation.

25 With regard to the allegation about Mr.

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1 Apostolou's failure to investigate, Mr.
2 Apostolou gave appropriate testimony about
3 things that he investigated. He also
4 testified that he didn't feel like he had
5 anything else to investigate. Mr. Roper has
6 not shown anything that would have resulted
7 had further investigation by defense counsel
8 been developed. Mere speculation is
9 insufficient to support a claim of
10 ineffective assistance of counsel and failure
11 to investigate.

12 With regard to Mr. Apostolou's alleged
13 failure to make any objection to Mr. Roper
14 being referenced to as a kingpin by the SLED
15 officer, Mr. Apostolou -- if there was any
16 ineffectiveness or prejudice by Mr.
17 Apostolou's failure to object, it was
18 remedied by the Motion to reconsider to
19 preserve the issue for appeal.

20 In the appellate courts, his appellate
21 counsel raised the issue in an *Anders* brief
22 and the court affirmed his conviction. As
23 you know, in an *Anders* brief, the court
24 reviews the entire record to determine if
25 there are any issues proper for appeal.

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1 With regard to the voluntariness of Mr.
2 Roper's plea, there was testimony several
3 years after the plea that he was induced or
4 persuaded to plead guilty but at the guilty
5 plea he testified that he was satisfied with
6 trial counsel, didn't need additional time,
7 that he had sat down and talked to him about
8 it, that he was told about all the evidence
9 against him, that he was told of all the
10 charges, that he discussed his right to trial
11 and that he didn't want to call any
12 witnesses. He stated that he was being
13 truthful.

14 The State would request that you deny his
15 application for post-conviction relief.

16 THE COURT: In an application for post-
17 conviction relief, the applicant bears the
18 burden of proving the allegations of the
19 application. We all know the standard where
20 the allegation is ineffective assistance of
21 counsel, where a guilty plea is concerned, he
22 must prove that counsel's conduct so
23 undermined the proper functioning of the
24 adversary process but for that advice which
25 fell below the objective standard, that the

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1 would not have pled guilty.

2 He also indicates that his lawyer failed
3 to fully advise him of the extent of the plea
4 offer of the State and further asserts that
5 his attorney promised that he was going to
6 get a five-year sentence.

7 In that regard, he has to prove that
8 there is a reasonable probability that but
9 for these alleged errors, he would not have
10 plead guilty and would insisted on going to
11 trial.

12 I would, just an anecdotal, I guess,
13 point, I've reviewed all the indictments --
14 he was facing three, four, five, six, seven
15 charges, all of which were in excess of ten
16 to twenty-eight grams -- in excess of twenty-
17 eight grams.

18 All of these offenses, at least the vast
19 majority -- well, all of them being on
20 separate dates; those being Indictments:

21 09-1616 was 9-10-08;

22 1617 was 9-16-08;

23 1618 was 10-22-08;

24 1619 was 11-12-08;

25 1620 was 10-10-08 and

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1 1621, the proximity was 10-10-08.

2 So he would have been able to argue that
3 1620 and 1621 would have been part of the
4 same incident, but these others -- based on
5 what I know of the solicitor's policy, in
6 this circuit, they would have simply put him
7 on LWOP notice, which is the possibility of
8 life without parole, and they would have
9 tried each one of these indictments until
10 they got their desired result.

11 And, in addition to that, and I am
12 getting a little out of order, but there has
13 been some argument regarding the fact that
14 these buys, for lack of a better term, were
15 only on -- well, that they were precipitated
16 by phone calls, which were wiretapped, and
17 then consummated with these sales; but that
18 he is not visible on the videotape. His
19 voice is audible on the videotape. I would
20 just note again, anecdotally, that it really
21 isn't necessary for him to be visible on the
22 videotape. Notoriously, videotapes of buys
23 are of horrible quality. Normally, and quite
24 frankly, most of them are inaudible, for one
25 reason or other. Most of the time, because

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1 of the way that the camera is situated on the
2 CI, it's rare that they get the actual deal
3 on video. It has been my experience,
4 however, that even without the person being
5 on the video that if their voice can be
6 authenticated, someone can identify them,
7 identify them as the person speaking, that
8 that rises to the level of substantial
9 circumstantial evidence and has little or no
10 effect on the ability of the State to achieve
11 a conviction. So I don't know that that
12 really makes any appreciable difference or
13 that it would have made any appreciable
14 difference if he had gone to trial.

15 But going back to his allegations
16 regarding ineffective assistance of counsel,
17 the court -- while I listened very intently
18 to both the testimony of the applicant and
19 his wife, as well as Mr. Apostpoulou, what
20 the court actually finds most convincing in
21 these instances is the actual trial
22 transcript. It is a contemporaneous record
23 of what actually took place on that day. I
24 think that people's memories are hazy. I
25 also realize that perception is reality, that

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1 when faced with a very difficult situation,
2 whether it be a criminal matter, whether it
3 be someone's health, people tend to hear what
4 they want to hear, that being the most
5 beneficial of the information being conveyed
6 to them and they tend to block out that which
7 is hard to hear, hard to digest or hard to
8 accept. I think hindsight tends to provide
9 people with difference recollections of what
10 actually transpired.

11 Based on this record, the court finds
12 most compelling that at page four and at page
13 five, clearly the Applicant was advised of
14 his exposure to the possibility of life
15 without parole, strikes, and enhancements,
16 that he was pleading to a serious and,
17 thereby, affecting how he would serve his
18 time. That really bring into question his
19 credibility that he did not know that.

20 Certainly he did know that Mr. Apostolou
21 -- considering or taking his testimony as
22 true, if in fact I believe him that Mr.
23 Apostolou didn't explain it to him, the judge
24 certainly did. So I would think that it's
25 not credible that he did not know what he was

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1 facing in terms of his exposure on these
2 offenses.

3 The record is void of any guarantees to
4 him of a sentence. Normally when there is a
5 guarantee of a sentence, it would have been
6 in the form of a negotiated plea and the
7 State would have made those negotiations, as
8 well as his counsel would have made the
9 substance of those negotiations, clear for
10 the record. That being articulated, he would
11 have known that he was facing at least the
12 minimum mandatory on each of these offenses,
13 which was five years.

14 He was clearly advised of his right to a
15 jury trial, his Constitutional rights, as
16 well as -- which I find to be more probative
17 -- his ability to challenge the State's
18 evidence. So he came today and testified
19 that he was not aware of that, but clearly
20 the court asked him of that right. If he
21 didn't know, he certainly was advised at that
22 point that he could challenge the State's
23 evidence, that being in the nature of a
24 suppression Motion.

25 As an anecdotally point, I really can

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1 discern no basis for a Motion to suppress.

2 So I don't -- you know.

3 Mr. Apostolou is correct that the
4 practice in this circuit is that once you
5 start filing Motions to suppress, or
6 otherwise, that any deals are removed from
7 the table. They are permanently removed. So
8 if you decide them to plead, you are pleading
9 straight up on any indictments that you are
10 facing or they are just going to take it to
11 trial and let the chips fall where they fall.

12 If you roll the dice, you go forward and
13 you file any Motion to suppress, or any other
14 type of dispositive Motions, and you don't
15 succeed on them -- well, it doesn't matter
16 whether you succeed or them or not, any deals
17 are withdrawn at that point and they are
18 going to place you on either a plea docket or
19 a trial docket and no further deals are going
20 to be offered to you.

21 But at Page 5, Line 15 through 25, as
22 well as Page 6, Lines 1 through 5, he is very
23 clearly advised of his right to a jury trial,
24 his Constitutional rights and his right to
25 challenge the State's evidence.

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1 It is clear from the record that he was
2 not under the influence of any substances,
3 drugs or alcohol; that he was not under any
4 physical or emotional conditions that
5 inhibited his ability to understand where he
6 was or what he was doing. That is at Page 6,
7 Lines 13 through 15 and Page 6, Lines 16
8 through 19.

9 As well as his own admission of guilt at
10 Page 6, Lines 9 through 12.

11 He advised the court of his satisfaction
12 with his attorney's services, Page 6, Lines
13 20 through 25; Page 7, Lines 1 through 25;
14 and Page 8, Lines 1 through 7.

15 And based on my experience of having done
16 way too many guilty pleas, probably way too
17 many to count, defendants are very vocal when
18 they are dissatisfied with their lawyers. As
19 a matter of fact, most of the time it will
20 disrupt the plea and it will have the court
21 wary or unwilling, so to speak, to accept the
22 plea.

23 If they am not satisfied, they will come
24 right out and they will embarrass their
25 lawyers. They will say:

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1 *'He only met with me five minutes.'*

2 *'I didn't see him until today.'*

3 *'I never saw him before.'*

4 *'I was picked up on a bench warrant and I*
5 *never saw him until I was down in holding.'*

6 Or, *'I never saw him before today when we*
7 *came to court.'*

8 So I know defendants can be very bold
9 about making those statements, as well as
10 being very bold about whether *'I was offered*
11 *a deal'* and whether, *'I'm taking a plea based*
12 *on a deal.'* Or, *'I expected such and such, I*
13 *was made a promise of such and such.'*

14 He indicated at Page 8, Line 8 through
15 10, that the decision to plea guilty was
16 solely his, that there were no promises other
17 than the reduction in charges, at Page 8,
18 Lines 11 through 22.

19 He clearly had sufficient education and
20 experience to know what he was doing. Page
21 8, Lines 23 through 25, and Page 9, Lines 1
22 through 17.

23 Judge Young then asked him again if he
24 was clear about the total mandatory as well
25 as maximum sentences that he facing, Page 20,

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1 Lines 1 through 19 and Lines 21 through 25.

2 He advised the court hat knowing that, that
3 he still wished to plead guilty. Certainly
4 he could have withdrawn his plea at that
5 point.

6 I find his testimony credibility that he
7 knew SLED was there, whether he expected them
8 to be there or knew beforehand, he clearly
9 was advised at that point that his could
10 "snowball", so to peak, or that -- in other
11 words, he knew that they weren't there to say
12 anything complimentary. So certainly he
13 could have withdrawn his plea at that time.

14 The court would have allowed him to
15 withdraw his plea.

16 If Mr. Apostolou wasn't ready to go to
17 trial at that point, the court would have
18 allowed him adequate time to have become
19 prepared to try the case.

20 Most compelling is his statement at Page
21 -- or compelling, not most compelling -- is
22 his statement on Page 25, Line 7, "I can't
23 believe that I would allow myself to be in
24 this position", basically that he find
25 himself in this position of 'I'm between a

1 rock and a hard place' with two bad
2 alternatives. Most defendants want
3 probation, which is rarely ever available
4 under this circumstance.

5 But, again, people want to believe the
6 best of each circumstance. You can't fault
7 someone for that.

8 Oftentimes, that option is just not
9 available. So when faced with having to
10 chose between two bad alternatives, there is
11 no -- I mean, it's just a bad alternative,
12 either way around. But that's your only
13 option.

14 He was very clear about that, Page 25,
15 Lines 14 through 16.

16 Also it was clear from the elocution of
17 the facts that this was a joint investigation
18 between SLED and the City of Charleston.

19 But also in the record, it is very clear
20 and the court finds credible that Mr.
21 Apostolou's testimony about that he had to
22 make a decision about, *'How do I challenge*
23 *this really bad situation that I find myself*
24 *in, that SLED has taken this much interest in*
25 *the case?'*

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1 And it is not unusual for them to take an
2 interest in a case, it's not unusual for
3 police to show up at a plea, period.
4 Sometimes they want to be heard, sometimes
5 they don't.

6 Most times the solicitor will thank them
7 for their cooperation and make the court
8 aware that they are there in support of the
9 prosecution's case. They show up -- I rarely
10 have a drug plea or any other -- especially
11 if it is an assault on a police officer, with
12 or without injury, drug charges or otherwise,
13 that they show up. That is just regular
14 everyday practice.

15 So the fact that an officer would take or
16 be invested in the prosecution would not be
17 unusual. But I do find credible Mr.
18 Apostolou's testimony that he was trying to
19 balance certain interests. And I do find it
20 credible, though he didn't say it, it is
21 inferred; which is *'How do I mitigate this*
22 *for my client and not make these officers*
23 *even more angry, to say even more bad stuff*
24 *about my client?'* So he really was between a
25 rock and a hard place.

1 He had to let them have their say, then
2 mitigate this, let the judge understand that
3 *'my client is not this person that they are*
4 *representing him to be.'*

5 So he presented extensive mitigation,
6 probably more than is ever presented in a
7 guilty plea in the nature of several
8 witnesses -- and I won't go through all their
9 names, in the interest of time. But several
10 of them seemed to have appropriate or good
11 standing in the community, they came and
12 spoke on behalf of Mr. Roper. It's very
13 clear in the transcript, at Pages 14 through
14 19, as well as the statements made in
15 mitigation by Mr. Apostolou where he says,
16 *"My client is not this person that he is*
17 *being represented to be."*

18 Clearly the State had made it clear that
19 Mr. Roper was facing the possibility of life
20 without parole, that's at Page 17, Lines 1
21 through 5.

22 And he asked the Court for the minimum
23 sentence, at Page 19 -- I didn't write down
24 the line number. I apologize.

25 But again, there was much mitigation,

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1 Page 20, Lines 7 through 25, and Pages 21
2 through 25, ending at Line 5 on Page 25.

3 So there are many people that spoke on
4 behalf of Mr. Roper. The court acknowledges
5 that he has had many people of good
6 reputation come and speak on his behalf and
7 that he is faced with a conundrum, so to
8 speak, whether in fact Mr. Roper is leading a
9 double life. Whether in fact he is the
10 person that his family believes him to be or
11 whether in fact he is this person that law
12 enforcement believes him to be.

13 But I think of critical note and import
14 is Judge Young's reference to the fact that
15 -- it seemed to weigh more on him -- and of
16 course I can't speak for Judge Young. I
17 wasn't in his mind. I wasn't there at the
18 time. But it appears that more important to
19 him was just the sheer number of the charges,
20 because he made reference to it. As a judge
21 that hears guilty pleas all the time, that
22 would have registered in my mind as well, the
23 number of indictments that he was facing.

24 Frankly, you know, we're not -- we didn't
25 just fall off the turnip truck. You know, we

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1 have an incredible amount of discernment. We
2 know when people are angry, we know when they
3 have an ax to grind. We know when they have
4 prejudices about certain things, or whether
5 they just have -- they just dislike somebody.
6 You can tell, based on not only somebody's
7 words but their body language. So, you know,
8 we're not -- it is not lost on us.

9 We know when law enforcement or any other
10 witness has it out for somebody, and we --
11 you know, unlike juries -- and I don't want
12 to put down juries because they have an
13 inordinate amount of common sense. I think
14 some of them have more common sense than we
15 do.

16 We know what to sift through and get to
17 the bottom line of what we are dealing with.

18 And we have so many other factors to
19 weigh, because we don't have plea bargainers.
20 That is not our job. We are the only fixture
21 in the courtroom that has nobody to reward
22 and nobody to punish. The only people that
23 we represent is the State of South Carolina.
24 So we are very careful about how we do that
25 job.

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1 Even when someone has committed a
2 criminal offense, they are still entitled to
3 be treated fairly. They are still entitled to
4 a fair range of penalty, no matter how
5 egregious the act has been, because we've
6 come to the conclusion -- and I think that I
7 can speak for most of my colleagues -- that
8 most people who find themselves in a criminal
9 situation are not evil, they are not "bad"
10 people. They are just people with bad
11 judgment and they sometimes make very bad
12 decisions. Unfortunately, the way that our
13 laws are now structured, it doesn't take but
14 one bad decision to find yourself in a real
15 catastrophic situation.

16 Unfortunately we have a lot of young men,
17 and it pains my heart some days to think of
18 all the young men in South Carolina who at
19 twenty-two years old, twenty-five years old,
20 who find themselves in twenty-year sentences,
21 life without parole sentences. In effect,
22 their life is over in some instances. It is
23 very troubling. But because of the way that
24 our laws are structured, it is very easy
25 because of a poor decision -- and this isn't

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1 Mr. Roper's situation, because he's educated,
2 he had two years at Tech. But, you know, a
3 lot of people have the attitude of, 'I'm not
4 going to work at McDonalds. I can hustle and
5 make more money doing that.' They find
6 themselves in one buy, two buys and then the
7 next thing you know that are facing a minimum
8 mandatory of fifteen years or they are facing
9 life without parole. So that's -- I just
10 need for you to know that is not lost on us
11 when making decisions.

12 Now, there's been a lot of talk about the
13 CI, Motions to reveal the CI. To some extent
14 it is a moot issue because you knew who the
15 CI was. Also, I've never heard of a CI who
16 had credibility. I've never known one who
17 didn't have some gain in being here to
18 testify against somebody. A CI is always
19 here because they are trying to get
20 themselves out of a crack. They are always
21 going to set somebody else up to get rid of
22 their criminal situation. But I've never
23 seen that stop somebody from the State from
24 getting a conviction. CI's don't have
25 credibility. Frankly, most of them are

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1 addicts or either have extensive criminal
2 history and are facing some substantial time,
3 or they wouldn't agree to be a CI.

4 But, again, you knew who the CI was. In
5 looking at the case law, even if Mr.
6 Apostolou had made a Motion to reveal the CI,
7 based on the balancing tests, it is unlikely
8 that the court would have been in any
9 position to reveal that. They would have
10 revealed the substance of the tests on the
11 drugs, they would have revealed the substance
12 of the elements of the offense, but it is
13 rare that the court will reveal the identity
14 of a CI, unless the State doesn't object to
15 it. If they don't, then they would give it
16 to you. In most instances the State is going
17 to argue that it is going to put that
18 person's life at risk. Once you do the
19 balancing thing, the objection can be
20 achieved -- that being allowing the defendant
21 to have the information that they need to
22 zealously advocate. To meet the elements
23 that they have been charged with, you can
24 give that information without disclosing the
25 information of the CI. So I don't know if

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1 that would have made any difference if Mr.
2 Apostolou had made any Motions at that point,
3 the State in all likelihood would have
4 withdrawn any deals made to Mr. Roper.

5 The court can discern no evidence in this
6 record that Mr. Apostolou failed to
7 investigate. It is apparent from his
8 testimony that he came into this late in the
9 game, that Mr. Roper had already been on
10 several plea dockets.

11 I can tell, based on my experience, once
12 you've been on several plea dockets and
13 you've failed to ask for a trial or have pled
14 guilty, you are just not in as advantageous
15 situation in dealing with the solicitor's
16 office in terms of what they will offer you,
17 what they are willing to do.

18 Now, as regards SLED showing up at the
19 guilty plea, neither Mr. Apostolou nor Ms.
20 Lindler had any control over that.

21 In addition to that, let's just say that
22 for a week or two weeks that they knew. They
23 had no obligation to inform Mr. Apostolou,
24 It wasn't exculpatory, and they just had no
25 duty to advise him that they were planning on

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1 showing up. So I don't know that it really
2 -- it appears from the testimony of Mr.
3 Apostolou that Ms. Lindler was surprised as
4 well that they were showing up, that they
5 were upset that he received this deal that
6 had been offered to him, which reduced the
7 range of his penalty. So I don't know if he
8 had known in advance, would he had requested
9 a trial? Considering what he was facing,
10 that is really doubtful to me.

11 There is no evidence in the record that
12 he was guaranteed a five-year deal. Again, I
13 think perception is reality, and that may be
14 what he was faced with, but what he wanted to
15 hear. I think, based on Mr. Apostolou's
16 testimony, that the best that he could get
17 was a five-year minimum and *'that's what I am*
18 *going to ask for, but this is what you are*
19 *facing.'* That is based on the fact that the
20 mother-in-law called him and after that phone
21 call, he called him to reinforce that, you
22 know, *'If you are under this misapprehension,*
23 *let me correct that. This is the minimum*
24 *mandatory, and I am going to request that but*
25 *I have no guarantee of knowing that you will*

1 get that.'

2 In addition, the only way to get that
3 would be a negotiated plea and there is no
4 evidence in the record of that.

5 So it's clear from this plea colloquy
6 that Mr. Roper knew that sentencing was in
7 the prerogative and the discretion of the
8 trial judge.

9 Again, Mr. Apostolou has no control over
10 that. The best thing that he can do is argue
11 everything in mitigation and hope for the
12 best.

13 Also at Page 10, Lines 1 through 8 of the
14 transcript the court questions Mr. Apostolou
15 about whether he has explained to his client
16 strikes and enhancements. So that is a
17 contemporaneous record that that discussion
18 did in fact take place with the Applicant.

19 There has also been discussion about
20 whether there was preservation of the kingpin
21 issue. I think that it is supported by the
22 record that it was preserved and reviewed by
23 the appellate court, and was not the basis
24 for a reversal of the voluntariness of the
25 plea. So I don't think that there is any

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1 ground for the assertion that Mr. Apostolou
2 was deficient or fell below the appropriate
3 standard of representation by not preserving
4 that issue.

5 Again, he made a strategic position of
6 when to and how to object to those comments.

7 I do find credible Mr. Apostolou's
8 testimony that this was a very serious case,
9 that -- and one where there were very few
10 options. If he had rolled the dice and Mr.
11 Roper had been convicted, I think we'd be
12 sitting here again on a PCR. Of course, if
13 he had rolled the dice and had not been
14 convicted, then of course we would have a
15 different result.

16 But based on the evidence and the
17 discovery facing him -- I don't know how it
18 would have turned out, but I don't think it
19 fell below the standard of representation for
20 him to advise him of the pros and cons of
21 pleading guilty and ultimately to allow his
22 client to make a decision, or advising him
23 that he felt that it was optimal -- those
24 are my words, not his -- I believe Mr.
25 Apostolou's testimony was that he tries to

1 inform his clients about all of the
2 alternatives and option; that if they ask for
3 his input, that he gives it. Probably under
4 these circumstances, he told them that a plea
5 deal made sense in this situation. That is
6 supported by the breadth of what Mr. Roper
7 was facing if he were to go to trial.

8 The Applicant really doesn't raise that
9 he doesn't feel that he met with his attorney
10 enough. However, I do find credible Mr.
11 Apostolou's testimony that he wanted to meet
12 with him more, that he had some communication
13 issues with his client and they didn't meet
14 as often as he would have liked to.

15 It is also not unusual for the State to
16 use the same CI, at least not in the same
17 circuit. As a matter of fact, I haven't
18 heard of a case where they haven't used the
19 same CI. So that is not unusual to me or
20 raise any basis that could be appreciable if
21 he had decided to go to trial.

22 Also it is clear from the record, the
23 testimony of Mr. Apostolou as well as the
24 applicant, that he was provided with his
25 discovery. I don't know that it matters

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1 whether it was a hard copy or electronically.
2 Now we have moved to most things being
3 electronic. Certainly he could -- there was
4 nothing that would have precluded him from
5 printing it, if he so desired.

6 The record supports that he did in fact
7 go over the discovery with him. He had the
8 opportunity to listen to the evidence as well
9 as review the evidence that was against him,
10 or that at least as the State contended that
11 they were going to present the evidence of
12 the elements of his guilt of this offense.

13 I find credible that Mr. Apostolou said
14 that he was constantly and always in
15 negotiations with the State, trying to get
16 them to come off the mandatory minimums.
17 Frankly, I will tell you that based on my
18 experience in this circuit, I'm shocked that
19 they came down on the mandatory minimums and
20 allowed him to plea to the mandatory minimums
21 of five; that is, again, based on my
22 experience. Generally they take a very hard
23 line in that in that in order to allow him to
24 plead guilty to the reduction that they would
25 have set a substantial cap. So I'm -- it

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1 really is evidence of the substantial
2 negotiation that Mr. Apostolou was able to
3 achieve on Mr. Roper's behalf in terms of
4 having it reduced to ten to twenty-eight
5 grams and the reduction in charge.

6 The court finds credible that Mr.
7 Apostolou never told Mr. Roper that he was
8 guaranteed five years. Also credible that he
9 never told his attorney that he wanted to go
10 to trial.

11 It is clear from the record that the
12 State was always seeking a substantial
13 sentence in this case.

14 Also, Mr. Apostolou made reference that
15 he wanted to have a sidebar and that the
16 solicitor would not do that with him.

17 Again, anecdotally, I will say that as a
18 bench that we have moved away from having
19 sidebars and any discussions about anything
20 without a court reporter being present.
21 Because what happens then the lawyers says --
22 that there presumption of the client making
23 an assumption of what was said. Then
24 defendants make decisions based on their
25 assumption of what the content of that

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1 conversation was. So it is very rare that
2 we'd want our words to be misinterpreted or
3 any comments that we would make.

4 At least for my part, I don't have
5 sidebars or conversations with attorneys
6 unless I have a court reporter present
7 because, hindsight, I don't my words mis-
8 interpreted. I also want a contemporaneous
9 record of what is being discussed. As well,
10 it is rare but every once in a while judges
11 will make promises about what the -- what the
12 sentence will be regarding any particular
13 situation.

14 So I can't speak for Judge Young but, you
15 know, in the chaos really of plea court, I
16 kinda doubt that he would have had the
17 ability to have had a sidebar even if the
18 solicitor were inclined to do it. And I
19 don't know that it, again, would have made
20 any appreciable difference in how the court
21 viewed, uh, in terms of its sentencing on the
22 guilty plea.

23 I find credible Mr. Apostolou's testimony
24 that he knew law enforcement was highly
25 interested in the case. You know, whether

1 they threatened her or didn't threaten her, I
2 don't know. But the issue is that they never
3 went to Ms. Wilson about it and there was no
4 change in the position that the State offered
5 the Applicant as a result of what they felt
6 to be threatening behavior.

7 Of course, y'all don't know Ms. Lindler.
8 I do. She's a very strong personality. I
9 kinda think that if somebody threatened her
10 that it might go in the opposite direction,
11 not a malleable posture. I -- not to mean
12 that she is unreasonable but I just do not
13 perceive -- she would have told them to go to
14 Ms. Wilson and have a talk. I've seen her in
15 that position before and it is -- I have just
16 known her for a long time and I just don't
17 perceive that she would have been easily
18 threatened by anyone. If anything, she would
19 have told them, you know, *'I've made a deal.*
20 *You can go talk to the solicitor if you*
21 *want.'* You know, by then we would be done
22 with it and *'you have a good day.'*

23 I don't know that that really makes a
24 difference either way because they didn't go
25 talk to the solicitor and nothing was done as

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1 a result. In other words, there was no
2 change in the posture of the State regarding
3 this case that would have been detrimental to
4 Mr. Roper. If there was, then they would
5 have withdrawn the offer; which is a
6 reduction of charges.

7 Okay. Based on the extent of this
8 record, the Court finds that the Applicant
9 has failed to meet his burden of prove
10 regarding his application for post-conviction
11 relief.

12 Ms. Wilson will provide the court with a
13 proposed Order. The court reserves the right
14 to make any further findings of law or any
15 further -- or any further findings of fact or
16 conclusions of law based on the record. Ms.
17 Wilson should provide counsel with -- she
18 will provide me a copy of it electronically
19 and she will provide you a copy as well,
20 electronically. If there is anything that
21 y'all want to add to it, let her know before
22 it is submitted to the court. If you would,
23 do that within fifteen days. Thank you very
24 much.

25 MS. WILSON: Yes, Your Honor. Thank

1 | you.

2 (CONCLUDED)

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STATE OF SOUTH CAROLINA)

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CERTIFICATE

COUNTY OF CHARLESTON

)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on May 21, 2013 before The Honorable Deadre Jefferson;

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

A handwritten signature in cursive script, reading "Deborah Garrison", is written over a horizontal line.

Deborah Garrison

Charleston, South Carolina
April 1, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Leonard Roper¹, #338094,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-10-3597

ORDER OF DISMISSAL

FILED
2013 JUL 29 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Presiding Judge:
Applicant's Attorney:

Hon. Deadra L. Jefferson
Joenathan S. Chaplin, Esq.
Nicole L. Singletary, Esq.
Edwin D. Givens, Esq.

Respondent's Attorney:

Ashleigh R. Wilson, Esq.

Plea Counsel:

Alex N. Apostolou, Esq.

Date of Hearing:

May 21, 2013

Court Reporter:

Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 1, 2012. The Respondent made its Return on January 23, 2013. An evidentiary hearing into the matter was convened on May 21, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Joenathan S. Chaplin, Esquire, Nicole L. Singletary, Esquire, and Edwin D. Givens, 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, Alex N. Apostolou, Esquire, and Nadia Johnson Roper, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application,

¹ The Applicant is also known as Jarvis Roper.

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[Signature]

Respondent's Return thereto, and the Applicant's appellate 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 Charleston County. The Applicant was indicted at the March 2009 term of the Charleston County Grand Jury for five (5) counts of trafficking in cocaine 28-100g (2009-GS-10-1616, 1617, 1618, 1619, 1620, and 1621) and possession with intent to distribute cocaine (2009-GS-10-1621). Alex N. Apostolou, Esquire, represented the Applicant. The Applicant pled guilty to five (5) counts of trafficking cocaine 10-28g and possession with intent to distribute cocaine. The Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for twenty (20) years for each trafficking charge and ten (10) years for the possession with intent to distribute charge. The sentences were to run concurrently.

The Applicant filed a timely Notice of Appeal. On appeal, the Applicant was represented by Lanelle Durant, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Roper, 2011-UP-257 (S.C. Ct. App. June 1, 2011). The Remittitur was issued June 24, 2011.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failure to investigate the Petitioner's case.
 - b. Failure to object to improper statements that were made at the guilty plea.
 - c. Advised the Applicant to plead guilty based on erroneous sentencing advice.
 - d. Failure to research the law and elements of entrapment to prepare an adequate and complete defense that denied Applicant his 6th amendment right to effective

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- representation.
- 2. 4th Amendment violation.
- 3. Violation of due process rights.

At the evidentiary hearing, the Applicant presented testimony and evidence to support the following allegations:

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 - c. Advised the Applicant to plead guilty based on erroneous sentencing advice.
 - d. Failure to file a motion to discover the identity of the confidential informant.

This Court finds all other allegations raised in the application for post-conviction relief were abandoned by the Applicant.

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).

Summary of Testimony

The Applicant testified at the evidentiary hearing that he retained Alex N. Apostoulou, Esquire to represent him shortly after bonding out of jail. He testified he met with counsel five (5) times prior to pleading guilty for forty-five (45) minutes to one (1) hour each time. He testified counsel e-mailed the discovery to him and they discussed the documents by phone shortly before the guilty plea. He also testified they reviewed the video of his controlled buy and

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the officer's statement. The Applicant conceded the voice on the video they received of the controlled buy was his voice however he contends he was not discussing drugs on the video.

The Applicant testified he felt the State had no evidence against him and his case was solely based on a statement from a confidential informant. He testified counsel should have made a motion to obtain the identity of the confidential informant. The Applicant then conceded he was aware of the identity of the confidential informant and spoke with counsel about the credibility of the informant. He testified further he did not review the drug analysis with counsel prior to his plea. He testified counsel should have investigated the drug analysis done in his case. The Applicant testified counsel also did not discuss potential witnesses that they could call at trial.

The Applicant testified counsel came to him the week of the guilty plea with a plea offer from the State. He testified counsel told him he would receive five (5) years if he pled guilty. He acknowledged his attorney seemed knowledgeable. He testified counsel did not discuss his constitutional rights, the enhancement statute, or his right to testify. He also testified counsel did not explain to him that the court did not have to accept the plea offer from the State.

The Applicant testified counsel did not investigate his case. He testified had counsel investigated, he would have discovered problems with his case, the location of the buys, and the video and audio of the buys. The Applicant also testified trial counsel did not tell him SLED officers would be present at his guilty plea and their presence alarmed them. He testified the SLED officers called him a "kingpin" at the guilty plea. The Applicant recalled his uncle and mother telling the court he was not a "kingpin" at his guilty plea. He testified the court would

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take the word of law enforcement officers over that of his family. He also recalled counsel filing a Motion to Reconsider Sentence based on the statements of the SLED officers.

The Applicant testified he pled guilty because he was uncomfortable with counsel's representation and because he did not want to go to trial. He testified he also accepted the plea because the time was short enough for him to be away from his wife and kids. The Applicant then testified he now wants to go to trial to face his original charges since he did not receive a five (5) year sentence.

Nadia Johnson Roper, the Applicant's wife, also testified at the evidentiary hearing. She testified she attended three (3) meetings with counsel and that all of them were not at the attorney's office. She testified that one of the three meetings was at the Applicant's parent's home. She testified the meetings were not in depth. She testified she was not privy to all of the conversations her husband had with his attorney. Mrs. Roper also testified the Applicant and counsel discussed the plea negotiations the morning of the guilty plea. She testified counsel told the Applicant that the mandatory sentence for his charges was dropped from seven (7) years to five (5) years and the Applicant would be sentenced to five (5) years. She testified they thought five (5) years was good for the family. However, she testified she was aware the maximum exposure for the offenses was at least twenty-five (25) years. Lastly, she testified she was certain counsel did not say the Applicant could be sentenced between five (5) and twenty five (25) years in prison.

Alex N. Apostolou, Esquire, testified he has spent the last ten (10) years practicing criminal law. He testified when he was retained to represent the Applicant he had been practicing for six (6) to seven (7) years and had tried approximately ten (10) serious cases. His previous

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practice was in the solicitor's office. He testified he met with the Applicant five (5) times and was unable to meet with him more frequently. Counsel testified he tried to communicate to the Applicant and his family the serious nature of the charges he was facing, but it was difficult to get in touch with the Applicant which contributed to their communication problems. He testified he felt they should have met more times because the case was already on the plea docket several times before he was retained. He testified he tried to talk and meet with the Applicant more often however the applicant was uncooperative. He testified as a result he went to the applicant's parent's home for a meeting to convey the "monster serious" nature of the case and the fact that they needed to have an "aggressive conversations" about it.

Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he met with the assistant solicitor in her office to receive the discovery and sent a copy to the Applicant. He testified further they had some basic conversations about the State's evidence. Counsel testified he discussed with the Applicant the elements of the charges, what the State was required to prove, possible defenses, the confidential informant's lack of credibility and the Applicant's version of the facts. He testified there was evidence of five (5) different buys on initiated by a recorded call (audio) all with the same confidential informant following the same pattern of the confidential informant calling the applicant followed by a controlled buy. He testified there were no witnesses other than the video, audio and the confidential informant.

Counsel testified his investigation of the case included a review of all discovery and a review of the video of the controlled buys. Counsel testified he was present at the preliminary hearing and was able to question all the officers and meet with the Solicitor to discover all the

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evidence against the Applicant. He testified further he was not aware of any additional investigation that needed to be done in the Applicant's case.

Counsel testified he was aware of the identity of the confidential informant and did not need to file a motion to obtain his identity. Counsel testified he discussed proceeding to trial as an option with the Applicant and told him what would happen if he went to trial. He testified he discussed a motion to suppress the drugs with the Applicant and would have filed such motion had the Applicant indicated he wanted to proceed to trial.

Counsel testified the Applicant was on the plea docket prior to him being retained. He testified he was always in plea negotiations with the State and wanted to obtain a plea offer for the Applicant. He testified the State offered a plea to a lesser included offense that would reduce the minimum mandatory sentence from seven (7) years to five (5) years. He testified the Applicant would be pleading to a range of sentences from five (5) to twenty five (25) years in prison. Counsel testified he communicated the offer and he never told the Applicant he would be guaranteed a sentence of five (5) years. Counsel testified he did not advise the Applicant on whether to accept or reject the plea offer. He testified that he advised him of the pros and cons of a plea so that he could make an informed decision however under the circumstances he probably told him a plea made sense in this situation. He testified he let the Applicant make his own decision. He further testified the day before the Applicant's plea his mother in law told him that the Applicant thought he would be getting a five (5) year sentence. Counsel testified after speaking with the Applicant's mother in law, he called the Applicant and told him that a five (5) year sentence was not guaranteed. He further testified that the Applicant never told him he desired a trial on these charges.

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Counsel testified he was unaware the SLED agents would be present at the guilty plea until the morning of the plea upon arriving at court. He testified he found out the SLED officers had driven down for the plea because they were "furious" regarding the reduction in the charges. He testified the State was requesting a sentence of substantial jail time and he was aware the State was communicating with SLED. Counsel testified he was balancing several factors during the guilty plea such as law enforcement's right to be present at the plea, ensuring the plea was based on the facts and avoiding any further agitation of law enforcement regarding his client's sentence exposure. He further testified that he attempted a sidebar with the solicitor and the court because of the volatility he perceived however the solicitor would not do it. He further testified that he made a strategic decision to head this off with the substantial mitigation evidence he presented on the Applicant's behalf that would have refuted the officers' characterization of the Applicant. He testified in hindsight he wished he had objected however he was trying to balance his client's best interests at the time. Counsel testified he filed a motion to reconsider based on the SLED officer's statements to the court which was denied.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-90, 104 S. Ct. at 2064-66. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. The applicant must overcome this presumption in order to receive relief. Id.; Cherry, 300 S.C. 115, 386 S.E.2d 624 (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. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117-18, 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues

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relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668, 104 S. Ct. at 2052; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

Failure to investigate the Petitioner's case

This Court finds counsel was not ineffective for failing to investigate the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation

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of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense." Harrington v. Richter, 131 S. Ct. 770, 789–90 (2011). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

This Court finds the Applicant has failed to show what would have resulted had counsel further investigated his case. Counsel gave credible testimony that he fully investigated the Applicant's case and was fully aware of the State's evidence against the Applicant. This Court finds and the record reflects through counsel's testimony that counsel conducted an independent investigation of the facts and circumstances of the case. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel provided ineffective assistance of counsel for failing to investigate his case:

Failure to object to improper statements that were made at the guilty plea

This Court finds counsel was not ineffective for failing to object to what the Applicant has characterized as improper statements that were made at the Applicant's guilty plea. The Applicant alleges counsel should have objected to testimony from SLED officers during his guilty plea in which the officers referred to the Applicant as a drug "kingpin". This Court finds counsel's failure to object did not result in deficient performance. Counsel provided credible testimony that during the guilty plea he was concerned with balancing the Applicant's best interests in not further antagonizing the law enforcement officers and choosing instead to counteract the situation by presenting substantial mitigation on the Applicant's behalf. This

Court finds counsel's concerns were valid. This Court finds the presence of SLED officers at a guilty plea for a case in which they have an interest is not uncommon. This Court finds further that counsel provided substantial evidence in mitigation for the Applicant which weighed against the SLED officers' characterization of the Applicant as a "kingpin". This Court finds the Applicant could have chosen to withdraw his guilty plea after the officers' statement, but instead affirmed his desire to plead guilty. (Tr. 20:5-6).

This Court further finds that no prejudice resulted from counsel's failure to object to this testimony since after the Applicant's plea; counsel filed a Motion for Reconsideration of Sentence based on the Applicant's disagreement with the statements made by the SLED officers during the plea. While the Motion for Reconsideration was denied, the issue was properly preserved for review by the Court of Appeals. The Court of Appeals after review of the issue and the entire record pursuant to Anders v. California², dismissed the Applicant's appeal. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to object to improper statements that were made at the guilty plea.

Advised the Applicant to plead guilty based on erroneous sentencing advice

This Court finds counsel was not ineffective for providing erroneous sentencing advice to the Applicant. At the evidentiary hearing, the Applicant alleged counsel told him he was pleading guilty to a five (5) year sentence and that he pled guilty with the understanding he would receive a five (5) year sentence. This Court finds the Applicant's testimony lacks credibility. This Court finds counsel provided credible testimony that he did not advise the Applicant that he would receive a five (5) year sentence. Counsel testified he advised the

² 386 U.S. 738 (1967).

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Applicant that he would be pleading to a lesser included offense which lowered the mandatory minimum sentence from seven (7) years to five (5) years. Counsel also provided credible testimony that when he learned the Applicant thought he was pleading guilty to five (5) years, he called the Applicant to reiterate the plea offer to a lesser included offense with a lower minimum mandatory sentence of five (5) years.

This Court finds the Applicant was aware of the exposure he was facing and advised of the potential sentences he was facing by the court. The court advised the Applicant that the trafficking cocaine charge for which he was originally indicted carried a potential sentence ranging from seven to thirty years. (Tr. 3:18-22.) The court advised the Applicant that the State was allowing him to plead to trafficking cocaine 10-28g which carried a potential sentence of five to thirty years. (Tr. 3:18-22.) The Applicant was subsequently advised again of the mandatory minimum five years on the trafficking charges. (Tr. 19:21-25.) The court also advised the Applicant that he could have been facing life without the possibility of parole (Tr. 4:14-23), that he was pleading to three strike offenses (Tr. 4:14-23), and that the charges were considered violent, which would affect his parole eligibility. (Tr. 5:4-15.) The Applicant told the court during his guilty plea that no one promised him anything to get him to plead guilty other than the reduction of charges. (Tr. 8:11-22.) This Court finds the Applicant's discussion with the court and his high level of education (Tr. 9:1-4) indicates he was well aware of the consequences of his guilty plea and that he was facing a potential sentence between five (5) to thirty (30) years. The Applicant stated to the court during mitigation that he "[couldn't] believe [he] allowed [himself] to be in this situation." (Tr. 25:14-16.) During the colloquy with the court, the Applicant admitted his guilt (Tr. 6:9-12), indicated he was not under the influence of any drugs

or alcohol (Tr. 6:13-15), and was not suffering from any physical, mental, or emotional conditions affecting his understanding of the proceedings. (Tr. 6:16-19.) The Court informed the Applicant of his right to a jury trial and his right to challenge the State's evidence, and the Applicant indicated he still wished to plead guilty. (Tr. 5:16-6:5.) The Applicant also told the court that it was his decision solely to plead guilty. (Tr. 8:8-10.) Additionally, the Applicant communicated to the Court that he was satisfied with his attorney and did not need additional time to speak with him. (Tr. 6:20-8:7.) Applicant's attorney provided mitigation to the court by discussing Applicant's education, work history, lack of weapons involved, and family life, (Tr. 14-19), as well as providing many friends and family to speak on his behalf. (Tr. 20-25.) This Court finds the record is void of any guaranteed recommended or negotiated sentences. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for providing erroneous sentencing advice.

Failure to file a motion to discover the identity of the confidential informant

This Court finds trial counsel was not ineffective for failure to file a motion to discover the identity of the confidential informant. This Court finds this issue is moot since both the Applicant and counsel testified they knew the identity of the confidential informant. This Court finds further it is unlikely the Applicant would have benefitted from the filing of such a motion by counsel as doing so would have likely halted all plea negotiations with the State. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to file a motion to discover the identity of the confidential informant.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense." Harrington v. Richter, 131 S. Ct. 770, 789-90 (2011). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

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Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

CONCLUSION

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

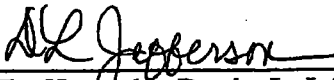
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.

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The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

July 26, 2013
Charleston, South Carolina.

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Leonard Roper,¹ #338094,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-10-3597

AMENDED ORDER OF DISMISSAL²Presiding Judge:
Applicant's Attorney:Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:Hon. Deadra L. Jefferson
Joenathan S. Chaplin, Esq.
Nicole L. Singletary, Esq.
Edwin D. Givens, Esq.
Ashleigh R. Wilson, Esq.
Alex N. Apostolou, Esq.
May 21, 2013
Deborah Garrison

BY

JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 1, 2012. The Respondent made its Return on January 23, 2013. An evidentiary hearing into the matter was convened on May 21, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Joenathan S. Chaplin, Esquire, Nicole L. Singletary, Esquire, and Edwin D. Givens, 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, Alex N. Apostolou, Esquire, and Nadia Johnson Roper, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application,

¹ The Applicant is also known as Jarvis Roper.

² Amended to correct scrivener's and citation errors.

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Respondent's Return thereto, and the Applicant's appellate 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 Charleston County. The Applicant was indicted at the March 2009 term of the Charleston County Grand Jury for five (5) counts of trafficking in cocaine 28-100g (2009-GS-10-1616, 1617, 1618, 1619, 1620, and 1621) and possession with intent to distribute cocaine (2009-GS-10-1621). Alex N. Apostolou, Esquire, represented the Applicant. The Applicant pled guilty to five (5) counts of trafficking cocaine 10-28g and possession with intent to distribute cocaine. The Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for twenty (20) years for each trafficking charge and ten (10) years for the possession with intent to distribute charge. The sentences were to run concurrently.

The Applicant filed a timely Notice of Appeal. On appeal, the Applicant was represented by Lanelle Durant, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Roper, 2011-UP-257 (S.C. Ct. App. June 1, 2011). The Remittitur was issued June 24, 2011.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failure to investigate the Petitioner's case.
 - b. Failure to object to improper statements that were made at the guilty plea.
 - c. Advised the Applicant to plead guilty based on erroneous sentencing advice.
 - d. Failure to research the law and elements of entrapment to prepare an adequate and complete defense that denied Applicant his 6th Amendment right to effective

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- representation.
2. 4th Amendment violation.
 3. Violation of due process rights.

At the evidentiary hearing, the Applicant presented testimony and evidence to support the following allegations:

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This Court finds all other allegations raised in the application for post-conviction relief were abandoned by the Applicant.

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).

Summary of Testimony

The Applicant testified at the evidentiary hearing that he retained Alex N. Apostoulou, Esquire to represent him shortly after bonding out of jail. He testified he met with counsel five (5) times prior to pleading guilty for forty-five (45) minutes to one (1) hour each time. He testified counsel e-mailed the discovery to him and they discussed the documents by phone shortly before the guilty plea. He also testified they reviewed the video of his controlled buy and

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take the word of law enforcement officers over that of his family. He also recalled counsel filing a Motion to Reconsider Sentence based on the statements of the SLED officers.

The Applicant testified he pled guilty because he was uncomfortable with counsel's representation and because he did not want to go to trial. He testified he also accepted the plea because the time was short enough for him to be away from his wife and kids. The Applicant then testified he now wants to go to trial to face his original charges since he did not receive a five (5) year sentence.

Nadia Johnson Roper, the Applicant's wife, also testified at the evidentiary hearing. She testified she attended three (3) meetings with counsel and that all of them were not at the attorney's office. She testified that one of the three meetings was at the Applicant's parent's home. She testified the meetings were not in depth. She testified she was not privy to all of the conversations her husband had with his attorney. Mrs. Roper also testified the Applicant and counsel discussed the plea negotiations the morning of the guilty plea. She testified counsel told the Applicant that the mandatory sentence for his charges was dropped from seven (7) years to five (5) years and the Applicant would be sentenced to five (5) years. She testified they thought five (5) years was good for the family. However, she testified she was aware the maximum exposure for the offenses was at least twenty-five (25) years. Lastly, she testified she was certain counsel did not say the Applicant could be sentenced between five (5) and twenty five (25) years in prison.

Alex N. Apostolou, Esquire, testified he has spent the last ten (10) years practicing criminal law. He testified when he was retained to represent the Applicant he had been practicing for six (6) to seven (7) years and had tried approximately ten (10) serious cases. His previous

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practice was in the solicitor's office. He testified he met with the Applicant five (5) times and was unable to meet with him more frequently. Counsel testified he tried to communicate to the Applicant and his family the serious nature of the charges he was facing, but it was difficult to get in touch with the Applicant, which contributed to their communication problems. He testified he felt they should have met more times because the case was already on the plea docket several times before he was retained. He testified he tried to talk and meet with the Applicant more often however the applicant was uncooperative. He testified as a result he went to the applicant's parent's home for a meeting to convey the "monster serious" nature of the case and the fact that they needed to have an "aggressive conversations" about it.

Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he met with the assistant solicitor in her office to receive the discovery and sent a copy to the Applicant. He testified further they had some basic conversations about the State's evidence. Counsel testified he discussed with the Applicant the elements of the charges, what the State was required to prove, possible defenses, the confidential informant's lack of credibility and the Applicant's version of the facts. He testified there was evidence of five (5) different buys on initiated by a recorded call (audio) all with the same confidential informant following the same pattern of the confidential informant calling the applicant followed by a controlled buy. He testified there were no witnesses other than the video, audio and the confidential informant.

Counsel testified his investigation of the case included a review of all discovery and a review of the video of the controlled buys. Counsel testified he was present at the preliminary hearing and was able to question all the officers and meet with the Solicitor to discover all the

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evidence against the Applicant. He further testified he was not aware of any additional investigation that needed to be done in the Applicant's case.

Counsel testified he was aware of the identity of the confidential informant and did not need to file a motion to obtain his identity. Counsel testified he discussed proceeding to trial as an option with the Applicant and told him what would happen if he went to trial. He testified he discussed a motion to suppress the drugs with the Applicant and would have filed such motion had the Applicant indicated he wanted to proceed to trial.

Counsel testified the Applicant was on the plea docket prior to him being retained. He testified he was always in plea negotiations with the State and wanted to obtain a plea offer for the Applicant. He testified the State offered a plea to a lesser included offense that would reduce the minimum mandatory sentence from seven (7) years to five (5) years. He testified the Applicant would be pleading to a range of sentences from five (5) to twenty five (25) years in prison. Counsel testified he communicated the offer and he never told the Applicant he would be guaranteed a sentence of five (5) years. Counsel testified he did not advise the Applicant on whether to accept or reject the plea offer. He testified that he advised him of the pros and cons of a plea so that he could make an informed decision however under the circumstances he probably told him a plea made sense in this situation. He testified he let the Applicant make his own decision. He further testified the day before the Applicant's plea, his mother in law told him that the Applicant thought he would be getting a five (5) year sentence. Counsel testified after speaking with the Applicant's mother in law, he called the Applicant and told him that a five (5) year sentence was not guaranteed. He testified further that the Applicant never told him he desired a trial on these charges.

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Counsel testified he was unaware the SLED agents would be present at the guilty plea until the morning of the plea upon arriving at court. He testified he found out the SLED officers had driven down for the plea because they were "furious" regarding the reduction in the charges. He testified the State was requesting a sentence of substantial jail time and he was aware the State was communicating with SLED. Counsel testified he was balancing several factors during the guilty plea such as law enforcement's right to be present at the plea, ensuring the plea was based on the facts and avoiding any further agitation of law enforcement regarding his client's sentence exposure. He further testified that he attempted a sidebar with the solicitor and the court because of the volatility he perceived however the solicitor would not do it. He further testified that he made a strategic decision to head this off with the substantial mitigation evidence he presented on the Applicant's behalf that would have refuted the officers' characterization of the Applicant. He testified in hindsight he wished he had objected however he was trying to balance his client's best interests at the time. Counsel testified he filed a motion to reconsider based on the SLED officer's statements to the court which was denied.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application by a preponderance of the evidence. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 441, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

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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.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-90, 104 S. Ct. at 2064-66. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. The applicant must overcome this presumption in order to receive relief. See id.; State v. Cherry, 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. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (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 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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. at 59,

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106 S. Ct. at 370; Jackson v. State, 342 S.C. 95, 98, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (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, 242-44, 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. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, 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. The record reflects the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

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

that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 4-5, 239 S.E.2d 750, 751-52 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. 442, 334 S.E.2d 814 (1985) (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, 476 U.S. 28, 106 S. Ct. 1683 (1986); Marzullo v. Md., 561 F.2d 540, 544 (4th Cir. 1977)).

Failure to investigate the Petitioner's case

This Court finds counsel was not ineffective for failing to investigate the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (citing Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011)). "An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense." Harrington v. Richter, 131 S. Ct. 770, 789-90 (2011). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 256, 227 S.E.2d 199, 202 (1976)).

This Court finds the Applicant has failed to show specific circumstances that would have resulted had counsel further investigated his case. Counsel gave credible testimony that he fully investigated the Applicant's case and was fully aware of the State's evidence against the Applicant. This Court finds and the record reflects through counsel's testimony that counsel

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conducted an independent investigation of the facts and circumstances of the case. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel provided ineffective assistance of counsel for failing to investigate his case.

Failure to object to improper statements that were made at the guilty plea

This Court finds counsel was not ineffective for failing to object to what the Applicant has characterized as improper statements that were made at the Applicant's guilty plea. The Applicant alleges counsel should have objected to testimony from SLED officers during his guilty plea in which the officers referred to the Applicant as a drug "kingpin." This Court finds counsel's failure to object did not result in deficient performance. Counsel provided credible testimony that during the guilty plea he was concerned with balancing the Applicant's best interests in not further antagonizing the law enforcement officers and choosing instead to counteract the situation by presenting substantial mitigation on the Applicant's behalf. This Court finds counsel's concerns were valid. This Court finds the presence of SLED officers at a guilty plea for a case in which they have an interest is not uncommon. This Court finds further that counsel provided substantial evidence in mitigation for the Applicant which weighed against the SLED officers' characterization of the Applicant as a "kingpin." This Court finds the Applicant could have chosen to withdraw his guilty plea after the officers' statement, but instead affirmed his desire to plead guilty. (Tr. 20:5-6).

This Court further finds that no prejudice resulted from counsel's failure to object to this testimony since, after the Applicant's plea; counsel filed a Motion for Reconsideration of Sentence based on the Applicant's disagreement with the statements made by the SLED officers during the plea. While the Motion for Reconsideration was denied, the issue was properly

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preserved for review by the Court of Appeals. After review of the issue and the entire record pursuant to Anders v. California³, The Court of Appeals dismissed the Applicant's appeal. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to object to improper statements that were made at the guilty plea.

Advised the Applicant to plead guilty based on erroneous sentencing advice

This Court finds counsel was not ineffective for providing erroneous sentencing advice to the Applicant. At the evidentiary hearing, the Applicant alleged counsel told him he was pleading guilty to a five (5) year sentence and that he pled guilty with the understanding he would receive a five (5) year sentence. This Court finds the Applicant's testimony lacks credibility. This Court finds counsel provided credible testimony that he did not advise the Applicant that he would receive a five (5) year sentence. Counsel testified he advised the Applicant that he would be pleading to a lesser included offense which lowered the mandatory minimum sentence from seven (7) years to five (5) years. Counsel also provided credible testimony that when he learned the Applicant thought he was pleading guilty to five (5) years, he called the Applicant to reiterate the plea offer to a lesser included offense with a lower minimum mandatory sentence of five (5) years.

This Court finds the Applicant was aware of the exposure he was facing and advised of the potential sentences he was facing by the court. The court advised the Applicant that the trafficking cocaine charge for which he was originally indicted carried a potential sentence ranging from seven to thirty years. (Tr. 3:18-22.) The court advised the Applicant that the State was allowing him to plead to trafficking cocaine 10-28 grams which carried a potential sentence

³ 386 U.S. 738, 87 S. Cl. 1396 (1967).

of five to thirty years. (Tr. 3:18-22.) The Applicant was subsequently and repeatedly advised of the mandatory minimum five years on the trafficking charges. (Tr. 19:21-25.) The court also advised the Applicant that he could have been facing life without the possibility of parole (Tr. 4:14-23), that he was pleading to three strike offenses (Tr. 4:14-23), and that the charges were considered violent, which would affect his parole eligibility. (Tr. 5:4-15.) The Applicant told the court during his guilty plea that no one promised him anything to get him to plead guilty other than the reduction of charges. (Tr. 8:11-22.) This Court finds the Applicant's discussion with the court and his high level of education (Tr. 9:1-4) indicates he was well aware of the consequences of his guilty plea and that he was facing a potential sentence between five (5) to thirty (30) years. The Applicant stated to the court during mitigation that he "[couldn't] believe [he] allowed [himself] to be in this situation." (Tr. 25:14-16.) During the colloquy with the court, the Applicant admitted his guilt (Tr. 6:9-12), indicated he was not under the influence of any drugs or alcohol (Tr. 6:13-15), and was not suffering from any physical, mental, or emotional conditions affecting his understanding of the proceedings. (Tr. 6:16-19.) The Court informed the Applicant of his right to a jury trial and his right to challenge the State's evidence, and the Applicant indicated he still wished to plead guilty. (Tr. 5:16-6:5.) The Applicant also told the court that it was his decision solely to plead guilty. (Tr. 8:8-10.) Additionally, the Applicant communicated to the Court that he was satisfied with his attorney and did not need additional time to speak with him. (Tr. 6:20-8:7.) Applicant's attorney provided mitigation to the court by discussing Applicant's education, work history, lack of weapons involved, and family life, (Tr. 14-19), as well as providing many friends and family to speak on his behalf. (Tr. 20-25.) This Court finds the record contains no evidence the State offered or the parties agreed upon any

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guaranteed recommended or negotiated sentences. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for providing erroneous sentencing advice.

Failure to file a motion to discover the identity of the confidential informant

This Court finds trial counsel was not ineffective for failure to file a motion to discover the identity of the confidential informant. This Court finds this issue is moot since both the Applicant and counsel testified they knew the identity of the confidential informant. This Court further finds it is unlikely the Applicant would have benefitted from the filing of such a motion by counsel as doing so would have likely halted all plea negotiations with the State. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to file a motion to discover the identity of the confidential informant.

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 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 her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. See id. at 694, 104 S. Ct. at 2068. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes the Applicant has not established

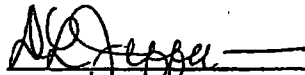
any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.



The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

September 23, 2013
Charleston, South Carolina.

HW

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Leonard Roper,¹ #338094,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-10-3597

AMENDED ORDER OF DISMISSAL²

Presiding Judge:
Applicant's Attorney:

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

Hon. Deadra L. Jefferson
Joenathan S. Chaplin, Esq.
Nicole L. Singletary, Esq.
Edwin D. Givens, Esq.
Ashleigh R. Wilson, Esq.
Alex N. Apostolou, Esq.
May 21, 2013
Deborah Garrison

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 SEP 24 PM 3:13

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 1, 2012. The Respondent made its Return on January 23, 2013. An evidentiary hearing into the matter was convened on May 21, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Joenathan S. Chaplin, Esquire, Nicole L. Singletary, Esquire, and Edwin D. Givens, 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, Alex N. Apostolou, Esquire, and Nadia Johnson Roper, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application,

¹ The Applicant is also known as Jarvis Roper.

² Amended to correct scrivener's and citation errors.

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Respondent's Return thereto, and the Applicant's appellate 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 Charleston County. The Applicant was indicted at the March 2009 term of the Charleston County Grand Jury for five (5) counts of trafficking in cocaine 28-100g (2009-GS-10-1616, 1617, 1618, 1619, 1620, and 1621) and possession with intent to distribute cocaine (2009-GS-10-1621). Alex N. Apostolou, Esquire, represented the Applicant. The Applicant pled guilty to five (5) counts of trafficking cocaine 10-28g and possession with intent to distribute cocaine. The Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for twenty (20) years for each trafficking charge and ten (10) years for the possession with intent to distribute charge. The sentences were to run concurrently.

The Applicant filed a timely Notice of Appeal. On appeal, the Applicant was represented by Lanelle Durant, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Roper, 2011-UP-257 (S.C. Ct. App. June 1, 2011). The Remittitur was issued June 24, 2011.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failure to investigate the Petitioner's case.
 - b. Failure to object to improper statements that were made at the guilty plea.
 - c. Advised the Applicant to plead guilty based on erroneous sentencing advice.
 - d. Failure to research the law and elements of entrapment to prepare an adequate and complete defense that denied Applicant his 6th Amendment right to effective

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representation.

2. 4th Amendment violation.
3. Violation of due process rights.

At the evidentiary hearing, the Applicant presented testimony and evidence to support the following allegations:

1. Ineffective assistance of counsel.
 - a. Failure to investigate the Petitioner's case.
 - b. Failure to object to improper statements that were made at the guilty plea.
 - c. Advised the Applicant to plead guilty based on erroneous sentencing advice.
 - d. Failure to file a motion to discover the identity of the confidential informant.

This Court finds all other allegations raised in the application for post-conviction relief were abandoned by the Applicant.

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).

Summary of Testimony

The Applicant testified at the evidentiary hearing that he retained Alex N. Apostoulou, Esquire to represent him shortly after bonding out of jail. He testified he met with counsel five (5) times prior to pleading guilty for forty-five (45) minutes to one (1) hour each time. He testified counsel e-mailed the discovery to him and they discussed the documents by phone shortly before the guilty plea. He also testified they reviewed the video of his controlled buy and

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the officer's statement. The Applicant conceded the voice on the video they received of the controlled buy was his voice however he contends he was not discussing drugs on the video.

The Applicant testified he felt the State had no evidence against him and his case was solely based on a statement from a confidential informant. He testified counsel should have made a motion to obtain the identity of the confidential informant. The Applicant then conceded he was aware of the identity of the confidential informant and spoke with counsel about the credibility of the informant. He further testified he did not review the drug analysis with counsel prior to his plea. He testified counsel should have investigated the drug analysis done in his case. The Applicant testified counsel also did not discuss potential witnesses that they could call at trial.

The Applicant testified counsel came to him the week of the guilty plea with a plea offer from the State. He testified counsel told him he would receive five (5) years if he pled guilty. He acknowledged his attorney seemed knowledgeable. He testified counsel did not discuss his constitutional rights, the enhancement statute, or his right to testify. He also testified counsel did not explain to him that the court did not have to accept the plea offer from the State.

The Applicant testified counsel did not investigate his case. He testified had counsel investigated, he would have discovered problems with his case, the location of the buys, and the video and audio of the buys. The Applicant also testified trial counsel did not tell him SLED officers would be present at his guilty plea and their presence alarmed them. He testified the SLED officers called him a "kingpin" at the guilty plea. The Applicant recalled his uncle and mother telling the court he was not a "kingpin" at his guilty plea. He testified the court would

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take the word of law enforcement officers over that of his family. He also recalled counsel filing a Motion to Reconsider Sentence based on the statements of the SLED officers.

The Applicant testified he pled guilty because he was uncomfortable with counsel's representation and because he did not want to go to trial. He testified he also accepted the plea because the time was short enough for him to be away from his wife and kids. The Applicant then testified he now wants to go to trial to face his original charges since he did not receive a five (5) year sentence.

Nadia Johnson Roper, the Applicant's wife, also testified at the evidentiary hearing. She testified she attended three (3) meetings with counsel and that all of them were not at the attorney's office. She testified that one of the three meetings was at the Applicant's parent's home. She testified the meetings were not in depth. She testified she was not privy to all of the conversations her husband had with his attorney. Mrs. Roper also testified the Applicant and counsel discussed the plea negotiations the morning of the guilty plea. She testified counsel told the Applicant that the mandatory sentence for his charges was dropped from seven (7) years to five (5) years and the Applicant would be sentenced to five (5) years. She testified they thought five (5) years was good for the family. However, she testified she was aware the maximum exposure for the offenses was at least twenty-five (25) years. Lastly, she testified she was certain counsel did not say the Applicant could be sentenced between five (5) and twenty five (25) years in prison.

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Counsel testified his investigation of the case included a review of all discovery and a review of the video of the controlled buys. Counsel testified he was present at the preliminary hearing and was able to question all the officers and meet with the Solicitor to discover all the

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evidence against the Applicant. He further testified he was not aware of any additional investigation that needed to be done in the Applicant's case.

Counsel testified he was aware of the identity of the confidential informant and did not need to file a motion to obtain his identity. Counsel testified he discussed proceeding to trial as an option with the Applicant and told him what would happen if he went to trial. He testified he discussed a motion to suppress the drugs with the Applicant and would have filed such motion had the Applicant indicated he wanted to proceed to trial.

Counsel testified the Applicant was on the plea docket prior to him being retained. He testified he was always in plea negotiations with the State and wanted to obtain a plea offer for the Applicant. He testified the State offered a plea to a lesser included offense that would reduce the minimum mandatory sentence from seven (7) years to five (5) years. He testified the Applicant would be pleading to a range of sentences from five (5) to twenty five (25) years in prison. Counsel testified he communicated the offer and he never told the Applicant he would be guaranteed a sentence of five (5) years. Counsel testified he did not advise the Applicant on whether to accept or reject the plea offer. He testified that he advised him of the pros and cons of a plea so that he could make an informed decision however under the circumstances he probably told him a plea made sense in this situation. He testified he let the Applicant make his own decision. He further testified the day before the Applicant's plea, his mother in law told him that the Applicant thought he would be getting a five (5) year sentence. Counsel testified after speaking with the Applicant's mother in law, he called the Applicant and told him that a five (5) year sentence was not guaranteed. He testified further that the Applicant never told him he desired a trial on these charges.

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Counsel testified he was unaware the SLED agents would be present at the guilty plea until the morning of the plea upon arriving at court. He testified he found out the SLED officers had driven down for the plea because they were "furious" regarding the reduction in the charges. He testified the State was requesting a sentence of substantial jail time and he was aware the State was communicating with SLED. Counsel testified he was balancing several factors during the guilty plea such as law enforcement's right to be present at the plea, ensuring the plea was based on the facts and avoiding any further agitation of law enforcement regarding his client's sentence exposure. He further testified that he attempted a sidebar with the solicitor and the court because of the volatility he perceived however the solicitor would not do it. He further testified that he made a strategic decision to head this off with the substantial mitigation evidence he presented on the Applicant's behalf that would have refuted the officers' characterization of the Applicant. He testified in hindsight he wished he had objected however he was trying to balance his client's best interests at the time. Counsel testified he filed a motion to reconsider, based on the SLED officer's statements to the court which was denied.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application by a preponderance of the evidence. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 441, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

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JAG

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.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-90, 104 S. Ct. at 2064-66. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. The applicant must overcome this presumption in order to receive relief. See id.; State v. Cherry, 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. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (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 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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. at 59,

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106 S. Ct. at 370; Jackson v. State, 342 S.C. 95, 98, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (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, 242-44, 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. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, 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. The record reflects the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

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

that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 4-5, 239 S.E.2d 750, 751-52 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. 442, 334 S.E.2d 814 (1985) (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, 476 U.S. 28, 106 S. Ct. 1683 (1986); Marzullo v. Md., 561 F.2d 540, 544 (4th Cir. 1977)).

Failure to investigate the Petitioner's case

This Court finds counsel was not ineffective for failing to investigate the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Cl. App. 2012) (citing Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011)). "An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense." Harrington v. Richter, 131 S. Ct. 770, 789-90 (2011). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 256, 227 S.E.2d 199, 202 (1976)).

This Court finds the Applicant has failed to show specific circumstances that would have resulted had counsel further investigated his case. Counsel gave credible testimony that he fully investigated the Applicant's case and was fully aware of the State's evidence against the Applicant. This Court finds and the record reflects through counsel's testimony that counsel

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conducted an independent investigation of the facts and circumstances of the case. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel provided ineffective assistance of counsel for failing to investigate his case.

Failure to object to improper statements that were made at the guilty plea

This Court finds counsel was not ineffective for failing to object to what the Applicant has characterized as improper statements that were made at the Applicant's guilty plea. The Applicant alleges counsel should have objected to testimony from SLED officers during his guilty plea in which the officers referred to the Applicant as a drug "kingpin." This Court finds counsel's failure to object did not result in deficient performance. Counsel provided credible testimony that during the guilty plea he was concerned with balancing the Applicant's best interests in not further antagonizing the law enforcement officers and choosing instead to counteract the situation by presenting substantial mitigation on the Applicant's behalf. This Court finds counsel's concerns were valid. This Court finds the presence of SLED officers at a guilty plea for a case in which they have an interest is not uncommon. This Court finds further that counsel provided substantial evidence in mitigation for the Applicant which weighed against the SLED officers' characterization of the Applicant as a "kingpin." This Court finds the Applicant could have chosen to withdraw his guilty plea after the officers' statement, but instead affirmed his desire to plead guilty. (Tr. 20:5-6).

This Court further finds that no prejudice resulted from counsel's failure to object to this testimony since, after the Applicant's plea; counsel filed a Motion for Reconsideration of Sentence based on the Applicant's disagreement with the statements made by the SLED officers during the plea. While the Motion for Reconsideration was denied, the issue was properly

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preserved for review by the Court of Appeals. After review of the issue and the entire record pursuant to Anders v. California³, The Court of Appeals dismissed the Applicant's appeal. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to object to improper statements that were made at the guilty plea.

Advised the Applicant to plead guilty based on erroneous sentencing advice

This Court finds counsel was not ineffective for providing erroneous sentencing advice to the Applicant. At the evidentiary hearing, the Applicant alleged counsel told him he was pleading guilty to a five (5) year sentence and that he pled guilty with the understanding he would receive a five (5) year sentence. This Court finds the Applicant's testimony lacks credibility. This Court finds counsel provided credible testimony that he did not advise the Applicant that he would receive a five (5) year sentence. Counsel testified he advised the Applicant that he would be pleading to a lesser included offense which lowered the mandatory minimum sentence from seven (7) years to five (5) years. Counsel also provided credible testimony that when he learned the Applicant thought he was pleading guilty to five (5) years, he called the Applicant to reiterate the plea offer to a lesser included offense with a lower minimum mandatory sentence of five (5) years.

This Court finds the Applicant was aware of the exposure he was facing and advised of the potential sentences he was facing by the court. The court advised the Applicant that the trafficking cocaine charge for which he was originally indicted carried a potential sentence ranging from seven to thirty years. (Tr. 3:18-22.) The court advised the Applicant that the State was allowing him to plead to trafficking cocaine 10-28 grams which carried a potential sentence

³ 386 U.S. 738, 87 S. Ct. 1396 (1967).

of five to thirty years. (Tr. 3:18-22.) The Applicant was subsequently and repeatedly advised of the mandatory minimum five years on the trafficking charges. (Tr. 19:21-25.) The court also advised the Applicant that he could have been facing life without the possibility of parole (Tr. 4:14-23), that he was pleading to three strike offenses (Tr. 4:14-23), and that the charges were considered violent, which would affect his parole eligibility. (Tr. 5:4-15.) The Applicant told the court during his guilty plea that no one promised him anything to get him to plead guilty other than the reduction of charges. (Tr. 8:11-22.) This Court finds the Applicant's discussion with the court and his high level of education (Tr. 9:1-4) indicates he was well aware of the consequences of his guilty plea and that he was facing a potential sentence between five (5) to thirty (30) years. The Applicant stated to the court during mitigation that he "[couldn't] believe [he] allowed [himself] to be in this situation." (Tr. 25:14-16.) During the colloquy with the court, the Applicant admitted his guilt (Tr. 6:9-12), indicated he was not under the influence of any drugs or alcohol (Tr. 6:13-15), and was not suffering from any physical, mental, or emotional conditions affecting his understanding of the proceedings. (Tr. 6:16-19.) The Court informed the Applicant of his right to a jury trial and his right to challenge the State's evidence, and the Applicant indicated he still wished to plead guilty. (Tr. 5:16-6:5.) The Applicant also told the court that it was his decision solely to plead guilty. (Tr. 8:8-10.) Additionally, the Applicant communicated to the Court that he was satisfied with his attorney and did not need additional time to speak with him. (Tr. 6:20-8:7.) Applicant's attorney provided mitigation to the court by discussing Applicant's education, work history, lack of weapons involved, and family life, (Tr. 14-19), as well as providing many friends and family to speak on his behalf. (Tr. 20-25.) This Court finds the record contains no evidence the State offered or the parties agreed upon any

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guaranteed recommended or negotiated sentences. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for providing erroneous sentencing advice.

Failure to file a motion to discover the identity of the confidential informant

This Court finds trial counsel was not ineffective for failure to file a motion to discover the identity of the confidential informant. This Court finds this issue is moot since both the Applicant and counsel testified they knew the identity of the confidential informant. This Court further finds it is unlikely the Applicant would have benefitted from the filing of such a motion by counsel as doing so would have likely halted all plea negotiations with the State. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to file a motion to discover the identity of the confidential informant.

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 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 her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. See id. at 694, 104 S. Ct. at 2068. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes the Applicant has not established

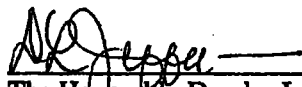
any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

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

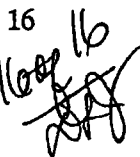
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.


The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

September 23, 2013
Charleston, South Carolina.

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SLB20081207309

WITNESSES

SOUTH CAROLINA LAW ENFORCEMENT

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

K304337

DATE OF ARREST

December 10, 2008

ACTION OF GRAND JURY

TRUE BILL

W. Russell
Foreperson of Grand Jury

Date:

MAR 03 2009

VERDICT

Foreperson of Petit Jury

INDICT

Date:

DOCKET NO. 2009GS1001616

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

JARVIS LEONARD ROPER

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2009 MAR 23 AM 9:42

FILED

08-7544(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

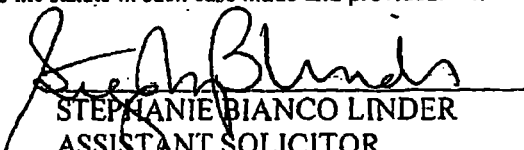
INDICTMENT

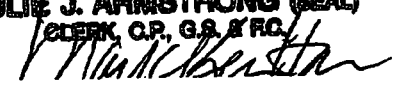
At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about October 10, 2008, the Defendant, JARVIS LEONARD ROPER, 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 28 grams; 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.


STEPHANIE BIANCO LINDER
ASSISTANT SOLICITOR

~~APPROPRIATE A TRUE COPY~~
JULIE J. ARMSTRONG (REAL)
CLERK, C.P., G.S. & F.C.


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SLB20081207309

WITNESSES

SOUTH CAROLINA LAW ENFORCEMENT

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

K304338

DATE OF ARREST

December 10, 2008

ACTION OF GRAND JURY

RUE BILL

W. Smith
Foreperson of Grand Jury

Date:

MAR 03 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1001617

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

JARVIS LEONARD ROPER

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine

FILED
2009 MAR 23 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT

08-7544(2)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

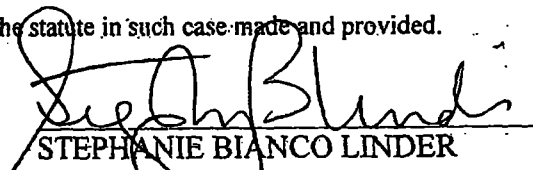
INDICTMENT

At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about September 10, 2008, the Defendant, JARVIS LEONARD ROPER, 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 28 grams; 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.


STEPHANIE BIANCO LINDER
ASSISTANT SOLICITOR

225

SLB20081207309

WITNESSES

SOUTH CAROLINA LAW ENFORCEMENT

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

K304339

DATE OF ARREST

December 10, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 03 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1001618

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

JARVIS LEONARD ROPER

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2009 MAR 23 AM 9:42

FILED

08-7544(3)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

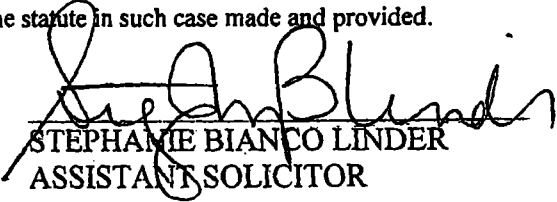
INDICTMENT

At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about September 16, 2008, the Defendant, JARVIS LEONARD ROPER, 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 28 grams; 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.


STEPHANIE BIANCO LINDER
ASSISTANT SOLICITOR

227 SLB20081207309

WITNESSES

SOUTH CAROLINA LAW ENFORCEMENT

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

K304340

DATE OF ARREST

December 10, 2008

ACTION OF GRAND JURY

TRUE BILL

W. Russell
Foreperson of Grand Jury

Date:

MAR 03 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1001619

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

JARVIS LEONARD ROPER

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine

2009 MAR 23 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

08-75414 (41)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

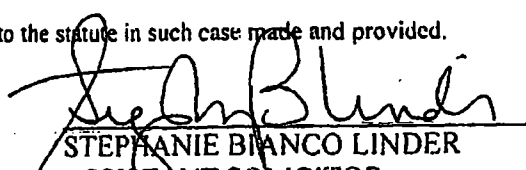
INDICTMENT

At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

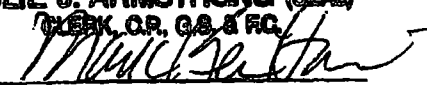
Trafficking Cocaine

That in Charleston County, South Carolina, on or about October 22, 2008, the Defendant, JARVIS LEONARD ROPER, 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 28 grams; 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.


 STEPHANIE BIANCO LINDER
 ASSISTANT SOLICITOR

APPROVED & FILED 2009
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., C.S. & F.C.

By 

229 SLB20081207242

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0823875

ARREST WARRANT NUMBER

K341959

DATE OF ARREST

December 9, 2008

ACTION OF GRAND JURY

TRUE BILL

W. S. S. S. S.
Foreperson of Grand Jury
Date: MAR 02 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT.

DOCKET NO. 2009GS1001620

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

JARVIS LEONARD ROPER

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine

FILED
2009 MAR 23 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

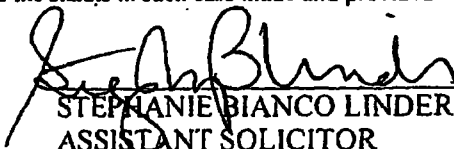
INDICTMENT

At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

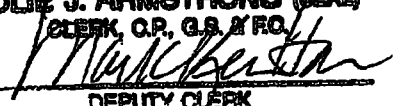
Trafficking Cocaine

That in Charleston County, South Carolina, on or about October 10, 2008, the Defendant, JARVIS LEONARD ROPER, 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 28 grams; 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.


 STEPHANIE BIANCO LINDER
 ASSISTANT SOLICITOR

~~APPROPRIATE A TRUE COPY~~
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., C.S. & F.O.

By 

DEPUTY CLERK

SLB2008120 2

DOCKET NO. 2009(1001621

WITNESSES

The State of South Carolina

County of Charleston

Charleston City Police Department

AGENCY CASE NUMBER

0823875

COURT OF GENERAL SESSIONS

March Term 2009

ARREST WARRANT NUMBER

K341960

DATE OF ARREST

December 9, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 12 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

THE STATE

vs.

JARVIS LEONARD ROPER

B/M

Indictment for

Distribution of Cocaine within Proximity of
a School

2009 MAR 23 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

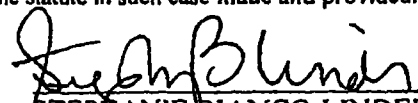
INDICTMENT

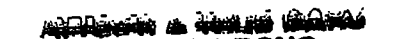
At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine within Proximity of a School

That in Charleston County, South Carolina, on or about October 10, 2008, the Defendant, JARVIS LEONARD ROPER, unlawfully did distribute, sell, purchase, manufacture, or possess with intent to distribute Cocaine, a controlled substance, within a one-half mile radius of the grounds of Fraser Elementary School located at 63 Columbus Street; all in violation of Section 44-53-445 of the South Carolina Code of Laws (1976) as amended.

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


STEPHANIE BIANCO LINDER
ASSISTANT SOLICITOR


JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By 
DEPUTY CLERK

SLB20081207286

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0823841

ARREST WARRANT NUMBER

K352618

DATE OF ARREST

December 8, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 02 2009

VERDICT

11-19-09 NP as part of plea
Stephanie B. Under
[Signature]
Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2009GS1001622

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

JARVIS LERNARD ROPER

DOB: [REDACTED]
B/M

Indictment for

Possession with Intent to Distribute MDMA

2009 MAR 23 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

NOLLE PROSE

Date: 11-19-09

APPROVE A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By

[Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

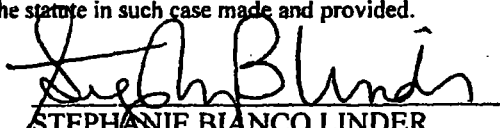
INDICTMENT

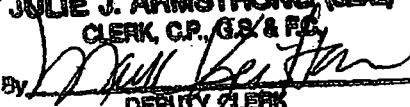
At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

Possession with Intent to Distribute MDMA

That in Charleston County, South Carolina, on or about December 8, 2008, the Defendant, JARVIS LERNARD ROPER, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: MDMA; 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.


STEPHANIE BIANCO LINDER
ASSISTANT SOLICITOR

APPROVED & FILED
JULIE J. ARMSTRONG, (SEAL)
CLERK, C.P., G.S. & F.C.
BY 
DEPUTY CLERK

SLB20081207286

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0823841

ARREST WARRANT NUMBER

K352619

DATE OF ARREST

December 8, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 02 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1001623

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

JARVIS LERNARD ROPER

DOB: [REDACTED]
B/M

Indictment for

Possession with Intent to Distribute MDMA
within Proximity of a School

FILED

2009 MAR 23 AM 9:42

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By

DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

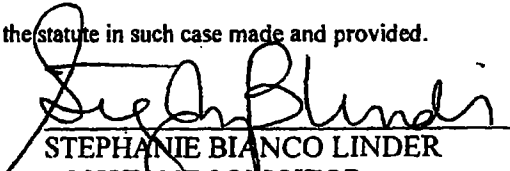
INDICTMENT

At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

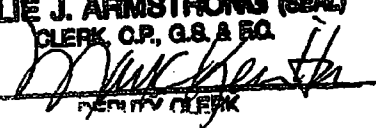
Possession with Intent to Distribute MDMA within Proximity of a School

That in Charleston County, South Carolina, on or about December 8, 2008, the Defendant, JARVIS LERNARD ROPER, unlawfully did distribute, sell, purchase, manufacture, or possess with intent to distribute MDMA, a controlled substance, within a one-half mile radius of the grounds of Fraser Elementary School located at 63 Columbus St; all in violation of Section 44-53-445 of the South Carolina Code of Laws (1976) as amended.

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


STEPHANIE BIANCO LINDER
ASSISTANT SOLICITOR

APPROVED AND FORWARDED
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & EQ.

By 
CLERK