

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

OCT 29 2014

S.C. Supreme Court

CASEY JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000496

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 08-GS-08-1833
	)	
Casey Jenkins,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within HEARING was held in above-captioned action on January 18, 2012, before The Honorable R. Markley Dennis, Jr., in Courtroom E of the Berkeley County Court of General Sessions, 300 California Avenue, Moncks Corner, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Ben Shelton, Assistant Solicitor
 9th CIRCUIT SOLICITOR'S OFFICE
 300 California Avenue
 Moncks Corner, SC
 Appearing for State of South Carolina

Mitch Lanier, Esq.
 Moncks Corner, South Carolina 29461
 Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

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1 THE COURT: You are Casey Jenkins?

2 DEFENDANT: Yes, sir.

3 THE COURT: Mr. Jenkins, you're
4 standing with Mr. Lanier. Does he represent
5 you?

6 DEFENDANT: Yes, sir.

7 THE COURT: The indicted offense
8 carries?

9 SOLICITOR: Twenty-five, mandatory.

10 THE COURT: That is what I thought.
11 Indictment 08-1833 charges you with trafficking
12 in cocaine; do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: In excess of two hundred
15 grams, do you understand that?

16 DEFENDANT: Yes, Your Honor.

17 THE COURT: According to this
18 sentencing sheet, you're desirous of entering a
19 plea to the lesser-included offense of
20 possession -- or trafficking in cocaine twenty-
21 eight to one hundred grams, first offense. Is
22 that correct?

23 DEFENDANT: Yes, Your Honor.

24 THE COURT: And your lawyer has

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1 explained that that carries a minimum sentence
2 of seven years up to twenty-five years?

3 DEFENDANT: Yes, Your Honor.

4 THE COURT: And your lawyer has
5 negotiated a sentence which you are asking me to
6 impose here today.

7 DEFENDANT: Yes, Your Honor.

8 THE COURT: And the terms are?

9 SOLICITOR: If Your Honor is inclined
10 to accept it, the negotiation is a cap of what
11 you could give you of twelve years; so
12 effectively in the range of seven to twelve
13 years.

14 THE COURT: Okay. Is that your
15 understanding, Mr. Jenkins?

16 DEFENDANT: Yes, Your Honor.

17 THE COURT: Mr. Lanier, is that your
18 understanding?

19 MR. LANIER: I'm a little confused.
20 My understanding is that I am free to argue for
21 less than twelve years.

22 THE COURT: You are. He said --
23 well, it can be less than twelve years but it
24 can't be less than seven.

25 MR. LANIER: I know that, (affirmative

$$1 \bmod 2) \cdot$$

2 THE COURT: The minimum sentence
3 provides the floor but the maximum, where it
4 would normally be twenty-five, is twelve. I
5 would not exceed that.

6 MR. LANIER: I understand.

7 THE COURT: Okay. Mr. Jenkins,
8 understanding then that I could, consistent with
9 the negotiated sentence of twelve years, how do
10 you plead?

11 DEFENDANT: Guilty.

12 THE COURT: Are you satisfied with
13 your lawyer?

14 DEFENDANT: Yes.

15 THE COURT: Any complaints about the
16 way that Mr. Lanier has handled your case?

17 DEFENDANT: No.

18 THE COURT: Mr. Lanier, you have
19 investigated this matter fully on your client's
20 behalf?

21 MR. LANIER: I have, Your Honor.

22 THE COURT: And shared the results
23 with him?

24 MR. LANIER: I have.

25 THE COURT: He has indicated to you a

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1 desire to enter this plea?

2 MR. LANIER: That's correct, Your
3 Honor.

4 THE COURT: And requested that you
5 negotiate the best arrangement that you could
6 for him?

7 MR. LANIER: He has, (affirmative
8 nod).

9 THE COURT: The record now reflects
10 the results of your efforts in that regard.

11 MR. LANIER: It does.

12 THE COURT: First of all, you've
13 gotten the State to remove it out of the
14 mandatory twenty-five years?

15 MR. LANIER: Correct.

16 THE COURT: And now furthermore to
17 put a ceiling of a little less than half of what
18 could be imposed?

19 MR. LANIER: Correct, Your Honor.

20 THE COURT: Do you believe the
21 negotiated sentence to be in your client's best
22 interest?

23 MR. LANIER: I do, Your Honor.

24 THE COURT: Mr. Jenkins, is that
25 true, sir?

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1 DEFENDANT: Yes, Your Honor.

2 THE COURT: Are you under the
3 influence of any alcohol or any medication here
4 today?

5 DEFENDANT: No.

6 THE COURT: Have you consumed any
7 alcohol or taken any type of drugs in the last
8 twenty-four hours?

9 DEFENDANT: No, Your Honor.

10 THE COURT: Have you had sufficient
11 time to reflect on what your lawyer has shared
12 with you, in order to make this decision?

13 DEFENDANT: Yes.

14 THE COURT: You realize that if I
15 accept your negotiated sentence that you will
16 not have a jury trial and that you are also
17 giving up the right to confront the witnesses
18 against you?

19 DEFENDANT: Yes, Your Honor.

20 THE COURT: You also realize that by
21 answering my questions today that you're giving
22 up your Constitutional right to remain silent?

23 DEFENDANT: Yes, Your Honor.

24 THE COURT: Has anyone threatened you
25 in any way to get you to plead guilty?

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1 DEFENDANT: No, Your Honor.

2 THE COURT: Other than the promises
3 which are contained in the negotiated sentence,
4 have any other promises been made to you?

5 DEFENDANT: No, Your Honor.

6 THE COURT: Solicitor, please tell me
7 the facts.

8 SOLICITOR: Thank you, Your Honor,
9 may it please the court. On May 4th, 2008,
10 officer of Berkeley County Sheriff's Office used
11 a confidential informant to set up a controlled
12 cocaine purchase from this defendant.

13 The confidential informant made several
14 recorded calls to the defendant setting up the
15 buy in front of officers who were watching.

16 They arranged to deliver the drugs to the
17 confidential informant's home. Officers
18 surrounded the home. When the defendant arrived
19 and exited his car, with a brown plastic bag, he
20 threw -- when he saw the officers, he threw the
21 bag under a vehicle that was parked at the
22 residence. The defendant was then detained and
23 the bag, containing cocaine, was recovered and
24 seized. The amount of cocaine test weight is
25 371.75 grams, Your Honor.

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1 The defendant has no prior record.

2 That's the reason the State is willing to
3 negotiate the sentence the way that it has.

4 THE COURT: So this is truly a first
5 offense?

6 SOLICITOR: Yes, Your Honor.

7 THE COURT: Are those facts correct,
8 sir?

9 MR. LANIER: I think the bare weight
10 was three twenty-something, wasn't it?

11 SOLICITOR: I am going by the State's
12 ---

13 MR. LANIER: Not that it matters. It
14 still puts him in ---

15 THE COURT: He definitely had between
16 twenty-eight and a hundred grams, no question
17 about that?

18 MR. LANIER: No question about that.
19 He definitely had more than twenty-eight.

20 THE COURT: I understand. Mr.
21 Lanier, I will be happy to hear from you now as
22 to why I should accept and impose the negotiated
23 sentence.

24 MR. LANIER: Thank you, Your Honor,
25 may it please the court. Casey is forty-two

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1 years of age, soon to be forty-three.

2 He is basically a lifelong resident of
3 Johns Island, South Carolina. He graduated from
4 St. John's High School in 1987.

5 In 1988, he enrolled in the Army Reserve.
6 Once he started his basic training, he started
7 at Benedict College and went there for about two
8 and a half years. He served a full four years
9 in the Army Reserve and received an honorable
10 discharge.

11 Your Honor, he -- Casey has had the same
12 job for thirteen years at W.P. Lyall. They
13 supply piping and plumbing supplies. He's
14 apparently been a very dedicated employee.

15 He's never been married but he has a
16 twenty-three old daughter who lives in West
17 Ashley. She is here with him in the courtroom
18 and would like to speak to the court if the
19 opportunity arises for that.

20 Your Honor, he's just got a spotless
21 record. This happened in 2008, hasn't been
22 arrested for anything since then. He's been out
23 on bond. How long were you in jail?

24 DEFENDANT: Two days.

25 MR. LANIER: After two days, he made

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1 bond and he's been in no trouble since then,
2 Your Honor.

3 Of course they made offers to Casey,
4 the Sheriff's Department did. But for reasons
5 that he doesn't want to discuss, he was not
6 inclined to do that.

7 Your Honor, I think Casey has learned
8 his lesson. He understands what the law is, you
9 know, as well as I do or you do.

10 I appreciate the Solicitor allowing him
11 the leniency that they have allowed him, to
12 where he is not facing a mandatory minimum of
13 twenty-five years or thirty years in prison.

14 I do some Federal criminal work and I
15 read the guidelines down there -- and know that
16 it's irrelevant because we're not in Federal
17 Court. But the guidelines, the amount of
18 cocaine that he had, and I was 371, was thirty-
19 three months to forty-one months. I know that's
20 a lot of cocaine for this area and this
21 community and this court. It's a lot more than
22 we usually see.

23 Nevertheless, seven years
24 nonparolable -- seven years -- is all Casey
25 needs to come out and lead a productive life

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1 for the rest of his life. It's my opinion
2 that if the court gave him probation, which I
3 know that you can't do, that he would -- that
4 the same thing would be true, that you would
5 never see Casey in a court again.

6 He's got strong family, close family
7 -- would Casey's family stand up or raise
8 their hand please.

9 THE COURT: Thank you all, thank
10 you for being here.

11 MR. LANIER: I just don't see twelve
12 years and him having to do over ten years is
13 going to serve a purpose in this particular
14 case. I understand that sentences also serve
15 another function other than rehabilitation of
16 a particular individual, but nevertheless --
17 it's just amazing, Your Honor, that someone
18 with no record would be involved in this.

19 Casey wasn't in the cocaine business.
20 He was like a mule. In fact, in the first
21 conversation that they reported, that the
22 sheriff's department reported, he said "Well,
23 I have to talk to my man and see what he's
24 got, I'll call you back and let you know."
25 It took him several days, if not a day or two,

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1 to make the arrangements. No, no, he was
2 going to get a profit out of it. Don't get me
3 wrong.

4 I know that his daughter wants to
5 speak to the court.

6 THE COURT: Okay, be happy to hear
7 from her. And that's his brother, Your Honor,
8 who is a policeman in Jacksonville, Florida,
9 has been for twenty-three years.

10 THE COURT: Delighted to hear from
11 you, sir. Just give me your full name for the
12 record, sir?

13 RONALD JENKINS: Ronald Lee Jenkins.
14 First I'd like to apologize to the court for
15 us having to be here for the choice that our
16 youngest brother made. However, he has been
17 -- in my eyes, when I visit -- a model for our
18 parents, who are elderly. Don't get me wrong
19 here. It is what it is, it's unfortunate, and
20 hopefully this is a most valuable lesson for
21 our family. That's all that I have to say.

22 THE COURT: Thank you, Mr. Jenkins.
23 Thank you for coming and for speaking so
24 eloquently on his behalf, sir.

25 MR. LANIER: Casey does live with

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1 his parents, both of whom are quite elderly
2 and the latter infirm, Your Honor. They
3 depend on Casey for everyday needs. That's
4 all that I have, Your Honor.

5 THE COURT: Mr. Jenkins, anything
6 that you wish to add, sir?

7 DEFENDANT: Only that by the full
8 statement that I made, I accepted
9 responsibility and told the police officers --
10 you know, they are doing things in this county
11 that aren't right. That's not to make an
12 excuse for what I did. But y'all need to make
13 sure that they're out there doing what they
14 say they do and what cases that they make.
15 Because from my investigation and what I know,
16 they're just as corrupt and lying as they get.
17 I just wanted to tell you that.

18 THE COURT: I appreciate that but
19 you're offering to plead guilty here.

20 DEFENDANT: Yeah. I mean, --

21 MR. LANIER: It has nothing to do
22 with his guilt or innocence, Your Honor. It's
23 the way certain ways that members of the
24 sheriff's department went about ---

25 THE COURT: Well, when he talks

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1 about lying and corruption. If he is talking
2 about corruption, if there is corruption in
3 the investigation of this case, then that
4 could be used as a possible way of having a
5 jury determine that he is not guilty in this
6 case.

7 DEFENDANT: I accept my guilt as
8 far as reading rights. I'm just going to go
9 ahead and say that I am guilty, Your Honor.

10 THE COURT: Yeah. Probably should
11 have, earlier. Mr. Jenkins, you know when I
12 look at a person your age and with your
13 family, I understand what you were doing.

14 You were doing what a lot of people
15 do. You were doing -- and I don't think for
16 the purpose of this young man, but I don't
17 think I will ever forget him. He was nineteen
18 years old. He was going to Trident and he was
19 selling cocaine, crack cocaine. I asked him,
20 I said, 'What were you doing that for?' He
21 said, 'So I could pay for my education. My
22 parents, I don't know my father, my mother is
23 a crack addict and crack is a marketable
24 commodity.' He's right. It is. I'll never
25 forget it. In these times, I understand that

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1 too. But that doesn't make it okay.

2 Just as the gentlemen that I saw with
3 the marijuana, selling marijuana. I know what
4 he is doing. You and I both know what he is
5 doing it for. It's tough right now.

6 DEFENDANT: It is, sir.

7 THE COURT: It really baffles me
8 how people can give lip service to that
9 sometimes when they don't really have a clue
10 what it is. I can't say that I do. I see a
11 lot of it. I know that. I have respect for
12 it, but it's illegal. That's the problem that
13 you've got.

14 The second problem -- and, frankly, I
15 was thinking about this. One thing that you
16 can do when you finish this sentence is make
17 sure that the people in your community and
18 your friends and anybody that might be
19 thinking about getting involved with drugs,
20 they need to know at large, especially mules,
21 because I know what that means too, it means
22 that you're simply transferring for people,
23 that's all that you are doing, you're working
24 and you're getting a little bit of money out
25 of it but the majority of it -- you're the

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1 risk taker is what you are.

2 Because in this state, the first time
3 -- and this was about six or seven years ago
4 in Horry County. It was the first time that I
5 tried a trafficking case and I thought, 'Well,
6 what is it that they have to prove?
7 Trafficking? That's just big business, a big
8 business operation.' I looked at it -- I
9 mean, you've got possession with intent to
10 distribute. You've got all this other
11 inferences and all this stuff that you can
12 have. In trafficking, you know what they have
13 to prove? You had the drugs and this drugs
14 weighed 'this much.' End of case. Done.
15 Trafficking.

16 I think that there is a misconception
17 in the public at large, and no disrespect to
18 Florida, but it comes out of *Miami Vice* and
19 everything that everybody saw, that you've got
20 to have this big business, big cars, boats and
21 all this stuff. Not so. Not so.

22 Here you were looking at twenty-five
23 years. There was not a thing in the world
24 that this judge could do for you. No, sir,
25 there was nothing that I could be its bound.

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1 Thanks to the State -- and I appreciate the
2 State's willingness, and I appreciate the
3 efforts of your lawyer, that we have now put
4 it in a range that probably is proper
5 punishment for you. However, I can't ignore
6 the quantity and I can't ignore the fact that
7 you're a person that should have known better.

8 I will give you some benefit. I
9 can't go with the minium, Mr. Lanier, though.
10 The sentence of the court is that you be
11 committed -- and you understand that it is a
12 Serious offense?

13 DEFENDANT: Yes, sir.

14 THE COURT: And you understand what
15 that means?

16 MR. LANIER: He understands that
17 there is no parole.

18 THE COURT: That it is a no-parole
19 offense?

20 DEFENDANT: (Affirmative nod).

21 THE COURT: I am taking that into
22 consideration. The sentence is eight (8)
23 years, and I give you credit for any time that
24 you have served. Good luck to you, sir.

25 (HEARING CONCLUDED)

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CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the
hearing held before The Honorable R. Markley
Dennis, Jr., on January 18, 2012;

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



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

December 3, 2012

012 CP 08-2077

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of BERKLEY)CASEY JENKINS 349382)

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

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFFILED
2012 JUL 17 AM 10:28
CLERK OF COURT
BERKLEY COUNTYINSTRUCTIONS - 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 WATERREE RIVER CORRECTIONAL INSTITUTION
P.O. BOX 189 REMBERT, SOUTH CAROLINA 29128
2. Name and location of Court which imposed sentence BERKLEY COUNTY
COURT OF GENERAL SESSIONS, MONCK'S CORNER, S.C. 29461
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) 2008-GS-08-1833 TRAFFICKING COCAINE

- (b) _____
- (c) _____

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

- (a) JANUARY 18, 2012 8 YEARS
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

NO

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

- (a) the name of each Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. N/A
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____

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

- (a) WAS NOT AWARE

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INNEFFECTIVE COUNSEL (see continuation)
- (b) VIOLATION OF DUE PROCESS
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- COUNSEL FAILED TO DO ANY INVESTIGATING; FAILED TO ADDRESS
INVALID EVIDENCE; FAILED TO ADDRESS RULE 6 CHAIN OF
(a) CUSTODY...
- (b) RULE 6 CHAIN OF CUSTODY IS INVALID, ALSO A PETITION TO
CONFIRM FORFEITURE IS INVALID..ALL VIOLATION OF DUE PROCESS.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. N/A
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. N/A

CONTINUATION FROM PAGE 3

11. Counsel failed to do any investigation in reference to establish that the plaintiff was NEVER in possession of any drugs;

Lead investigator alleges that he was the one who seized alleged drugs from the plaintiff, when in fact lead investigator was inside residence the entire time;

Applicant alleges that he never had any knowledge of alleged drugs;

Applicant, along with witnesses swear under oath that the alleged drugs were already under another vehicle prior to plaintiff's arrival;

Lead Detective D. Mitchum swore under an oath that HE was the one who seized approximately 390 gg of a white powdery substance as stated on the RULE 6 CHAIN OF CUSTODY, when in fact plaintiff and witnesses swear to another officer actually take initial control of the alleged drugs from under another vehicle in the area.

Under rule of ~~EXHIBIT~~ CHAIN OF CUSTODY, ~~xxx~~ it is "the movement and location of real evidence from the time it is obtained to the time it is presented in court." Chain of custody requires the testimony of **CONTINUOUS** possession by each individual having possession.

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____ N/A _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____ N/A _____

iv. _____

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

i. _____

ii. _____ N/A _____

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. _____

ii. _____ N/A _____

iii. _____

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

i. _____

ii. _____ N/A _____

iii. _____

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

(a) WAS NOT AWARE

(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? NO

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. J. MITCHELL LANIER, ESQ. PO BOX 1346, MONCKS
CORNER, SOUTH CAROLINA 29461

ii. _____

iii. _____

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

i. GUILTY PLEA AND SENTENCE

ii. _____

iii. _____

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

- HAVE ~~REVOKE~~ SENTENCE AND COVICTION SET ASIDE
- AN EVIDENTIARY HEARING
- APPLICANT ASK LEAVE TO AMEND THIS APPLICATION

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

NO

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

Revised 5/2003
FILED
2013 JUL 17 AM 10:28
CLERK OF COURT
BERKELEY COUNTY, SC

I, Casey Jenkins, 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.

Casey Jenkins

SWORN to and subscribed before me this 9th
day of July 2012.
Ramela D Hatfield (L.S.)
Notary Public

My Commission Expires: 3/15/2021

2012-CP-08-2077

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

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

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

Casey Jenkins
Applicant

SWORN or affirmed to and subscribed before me this
9th day of July, 2012.

Ramela D. Hartzfeld
Notary Public

My Commission Expires: 3/15/2021

FILED
2012 JUL 17 AM 10:28
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF BERKLEY

27

IN THE COURT OF COMMON PLEAS

2012 CP - 08 - 2077

CIVIL ACTION COVERSHEET

CASEY JENKINS

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

(Please Print)

Submitted By:

Address:

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

FILED
2012 JUL 17 AM 10:28
CLERK OF COURT
BERKLEY COUNTY, S.C.

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

DOCKETING INFORMATION (Check all that apply)

* If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature: _____

Date: _____

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2012-CP-08-2077
	)	
Casey Jenkins, # 349382,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 17, 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 Berkeley County Clerk of Court. The Applicant was indicted at the September 2008 term of the Berkeley County Grand Jury for Trafficking in Cocaine - in excess of 200g (2008-GS-08-1833). He was represented by J. Mitchell Lanier, Esquire. On January 18, 2012, the Applicant pled guilty to the lesser included offence of Trafficking Cocaine - 28-100 grams. He was sentenced by the Honorable R. Markley Dennis, Jr., to confinement for a period of eight (8) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department

of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel failed to do any investigation in reference to establish that the plaintiff was never in possession of any drugs."
2. Sufficiency of the evidence.
 - a. "Lead investigator alleges that he was the one who seized the alleged drugs from the plaintiff, when in fact lead investigator was inside resident the entire time."
 - b. "Applicant alleges that he never had any knowledge of alleged drugs."
 - c. "Applicant along with witness swear under oath that the alleged drugs were already under another vehicle prior to the plaintiff's arrival."

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 Respondent construes the second allegation as a challenge to the sufficiency of the evidence presented against the Applicant. The Applicant alleges that the evidence presented by the State was insufficient. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform

Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). The Respondent requests that this Court summarily dismiss this allegation with prejudice as this issue is not proper on post-conviction relief.

V.

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

VI.

WHEREFORE, having made its Return, the State requests an evidentiary hearing be held solely on the issue of ineffective assistance of counsel and the remaining allegation be summarily dismissed with prejudice.

[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: 
ATTORNEYS FOR RESPONDENT

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

February 21, 2013.

State Of South Carolina
County Of Berkeley

In The Court Of Common
Pleas Judicial Circuit

Casey Jenkins
applicant

C/A No: 12-CP-08-2079

- Vs. -

State Of South Carolina
Respondent

Motion For leave to
Amend and
Amendment to Application
For (P.C.R.)

Henceforth, now cometh the applicant, (Casey Jenkins) by and through undersigned counsel, to move this Honorable court for leave to Amend his initial pleadings Filed in the above - entitled action, based on rule and principle of application For post-conviction relief. Applicant would show unto this Honorable court.

Jurisdiction

1) This motion is brought as provided by in Rule 150B and 11.1CD SCRPC, Leave of the court is at the juncture.

II Statement of case

2) The above - entitled action is an application, for post-conviction relief (herein "APCR"). The initial pleadings were drafted and Filed by applicant without the assistance of Counsel.

FILED

2013 MAR 21 AM 11:24

CLERK OF COURT
BERKELEY COUNTY, SC

3.) Undersigned counsel (herein "counsel") has reviewed the record and pleadings as required by rule 71(c) SCBCP; and has determined that amendment is necessary to assure that all available,

meritious grounds for relief are included in the application and has, consequently determined that amendment is necessary.

4.) Rule 15, SCBCP strongly favors Amendments and the courts are encouraged to freely grant leave to amend. Jarrell-Vs.-Seaboard Systems B.R. Inc., 292 S.C. 183, 363 S.E.2d. 398, 399 (Ct. App. 1987).

Applicant submits that respondent State would not be prejudiced through amendment at this juncture.

5.) Applicant would propose the followings ground and facts as an addition to the ground and facts, previously alleged in the original APCR. Applicant proposes the following Amendment of additional

grounds and facts amending paragraphs 9 and 10 of the original APCR.

Claim: Applicant was deprived of effective assistance of trial counsel in violations of article I, section 3 and 14, sections xii sections 2 of the South Carolina Constitution and the 6th, and 8th, and 14th Amendments

of the United States Constitution, trial counsel was ineffective when he failed to:

9a.) The State violated the Fruit of the poisonous Tree doctrine, by failure to maintain a proper Chain of Custody.

9b) Counsel was ineffective at assistance, by Failure to perfect an appeal

9c.) The State Lacked Jurisdiction based on the fact of the matter of a variance in the CDR code.

9A.) The State violated the Fruit of the poisonous tree doctrine, by failure to maintain a proper Chain of Custody; In the current case, that's placed before the bar; The applicant here, would contend, the point that the state violated applicant's IV 4th, and 14th Amendment

right to the U.S. Constitution; regarding (illegal searches and seizures; and equal protection of the law) as to maintaining a proper "Chain of Custody", S.C. code of law 17-13-150,

thus violating the doctrine of the "Fruits of the poisonous Tree", as pursuant to Rule (G) of the Scimp., was not followed and/or maintained throughout the applicant's case in the initial

beginning; of such also amounting to "governmental abuse", in the case at [bar]; as applicant had a "Liberty Interest", in such, based on Rules and principles, of state created

rights, that applied to applicant, thus making applicant subject to those rules; accordingly allowing applicant -

to challenge such rules, that's made applicable to him. As the Fourth Amendment to the U.S. is quoted and reads:

"... The amendment contains two separate clauses, a prohibition against unreasonable searches and seizures; and a requirement that probable cause support each warrant issued, (The right

of people to be secure in their persons, houses, papers, and effects the like.

State Vs. Foster; 489 S.E.2d. 617 (1997); and State Vs. Austin; 409 S.E.2d. 811 (Ga. app. 1991); In Conclusion to the foregoing matter reads;

"Furthermore, many of the states that have adopted explicit state constitutional rights to privacy provisions have read their constitutions as applying protection above and beyond the protection provided by Federal Constitution;

Therefore, in the best interest of the Judicial economy; and applying the ruling in Carpenter as to protection of rights; as well as the U.S. Supremacy clause VI, cl. 2, S.C. Const. art. 1, sect. 23, such is deemed bound, and

Mandated to be Followed; as Law.

9b.) Counsel was ineffective at assistance, by failure to perfect an appeal. In the case at bar, that's before the court's, applicant would contend that in Case No. 08-GS-08 1822, that was before the Honorable Dennis, Jr. on

Jan. 18, 2012; In that trial counsel failed, to perfect an appeal, or pursuant to Rules 235/602 SCACR, did not get an Order from a Chief Administrative Judge; relieving counsel of

his duties to appeal; nor as such did applicant sign a written wave; waiving his right to such an appeal; In the case of Bae-Vs.-Flores-Ortega; 120 S.Ct. 1029, "it emphasized the

importance of the first appeal; as of right; or "The Bite at the Apple", being a first appeal as of right, further in the cases of Whitehead; and Austin, one being an appeal of a P.C.B.,

the other, being an appeal, straight from the general sessions court, in either case, Counsel neglected and failed to do such, thusly only amounting to nothing less than ineffective assistance of counsel.

9c) The State Lacked Jurisdiction based on the Fact of the matter of a variance in the CDR code; In conclusion to the foregoing at hand, the applicant before this Honorable court, would contend the point, that among other things, that State Lacked Jurisdiction,

to pronounce sentencing over the Subject's Matters; as applicant's sentencing commitment sheet; reflected / and/or showed a major Flaw; of a variance in that the CDR code, as well as subsections to

the Statutory provisions of 44-53-0370, is totally unclear; as the CDR code on the sentencing sheet for Case No: 08-GS-08-1833, shows two distinct codes, being 0208; and 2359; and as well as

For 44-53-0370; reflecting subsections (c)(2)(a)1; but also (c)(2)(b)1; accordingly how can one be apprised properly as to Face such for Trial.

S.C. Code of Law-2-13-175

State Of South Carolina
County Of Berkeley

Casey Jenkins

- Vs. - applicant

The State Of South Carolina
Respondent

In The Court Of Common
Pleas Judicial Circuit

C/A No: 12-CP-08-2097

Certificate

Service

CLERK OF COURT
BERKELEY COUNTY, SC

2013 MAR 21 AM 11:24

FILED

That I, Casey Jenkins, Certify and declare under the penalty of perjury, that I have served on the following address below; on this 14th day of March 2013; A Notice; and Motion to Amend Amendments, by depositing such in the Waterce River Cour. Inst., Mail Room Office.

Has sworn to and subscribed before me this 14th day of March 2013

Leon H. Brown Notary

Exp. 02/15/2017

Casey Jenkins

Casey Jenkins; 349382
Waterce River Cour. Inst.

D3-C-13A

P.O. Box 189

Dumbert, South Carolina
29128

Orig: The Hon. Mary P. Brown;
Clerk Of Court

P.O. Box 219

Moncks Corner, South Carolina

29461-0219

41
Casey Jenkins; 349382
Wateree River Corr. Inst.

DB-C-13A

P.O. Box 189

Feb 2013

Ambert, South Carolina
29128

Attn: Hon. Mary P. Brown;
Clerk of Court
P.O. Box 219
Moncks Corner, South Carolina
29461-0219

Re: CIA No. 12-CP-08-2077
Motion For Leave to Amend,
and Amendment in Support

Dear Hon. Brown;

Please, upon receipt of the original, enclosed
for Filing, is a Motion to Amend; Amendments
to P.C.B., and a certificate of Service, to be
clocked-Filed, in your office, and a clocked

in copy of the same returned to me as
soon as possible.

With the Kindest Regards,
Casey Jenkins
Casey Jenkins; 349382

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Casey Jenkins,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2012-CP-08-2077

MOTION FOR LIMITED DISCOVERY

2013 JUN 24 PM 2:56
 MARY F. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed July 17, 2012. The Respondent, State of South Carolina, pursuant to S.C. Code Ann. § 17-27-150, moves the Court to grant limited processes of discovery. Discovery is not typically permitted in non-capital post-conviction relief proceedings however, S.C. Code Ann. § 17-27-150(A) states, "[a] party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise." The issue being raised by the Applicant is ineffective assistance of counsel. The Respondent has learned that the Applicant's former defense counsel J. Mitchell Lanier, Esquire, has recently passed away. Due to defense counsel's unavailability to testify on the State's behalf at the Applicant's PCR hearing, the Respondent requests limited discovery to gain access to the complete defense file of J.

1/c

pm

Mitchell Lanier, Esquire, through Christopher P. Biering, Esquire, who has access to Mr. Lanier's defense files.¹

WHEREFORE, the Respondent respectfully requests the Court allow the Respondent to conduct limited discovery prior to the Applicant's PCR hearing.

Respectfully submitted,

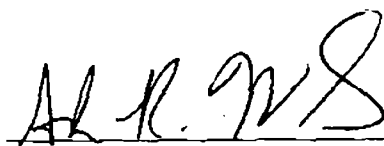
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
June 20, 2013

¹ The Respondent requests access to the Applicant's defense file for the following indictment: 2008-GS-08-1833.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

CASEY J. JENKINS #349382,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) CASE NO: 2012-CP-08-2077

) AMENDMENT TO POST CONVICTION
) RELIEF APPLICATION

2013 AUG 12 PM 2:05
JUDY P. GORMAN
CLERK OF COURT
BERKELEY COUNTY, SC

COMES NOW THE ABOVE NAMED PETITIONER TO AMEND
APPLICATION FOR POST CONVICTION RELIEF. IN SUPPORT OF THIS
AMENDMENT PETITIONER WILL RESPECTFULLY SHOW THE COURT THE
FOLLOWING\$

THE PETITIONER IS PRESENTLY CONFINED AT THE SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS PURSUANT TO ORDERS OF COMMITMENT
OF THE BERKELEY COUNTY CLERK OF COURT. THE PETITIONER WAS INDICTED
AT THE SEPTEMBER 2008 TERM OF THE BERKELEY COUNTY GRAND JURY
FOR TRAFFICKING IN COCAINE IN EXCESS OF 200g (2008-08-08-1833).

PETITIONER WAS REPRESENTED BY J. MITCHELL LANIER, ESQ. ON
THE ADVICE OF COUNSEL, PETITIONER PLED GUILTY ON JANUARY 18,
2012 TO TRAFFICKING IN COCAINE 28-100g AS A LESSER-INCLUDED
OFFENSE, THE PETITIONER FILED HIS APPLICATION FOR POST CONVICTION
RELIEF ON JULY 17, 2012. THE STATE FILED ITS RETURN ON FEB.

21, 2013. IN HIS CURRENT APPLICATION THE APPLICANT ALLEGES THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY FOR THE FOLLOWING REASONS:

1. INEFFECTIVE ASSISTANCE OF COUNSEL.
 - a. COUNSEL FAILED TO DO ANY INVESTIGATION IN REFERENCE TO ESTABLISH THAT THE PLAINTIFF WAS NEVER IN POSSESSION OF ANY DRUGS.
2. SUFFICIENCY OF THE EVIDENCE.
 - a. LEAD INVESTIGATOR ALLEGES THAT HE WAS THE ONE WHO SEIZED THE ALLEGED DRUGS FROM THE PLAINTIFF WHEN IN FACT THE LEAD INVESTIGATOR WAS INSIDE THE RESIDENCE THE ENTIRE TIME.
 - b. THE APPLICANT ALLEGES THAT HE NEVER HAD ANY KNOWLEDGE OF THE ALLEGED DRUGS.
 - c. APPLICANT ALONG WITH WITNESS SWEAR UNDER OATH THAT THE ALLEGED DRUGS WERE ALREADY UNDER ANOTHER VEHICLE PRIOR TO THE PLAINTIFF'S ARRIVAL.

IN THIS AMENDMENT, THE APPLICANT SEEKS TO AMEND A CLAIM THAT THE CIRCUIT COURT FOR BERKELEY COUNTY WAS WITHOUT SUBJECT MATTER JURISDICTION TO ACCEPT A PLEA OF GUILTY BECAUSE THERE WAS NOT AN INDICTMENT IN EXISTENCE CHARGING HIM WITH THE OFFENSE FOR WHICH HE PLED GUILTY TO; THE OFFENSE WHICH HE PLED GUILTY TO WAS NOT A LESSER-INCLUDED OFFENSE OF THE OFFENSE HE WAS INDICTED FOR AND THE APPLICANT NEVER WAIVED PRESENTMENT TO THE GRAND JURY PROCESS TO THE OFFENSE FOR WHICH HE WAS CONVICTED OF.

SUPPORTING FACTS

ON JANUARY 18, 2012, PETITIONER PLED GUILTY TO TRAFFICKING IN COCAINE 28-100g AS A LESSER-INCLUDED OFFENSE OF THE

INDICTED OFFENSE OF TRAFFICKING IN COCAINE IN EXCESS OF 200g AND WAS SENTENCED TO A TERM OF EIGHT (8) YEARS.

LAW ANALYSES

PURSUANT TO STATE V. GOSNELL, A DEFENDANT WAS CONVICTED IN THE CIRCUIT COURT, GREENVILLE COUNTY OF CONSPIRACY TO TRAFFIC IN COCAINE IN THE AMOUNT OF AT LEAST 200g, BUT LESS THAN 400g.

THE DEFENDANT APPEALED. THE COURT OF APPEALS HELD THAT A DEFENDANT INDICTED FOR CONSPIRACY TO TRAFFIC IN COCAINE 400g OR MORE COULD NOT BE CONVICTED OF CONSPIRACY TO TRAFFIC IN COCAINE IN THE AMOUNT OF AT LEAST 200g BUT LESS THAN 400g, AS A LESSER-INCLUDED OFFENSE. THE CONVICTION WAS REVERSED. SEE STATE V. GOSNELL, 535 S.E.2d 453 (S.C.App.2000).

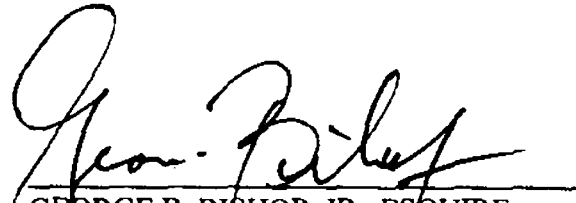
THE PETITIONER SUBMITS THAT THERE IS NO SOUTH CAROLINA LAW WHICH DIRECTLY ANSWERS THE QUESTION OF WHETHER THE GRADUATED SENTENCING CATEGORIES BASED UPON QUANTITY OF COCAINE ARE LESSER-OFFENSES. ALTHOUGH THE STATUTE PROVIDES A GRADUATED STRUCTURE OF INCREASING PENALTIES FOR TRAFFICKING IN LARGER AMOUNTS OF COCAINE, THE STATUTE IS TRIGGERED BY COMMITTING ONE OF THE PRESCRIBED ACTS WITH REGARD TO TEN (10)g OR MORE. RAFFALDT, 318 S.C. AT 117, 456 S.E.2d AT 394. THUS, OUR SUPREME COURT HAS RULED THAT AN INDICTMENT CHARGING TRAFFICKING IN COCAINE, WITHOUT SPECIFYING THE AMOUNT, IS SUFFICIENT TO CONFER SUBJECT MATTER JURISDICTION, GRANGER V. STATE, 322 S.C. 2, 507 S.E.2d 322 (1998). IN GRANGER V. STATE, THE SUPREME COURT RULED THAT AN INDICTMENT WHICH ALLEGED THAT THE DEFENDANT

TRAFFICKED IN COCAINE OF SPECIFIC AMOUNT LIMITED THE JURISDICTION TO THE COURT OVER THAT SPECIFIC SENARIO.

CONVERSELY, OUR SUPREME COURT HAS ALSO RULED THAT AN INDICTMENT WHICH DOES CHARGE A SPECIFIC SENTENCING PARAMETER BY DESIGNING AN AMOUNT WITHIN A PARTICULAR SENTENCING LEVEL CANNOT BE AMENDED BEFORE TRIAL PURSUANT TO S.C. CODE §17-19-100(1985) TO CHARGE AN AMOUNT AN INCREASED SENTENCING LEVEL BECAUSE TO DO SO CHANGES THE NATURE OF THE OFFENSE. CLAIR V. STATE, 324 S.C. 144, 478 S.E.2d 54 (1996). IN STATE V. RAFF ALDT, SUPRA, THE COURT NOTED WITHOUT COMMIT THAT THE TRIAL COURT HAD CHARGED LOWER SENTENCING CATEGORY AMOUNTS AS INCLUDED WITHIN THE CHARGED OFFENSE, BUT THE COURT DID NOT RULE ON THE PROPRIETY OF THAT PORTION OF THE LOWER COURT'S CHARGE. IN MATTHEWS, V. STATE, 300 S.C. 238., 241, 387 S.E.2d 258, 260 (1999). THE SUPREME COURT CONCLUDED THAT " THE LEGISLATURE INTENDED POSS. WITH INTENT TO DISTRIBUTE TO BE A LESSER-INCLUDED OFFENSE OF TRAFFICKING BASED UPON POS."

CONCLUSION

IN VIEW OF THESE LEGAL PRINCIPLES, IT IS THE PETITIONER'S THAT BY CHARGING THE LESSER AMOUNT AS A LESSER-INCLUDED OFFENSE THE COURT COMMITTED REVERSIBLE ERROR BECAUSE THE JURY TO CONVICT ON A DIFFERENT UNCHARGED CONSPIRACY. CONSEQUENTLY, THE PETITIONER WAS CONVICTED FOR AN OFFENSE NOT CONTAINED WITHIN THE INDICTMENT AND THE CONVICTION CANNOT STAND.

A handwritten signature in black ink, appearing to read "Geo. Bishop, Jr.", written over a horizontal line.

GEORGE B. BISHOP, JR., ESQUIRE
223 East Main Street, P. O. Box 848
Moncks Corner, SC 29461
843-761-8213
Attorney for Petitioner

August 13, 2013

Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2012-CP-08-2077
CASEY JENKINS #349382,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
DEFENDANT.	)	

2013 AUG 13 PM 2:06
 FILED
 CLERK OF COURT
 BERKELEY COUNTY, SC

I, the undersigned secretary to George B. Bishop, Jr., Attorney for the Plaintiff, do hereby certify that I have served the Defendant in this action with a copy of the pleadings hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses this 13th day of August, 2013.

PLEADINGS: Amendment to Post-Conviction Relief Application

SERVED: Alan Wilson, Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211-1549

Ashleigh R. Wilson
 Assistant Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211-1549

Joan S. Jones
 Joan S. Jones
 (Secretary)

SWORN to before me this
 13th day of August, 2013.

Joan S. Jones
 NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: *Apr. 29, 2013*

SB

Tom

Casey Jenkins 349382
Allendale Correctional Inst.

F2 B21

P.O. Box 1151

Fairfax S.C. 29827

ATTN: Hon. Mary P. Brown

Clerk of Court

P.O. Box 219

Moncks Corner, South Carolina

29461-0219

Re: C/A No: 12-CP-08-2077

Notice; and Motion to relieve
Counsel / reappointment

Dear Hon. Brown;

Please, upon receipt of such, Find enclosed an original motion For Notice, to relieve Counsel with a Certificate of Service, to be "clocked-date-stamped" Filed by your office, and a Filed clocked in copy of the same returned to me as soon as possible.

With the kindest Regards

Casey Jenkins

Casey Jenkins 349382

FILED

2013 DEC -3 AM 11:11

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY S.C.

11-26-13

MARTIN BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2013 DEC -3 AM 11:07

FILED

Jr

Hon. Mrs Brown

I am writing this letter along with this motion to please ask that Mr. Charles T. Brooks be removed from my case as soon as possible and reappoint a new representative. I will not have effective assistance of counsel and he is not working to help me and I know he would not be a help for me. I put in a motion on subject matter jurisdiction and his response is stating that I am trying to be a lawyer and he has also said my case will not be heard or come up for 3 yrs. In letters I have received from him the first dated November 4th he states can you please explain the particulars behind why you feel your trial counsel was ineffective during their representation and he looks forward to meeting with me on the 22nd the day I am to appear in court because he has stated he does not go to prisons. I ask how can he be effective counsel even slightly by never meeting with client until court date. The second letter this month was written on the 15th of November that I received he acknowledges the letter I wrote him advising

Jr

him of my change in location and about the amendment that was to accompany the letter. The amendment was sent the next day and I do not know if he has sent it to your office and that's been about a week ago I sent it to him. In a letter I picked up from the mail room on the 22nd of November the scheduled court date of my hearing. This letter is dated September 4 and it states my hearing has been canceled because he (Mr. Brooks) was due in general sessions court that day. This was not a mistake and as he stated it would be 3 yrs before I am heard. I really wish for him to be removed from my case. I want to thank your office for their patience and help with my letters and request. There are a few more things I can state in this letter but I will just ask again to have him removed from my case.

Thank You Greatly
Casey Jenkins

P.S. If I can could you please appoint someone out of Charleston County.

State of South Carolina
County of Berkeley

Casey Jenkins
Applicant

- Vs -

State of South Carolina
Respondents

In THE Court of Common Pleas
Ninth Judicial Circuit

C/A No: 12-CP-08-2077

Notice; and Motion to relieve
Counsel pursuant to (11.1(d)) SCRPC.
Foster / and for reappointment

FILE
2013 DEC -3 AM 10:07
CLERK OF COURT
BERKELEY, CA

Henceforth, cometh the applicant, before this Honorable Court, pursuant to rules and principles, and pursuant to rule 11.1(d) SCRPC; and Foster; In the case at bar; that's before this Honorable court; the applicant, afore hand seeing the possibility of a potential conflict of Interest pursuant to Jackson (495 S.E. 2d) that is based on rule violation of code of Conduct and ethics; 409 (1.9); of inference, and has reason to believe as a matter of Law; that due to such "undue Influence", that Applicant would not have "effective" assistance of competent counsel of (CHARLES T. BROOKS III) and as a matter of Law moves for relief of Counsel, and for reappointment

Casey Jenkins
Casey Jenkins 37382

State of South Carolina
County of Berkeley

Casey Jenkins
Applicant

VS

State of South Carolina
Respondents

In The Court of Common Pleas
Ninth Judicial Circuit

Case No: 12-CP-08-2077

Certificate of Service

MAE J. COON
CLERK OF COURT
BERKELEY COUNTY S.C.

2013 DEC -3 AM 11:07

FILED

du

I certify and declare under the penalty of perjury that I served the following with a copy of Notice and Motion to relieve counsel and for reappointment by depositing such in the United States Mail, Postage Prepaid, and properly addressed as follows

Hon. Mary P. Brown
Clerk of Court
P.O. Box 219
Moncks Corner, South Carolina
29461-0219

21 day of November 2013

Casey Jenkins
Casey Jenkins 39382
Allendale Corr. Inst
F2 B21
P.O. Box 1151
FAIRFAX S.C. 29827

To The Honorable Brown;
please note preference of
Counselor; if so possible of the
Following:

* Robert Howe *

Andy Savage

Jeff Todd Rutherford

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Casey Jenkins, 349382)

Applicant)

State of South Carolina)

Respondent,)

IN THE COMMON PLEAS COURT

DOCKET NO.: 2012-CP-08-2077

AMENDMENT TO
POST CONVICTION RELIEF
APPLICATION

The Applicant through undersigned Counsel wishes to Amend his Application for Post
Conviction Relief filed on July 17, 2012 as follows:

ATTACHED PAGES 1 THROUGH 5

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Casey Jenkins



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post Office Box 3512
Sumter, S. C. 29150
(803) 418-5708

November 19, 2013

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2013 DEC 12 PM 4:23

FILED

2/16/13
CTB

CTB

State of South Carolina,
County of Berkeley.

In the Court of Common Pleas
Ninth Judicial Circuit

Casey Jenkins #349382)

Case No: 12-CP-08-2077

Appellant,)

vs)

Motion for leave to Amend and
Amendment to Application for
(PCR)

State of South Carolina,)

Respondant.)

Henceforth, now cometh the petitioner by and through undersigned counsel, to move this Honorable Court for leave to Amend his initial pleading filed in the above entitled action based on Rule and principle of application for Post Conviction Relief. Applicant would show unto this Honorable Court.

Jurisdiction

This motion is brought as provided by in Rule 15(b) and 71.1 (d) SCRCP, leave of the court is at the juncture.

State of Case

The above entitled action in an application, for post conviction relief. The initial pleading were drafted and filed by petitioner without assistance of counsel.

Arguments

Undersigned counsel (herein "counsel") has reviewed the record and pleading as required by rule 71.1(d) SCRCP: and has determined that Amendment is necessary to assure that all available, meritorious grounds for relief are included in the application and has consequently determined that Amendment is necessary.

Rule 15 SCRCP strongly favors Amendment and the courts are encouraged to freely grant leave to amend. Jarrell vs Seaboard Systems R.R. Inc. 292 S.C. 183, 363 S.E.2d 398, 399 (ct App 1987).

Applicant submits that responded State would not be prejudiced through amendment at this juncture. Applicant would propose the following grounds and facts as an addition to the grounds and facts previously alleged in the original PCR. Applicant proposes the following Amendment of additional grounds and facts Amending ¶ 9 and 10 of original APCR.

FILED
JAN 12 PM 4:23
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Claim

Applicant 5th, 6th, 8th, and 14th Amendments United State Constitutional rights were violated.

In this amendment, the applicant seeks to amend a claim that the Circuit Court for Berkeley County was without subject matter jurisdiction to accept a plea of guilty, because there was not an indictment in existence charging him with the offense for which he plead guilty. The offense which he plead guilty to is not a lesser-included offense of the offense he was indicted for and the petitioner never waived presentment to the grand jury process to the offense for which he was convicted.

Supporting Facts

On January, 18, 2012 petitioner plead guilty to Trafficking in Cocaine 28g-100g as a lesser-included offense of the indicted offense of Trafficking in Cocaine in excess of 200g and was sentenced to a term of eight (8) years.

Law Analyses

Pursuant to Campbell v State, A defendant was convicted in the Circuit Court, Aiken County of committing a lewd act on a child under the age of sixteen. The defendant APPEALED THROUGH PCR. The issue raised to this Court concerned the voluntariness of petitioners plea. In finding by the PCR court the petitioners plea was involuntary. The petitioner was indicted for first degree criminal sexual conduct with a minor. The petitioner plead guilty to committing a lewd act on a child under the age of sixteen. The PCR courts granted relief to petitioner, because the trial court did not have subject matter jurisdiction to accept petitioners plea. The petitioner never waived presentment to the grand jury process. Committing a lewd act on a child under the age of sixteen is not a lesser-included offense of first degree criminal sexual conduct with a minor. Therefore the trial court was without jurisdiction to accept petitioners plea to unindicted charge. Carter v State 329, S.C. 355, 362 495 S.E.2d 773, 777 (1998) S.C. Code Ann § 17-19-10 (1985).

The State appealed and the Supreme Court held that the trial court lacked subject matter jurisdiction to accept a guilty plea to an unindicted charge. In this case relief was granted. See Campbell v State 535 S.E.2d 928 (S.C. 2000).

The petitioner now seeks to show that the Circuit Court of Berkeley County was without subject matter jurisdiction to accept a plea of guilty. The petitioner was indicted for trafficking in cocaine in excess of 200g by the Berkeley County Grand Jury at September 2008 term. The defendant plead guilty to trafficking in cocaine 28g-100g on January, 18, 2012 as a lesser-included offense to the indicted charge. The Circuit Court of Berkeley County was without subject matter jurisdiction to accept a guilty plea, because there was not an indictment in existence charging him with the offense for which he plead guilty and was convicted. The offense to which he plead guilty was not a lesser-included offense of the offense in which he was indicted and petitioner never waived presentment to the grand jury process to the offense for which he was convicted.

The petitioner submits that there is no South Carolina law which directly answers the question of whether the graduated sentencing categories based upon quantity of cocaine are lesser-offenses. In State v Raff ALDT, Supra the court noted without commit that the trial court had charged lower sentencing category amounts as included within the charged offense, but the court did not rule on the propriety of that portion of the lower courts charge. In Mathews v State 300 S.C. 238, 241 387 S.E.2d 258, 260 (1990). The Supreme Court concluded that. The legislature intended possession with Intent to Distribute to be a lesser-included offense of trafficking based upon possession.

In order that a sentence be valid it is essential that the court pronouncing it be an existing one lawfully constituted, lawfully in session at the time of rendition, with jurisdiction over the person and the crime with which such person is charged, and having power to pronounce the particular judgment or sentence and it is essential that nothing shall have occurred to deprive the court of such jurisdiction. A judgment of conviction by a court lacking jurisdiction is void.

Corpus Juris Secundum 24 Criminal Law 1458 to End CJS p.34.

Conclusion

The courts lacked jurisdiction to accept a plea to an unindicted offense. The offense was not the lesser-included offense and petitioner did not waive presentment to the grand jury process to the indicted offense. The petitioner was convicted of offense not contained in indictment. Therefore the conviction of petitioner can not stand in view of these legal principle. The petitioner now ask the court to vacate the sentence and conviction as a matter of law.

Question 19 to the PCR application ask that applicant state clearly the relief you seek in filing this application? I now seek to have sentence and conviction vacated as a matter to law.

Grand Jury Process

The illegally impaneling of the grand jury and the lack of jurisdiction to true bill the indictment according to law.

The Solicitor/ assistant Solicitor unlawfully impaneled it's grand jury outside the jurisdiction of the court of general Sessions Pursuant to S.C. Ann § 14-5-740 term of court in the Ninth Circuit. The Court of the Ninth Circuit shall be held hereinafter provided Berkeley County in May and October. The General Assembly did not make a special provision in statute 14-5-740 for a term of court in September.

The Statutory terms above are clear, unambiguous and require the county Solicitor to prepare and submit bill of indictment through the presiding Judge of the Court of General Sessions to a grand jury impaneled under the authority of the Court of General Sessions. No Exceptions. In the keeping with mandatory provision of the statute 14-9-210 and 14-5-740, the state has No jurisdiction to issue a return of the true billed indictment except during a time when the Court of General Sessions is lawfully concerned to oversee the grand jury process. Any act of the court taken outside those statutory provisions would be necessity be null and void. In fact our Spreme Court has already determined that No indictment may be true billed by a

grand jury when the court lacks jurisdiction. The facts will establish that the grand jury was impaneled outside the authority of the Court of General Sessions to complete a return of a true billed indictment. The grand jury was not properly impaneled and this was an obstruction of administration of justice and this means the performance of acts or duties required by law in discharge of duty. The Solicitor and assistant Solicitor are required to know and obey mandates of statute 14-9-210 and lawfully impanel a grand jury accordingly. In conformity with state law there was a violation of the provision of statute 14-9-210 and 14-5-740 by unlawfully processing of the indictment outside the jurisdiction of the Court of General Sessions and then stating that it had been return at a Berkeley County, Court of General Sessions. The Solicitor office failed to bring charges before the grand jury, because there is no September term of court in the statute 14-5-740. This office has "ministerial Duty" to uphold the laws of this State. The statutory terms are clear, unambiguous and require the preparayionnsubmitting of bills of indictment through the presiding Judge of the Court of General Sessions to a Grand Jury impaneled under the authority of the Court of General Sessios to be prepared by the County Solicitor. The legislature law limits the manner in which a procedure may be done in another manner. the procedure was unlawful and not allowed under statute 14-9-210 and 14-5-740, thus the State lacked the jurisdiction to complete a return of it's true billed indictment.

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-08-2077

Casey Jenkins, 349382)
 Applicant,)

vs.)

State of South Carolina)

Respondent)

MOTION FOR SUMMARY JUDGMENT

The Applicant, Casey Jenkins, will respectfully move this court of Common Pleas pursuant to the provision of Rule 56 (c) Motion for Summary Judgment and Memorandum of Law and Amended pleadings pursuant to the provision of Rule 15, the Applicant, Casey Jenkins, will respectfully show that He is entitled to Summary Judgment for the following reasons;

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to Orders of Commitment of the Berkeley County Clerk of Court, where he is currently serving an eight (8) year sentence. The Applicant would amend these pleadings;

1. Applicant's indictment states that on September 10, 2008, the Grand Jury of Berkeley County convened in a Court of General Sessions to indict him which is clearly perjury on a State document.
2. Letter from the Clerk of Court states there was not a Court of General Sessions held that day.
3. The lack of Subject Matter Jurisdiction.
4. The lack of personal jurisdiction.
5. The violation of the U. S. Constitution Amendment 5.
6. The violation of the State Constitution and the State's statutory provisions 14-9-210.

2014 JAN 13 PM 12:58
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

FILED

JW/AG
 Office
 B

MTB

7. The illegal and false conviction according to law.
8. The evidence that was said to be had does not exist. (The recorded conversation). No audio or video.
9. Attorney Mitchell Lanier and Prosecutor Benjamin T. Shelton's suppression of evidence from applicant.

SUMMARY JUDGEMENT

Summary Judgment is appropriate if the pleadings depositions answer to interrogatories and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that moving party is entitled to a judgment as a matter of law SCRC Rule 56 (c). When reviewing a Summary Judgment Order, this Court of Common Plea is required to apply the Standard as the Supreme Court. [Fleming vs. Rose, 350 S.C. 488, 567 S.E. 2d 857 (S.C.2002)] That is the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. (Id at 494, 567 S.E.2d at 860).

Without written order and proper continuance filed with the Clerk of Court issued, the parties were prohibited from continuing the cause. Therefore, my convictions and sentences should be vacated and I immediately be released from prison pursuant to S. C. Code Ann. 17-27-80.

RESPECTFULLY SUBMITTED

On Behalf of Applicant Casey Jenkins

BY: 

Charles T. Brooks III
Attorney for the Petitioner
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708

January 8, 2014
Sumter, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Casey Jenkins, 349382)

Applicant)

State of South Carolina)

Respondent,)

IN THE COMMON PLEAS COURT

DOCKET NO.: 2012-CP-08-2077

MOTION ON WAIT OF MANDAMUS/
AND SUMMARY JUDGMENT

The Applicant through undersigned Counsel wishes to file the attached motion:

TOTAL ATTACHED PAGES NINE (9)

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Casey Jenkins



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post Office Box 3512
Sumter, S. C. 29150
(803) 418-5708

January 9, 2014

CTB

1
JW/AG
TBY

IN RE: JAMES EARL RAY FOR SOUTH CAROLINA.

To Honorable Mr. JEAN TOLSON,
Chief Justice For South Carolina's Supreme
Court.

Ms. CASEY JENKINS

Initiator

Wills

State of South Carolina

Respondent

and Order of Mandamus and
Summary Judgment.

Ms. CASEY JENKINS
Allendale Correctional Institution
1151, Post Office Box
Fountain, S.C. 29827.

Executed on CASEY JENKINS Dec 1, 2013

S/ Casey Jenkins

COVER SHEET

Pg. 1

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Attachments / Exhibits

COPY OF Indictment.

COPY OF letter to Clerk of Court.

COPY OF Response From Clerk of Court.

Now comes the Petitioner, Mr. Casey Jenkins, Alvin in this Honorable Court for writ of Mandamus and Summary Judgment. Petitioner is currently housed at the Alameda Correctional Institution under commitment of the Berkeley County Court of General Sessions. However, by affidavit from the office of the Clerk of Berkeley County Court, evidence now shows that the State never held Court of General Session on September 10, 2008 to Indict the Petitioner by Grand Jury in accordance with United States Const. Provisions. The Petitioner filed a Post-Conviction Application Alleging Ineffective Assistance of Counsel, Subject Matter Jurisdiction ect. Petitioner submits to this Court his D.C.F. has been pending for 18 months when evidence clearly show he is illegally and unlawfully being held. Petitioner was scheduled to be in Court this Nov 22, 2013 but again has been delayed. Petitioner now brings this Mandamus and Summary Judgment due to the extraordinary circumstances of unlawful delay, Court didn't have Jurisdiction, and the Court still doesn't have Jurisdiction to hold me. Petitioner now invoke the Authority of this Court to Adjudicate on this case by the existence of the extraordinary reasons shown. Petitioner ask LEAVE to Proceed:

LEGAL Argument.

We the People of the United States in Order to Form a more Perfect Union and Establish Justice did ordain and established the Constitution for the United States of America. The Petitioner contends the 5th Amendment ordains, "No Person shall be held to answer for a crime

...or otherwise, infamous crimes, unless on a presentment or indictment of a Grand Jury." Evidence would show the Petitioner was indicted by the Grand Jurors of Berkeley County at a Court of General Sessions, supposedly convened September 10, 2008 for "Trafficking in Cocaine". See Attachment COPY of Indictment. However, Petitioner received affidavit from Clerk of Court (Berkeley County) that disclosed "Note - No General Sessions Court was held on September 10, 2008. See Attachment COPY of letter to Clerk of Court from Petitioner, and Attachment COPY of Clerk's Response.

Accordingly, Petitioner contends this evidence validates his incarceration is unlawful and the State or Respondent is without subject-matter jurisdiction because there was never a General Sessions held where Grand Jury would present upon their oath a valid Presentment or Indictment. The Petitioner argues the defendants have had more than adequate time (since Petitioner's P.C.R. Pending 18 months) to discovery which would defeat the evidence against them, instead have delayed and denied Petitioner his right to confront his accuser. A Motion for Summary Judgment is appropriate when there exists no genuine issue as to any material fact and a decision may be rendered as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A court must enter judgment against a party who, after adequate time for discovery fails to make a showing sufficient to establish the existence of an element essential

to the Party's case, and on which the Party will⁶⁹
bear the burden of Proof at Trial, Summary
Judgment is Mandated. Id. See Stone v. Liberty Mt.
Ins. Co., 105 F.3d 188 (4th Cir. 1997) Johnson v.
Quinones, 145 F.3d 164 (4th Cir. 1998).

Accordingly, Petitioner contends 18 months
later the Court still hasn't held a Evidentiary
hearing because it bears the burden of Proof
as to how it explains their having a presentment
without having General Sessions Court for a
Grand Jury's oath.

Conclusion

The Record, the Evidence, the Law speaks in FAVOR
of the Petitioner. CASEY Jenkins, which undoubtedly
Proved he is being held in Custody UNlawfully. He Re-
spectfully Motion this Court for "Order" vacating
his Conviction and Sentence in the Interest of
Justice, and an Order the defendant to hold an
Evidentiary hearing in the Matter within 30 days
of Your ORDER.

Respectfully Submitted,

MR. CASEY Jenkins

C.C.

Attorney General's Office.

Mr. Charles Brooks, Esquire.

Proof of Service

This will Acknowledge that the Respondents were properly served with a copy of the Petition For writ of Mandamus and Summary Judgment by placing a copy of the same in an envelope, Postage prepaid Addressed to :

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Copy also sent to :

Charles Brooks, Esquire
307 Broad Street
Mounton, South Carolina 29150

December 1, 2013

SI Carey Jenkins

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)

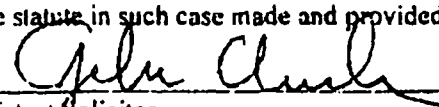
INDICTMENT FOR
 TRAFFICKING IN COCAINE

At a Court of General Sessions, convened on September 10, 2008 the Grand Jurors of Berkeley County present upon their oath:

That Casey Jenkins did in Berkeley County on or about the 4th day of May, 2008, knowingly traffic, sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt or conspire to traffic, sell, manufacture, cultivate, deliver, purchase, or bring into this State; or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a controlled substance analogue, to wit: Cocaine in excess of 200 grams. This is in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

FILED
 IN THE COUNTY OF BERKELEY
 SOUTH CAROLINA
 9/10/08

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


 Assistant Solicitor

Casey Jenkins 349382

Allendale Correctional Inst.

Dated Nov 4 2013

F-2 B21

P.O. Box 1151

Jaffox S.C. 29827

Mary P. Brown

Clerk of Court, Berkeley County

P. O. Box 219

Moncks Corner, S. C. 29461

Dear Mrs. Brown

This request is made under the Freedom of Information Act (F.O.I.A) S.C. Code Ann. § 30-4-10

Mrs. Brown, I am doing some very important research on my case. Please be patient with me. I am requesting from your office information and that information is that was a Court of General Sessions held in Berkeley County on September 10, 2008 and if a Court of General Sessions was held on September 10, 2008 I would like to know who was the Presiding Judge that was seated in that Court of General Sessions.

P.S. Will you Please clear stamp this letter, and send a copy back to me.

With kind Regards
Casey Jenkins

BERKELEY COUNTY

Clerk of Court

Post Office Box 219
Moncks Corner, SC 29461

11/18/2013

Mr. Casey Jenkins Inmate # 349382
Allendale Corrections F-2 B21
PO Box 1151
Fairfax SC 29827

Re: FOIA Request #W000182-111813 dated 11/04/2013

Dear Casey Jenkins Inmate # 349382:

I am writing in response to your Freedom of Information Act Request dated 11/18/2013, wherein you requested the following:

Per letter requesting from the Clerk of Court information that was a Court of General Sessions held in Berkeley County on September 10, 2008 and if a Court of General Sessions was held on September 10, 2008. I would like to know who was the Presiding Judge that was seated in that Court of General Sessions. Note-There was not a General Sessions Court held on September 10, 2008.

The purpose of this letter is to respond to your letter dated November 4, 2013. You state that your letter is a Freedom of Information Act ("FOIA") request; however, if you will review the statute, you will find that FOIA essentially makes certain meetings open to the public and makes certain records available to the public for inspection and copying. In contrast, your letter requests that the County create documents. As a result, your request is not a FOIA request. It more along the line of interrogatories used in litigation. While it is the County's goal to accommodate public inquiries, due to budgetary restrictions the County as a general rule does not re-assign personnel to create responses to interrogatory-type questions outside the litigation process.

With the exception of executive sessions, the meetings of the County Council and the County's boards, commissions and committees are open to the public and you are welcome to attend. If there are records that you would like to inspect or copy, please let me know and I will make arrangements to accommodate you for all non-exempt records.

If you have questions, please contact me.

Sincerely,
Mary P. Brown

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

CASEY JENKINS,) TRANSCRIPT OF RECORD
APPLICANT,) 2012-CP-08-2077

RESPONDENT.)

JANUARY 13, 2014

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KRISTI LEA HARRINGTON, JUDGE

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

CHARLES T. BROOKS, III, ESQUIRE

ATTORNEY FOR THE APPLICANT

ASHLEIGH R. WILSON, ASSISTANT ATTORNEY GENERAL

ATTORNEY FOR THE STATE

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

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REDIRECT EXAMINATION BY MR. BROOKS.....25

BENJAMIN T. SHELTON:

DIRECT EXAMINATION BY MS. WILSON.....28

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CASEY J. JENKINS:

DIRECT EXAMINATION BY MR. BROOKS.....33

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NO EXHIBITS WERE INTRODUCED

1 Monday, January 13, 2014

2 THE COURT: Are you Casey Jenkins?

3 THE APPLICANT: Yes, ma'am.

4 THE COURT: Please swear Mr. Jenkins.

5 CASEY J. JENKINS, after having been duly
6 sworn, testified as follows:

7 THE CLERK: State your full name.

8 THE APPLICANT: Casey Joel Jenkins.

9 THE COURT: Mr. Jenkins, we are here for your
10 application for post-conviction relief; is that correct?

11 THE APPLICANT: Yes, ma'am.

12 THE COURT: And Mr. Brooks is your attorney?

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: Have you had time to meet with him?

15 THE APPLICANT: No, ma'am. I mean, we had a
16 two-minute conversation out back.

17 THE COURT: Have you met with him before?

18 THE APPLICANT: No.

19 THE COURT: You've never met with Mr. Brooks?

20 THE APPLICANT: No.

21 MR. BROOKS: Judge, we had a lot of correspondence.

22 THE COURT: All right.

23 MR. BROOKS: And this is a guilty plea, Judge. I
24 don't know if you want me to get into some of the
25 background or you want to finish.

1 THE COURT: I'm going to finish with Mr. Jenkins
2 because I want him to feel like he got his day in court
3 here today.

4 MR. BROOKS: Yes, ma'am.

5 THE COURT: Mr. Jenkins, do you need any additional
6 time to meet with Mr. Brooks?

7 THE APPLICANT: Yes.

8 THE COURT: You do. All right. I'm going to break
9 for just a few moments. So Mr. Brooks can tell me how
10 much more time he needs because I'm going to break right
11 at noon for lunch.

12 So, Mr. Jenkins, you are here on a plea, and as I
13 understood it you were indicted for trafficking cocaine
14 in excess of 200 grams.

15 THE APPLICANT: Yes, ma'am.

16 THE COURT: And that carried a mandatory sentence
17 of 25 years, which could not be suspended and you could
18 not be given probation, and a hundred thousand dollar
19 fine.

20 THE APPLICANT: Yes, ma'am.

21 THE COURT: And you pled guilty to trafficking in
22 cocaine 28 to 100 grams first offense.

23 THE APPLICANT: Yes, ma'am.

24 THE COURT: And you received -- there was a
25 negotiated cap of 12 years. So you had the potential

1 from seven years to 25 years, and Judge Dennis sentenced
2 you to eight years in the Department of Corrections; is
3 that correct, sir?

4 THE APPLICANT: Yes, ma'am.

5 THE COURT: So what I want you to be very aware of
6 is eight years -- and I'm not so good at math, eight
7 years is substantially less than 25. You would agree
8 with me?

9 THE APPLICANT: Yes, ma'am.

10 THE COURT: All right. And so what happens is
11 should I grant your request for post-conviction relief
12 the case doesn't go away. It simply goes back to
13 Berkeley County and it's going to be tried again, and it
14 will be tried again on the original indictment; do you
15 understand that?

16 THE APPLICANT: Yes.

17 THE COURT: So you again would be facing a 25-year
18 mandatory sentence.

19 THE APPLICANT: Yes, ma'am.

20 THE COURT: Knowing that do you still wish to go
21 forward here today?

22 THE APPLICANT: Yes.

23 THE COURT: Yes?

24 THE APPLICANT: Yes.

25 THE COURT: All right. I'm going to give you just

1 a few moments.

2 Mr. Brooks, if you'll just take -- we are going to
3 waste everybody's time because he wants to see you --

4 MR. BROOKS: And I just wanted to add, Judge. I
5 explained to him that if he were successful the Attorney
6 General's Office would appeal. That takes probably two
7 to three years for him to come back if he does habeas
8 corpus. By the time he would exhaust his remedies he
9 would have completed his time because his max out date is
10 in 2019. I just -- along the lines that you were
11 questioning him, Judge, I wanted to --

12 THE COURT: You gave him that an additional
13 process.

14 MR. BROOKS: Correct. Absolutely. Make sure that
15 that's --

16 THE COURT: And then he would go back and face the
17 potential for 25 mandatory.

18 MR. BROOKS: That's correct.

19 THE COURT: And again, Mr. Jenkins, I want you to
20 be fully informed of the benefits and consequences of
21 going forward here today because there is a potential
22 perhaps that your PCR would be granted and that it would
23 not be appealed and that you would go back and be able to
24 try this more quickly. I just want you to know.

25 I'm going to give you five minutes because I'm

1 going to break right at noon. So five minutes and then
2 if you need more time just let me know.

3 Okay, Mr. Brooks?

4 MR. BROOKS: Yes, ma'am.

5 THE COURT: Thank you.

6 (WHEREUPON, a brief recess was taken.)

7 THE COURT: All right. We're back on the record.

8 Mr. Brooks, does your client still wish to go
9 forward?

10 MR. BROOKS: He does, Judge.

11 THE COURT: All right.

12 MR. BROOKS: I explained to him everything you said
13 and then some.

14 THE COURT: All right. Mr. Jenkins, do you need
15 any additional time to meet with your attorney?

16 THE APPLICANT: No.

17 THE COURT: No. You are ready to go forward at
18 this time?

19 THE APPLICANT: Yes, ma'am.

20 THE COURT: All right. What grounds are you going
21 forward on at this point?

22 No, not you. Your attorney.

23 MR. BROOKS: Judge, basically what he is saying is
24 that his plea was involuntarily given and we have filed
25 various documents in the court record, an amended

1 application as well as he had sent me on Friday, and I
2 sent it to the Court, I don't know if the Court had
3 gotten it yet, which was a habeas corpus petition that he
4 had drafted himself. I just wanted to make sure the
5 Court was aware that we had put all those things or
6 attempted to put all these things into the record.

7 THE COURT: I did not. I haven't received anything
8 filed by the defendant -- excuse me, the applicant, but I
9 do not think that's appropriate since he's represented by
10 counsel. So I think it's actually very good that I did
11 not receive it.

12 You have an attorney. You need to file your
13 matters and utilize the benefit of your attorney. All
14 right? I know you haven't seen him but he's indicated to
15 the Court he's been diligently working on your behalf.
16 All right? So if you have anything that you wish to tell
17 the Court if you'll tell your attorney and he'll take up
18 that matter for you.

19 Mr. Brooks, what are the grounds that we are going
20 forward today, so I can make sure that you have
21 adequately stated them for the record and the State knows
22 what to defend against?

23 MR. BROOKS: One second, Your Honor.

24 (WHEREUPON, Mr. Brooks and the Applicant speak
25 privately.)

1 MR. BROOKS: May it please the Court, Judge?

2 THE COURT: Yes.

3 MR. BROOKS: We had filed in his original
4 application basically that he had ineffective assistance
5 of counsel, and his plea was involuntarily given. He
6 indicates that the Court did not have subject matter
7 jurisdiction because he is claiming the defection in the
8 indictment, and he also claims that constitutional
9 rights, violations under the 5th and 14th Amendment under
10 the due process clause.

11 THE COURT: Ms. Wilson, this is the first I see a
12 jurisdictional issue.

13 MS. WILSON: Yes, Your Honor. It's my
14 understanding from what I got from the application and
15 all his writings is that he says that the jurisdictional
16 issue is that the Court didn't have jurisdiction to
17 proceed on a lesser included offense for which he was --

18 THE COURT: Slow down just a little.

19 MS. WILSON: I'm sorry. From what I gathered from
20 his multiple pro se filings is that he's alleging the
21 State didn't have subject matter jurisdiction based on
22 the fact that I believe he was indicted for trafficking
23 in cocaine in excess of 200 grams and they allowed him to
24 plead guilty to 28 to 100 grams first offense.

25 So that's his allegation of lack of subject matter

1 jurisdiction because he ultimately pled to the lesser
2 included offense, which the State's position is it is not
3 a loss in subject matter jurisdiction because an
4 indictment for a higher included offense encompasses the
5 lower as far as trafficking goes because it's just a
6 lesser quantity not the elements don't change.

7 THE COURT: So one more time, Mr. Brooks, just so I
8 understand the grounds that we are going forward here
9 today.

10 MR. BROOKS: Judge, and basically -- and I was just
11 basically characterizing what my client had indicated.
12 He indicates that the Court did not have subject matter
13 jurisdiction because they took this plea to a lesser
14 included offense.

15 THE COURT: I got it. What else are we going
16 forward on?

17 MR. BROOKS: Ineffective assistance of counsel in
18 regards to an involuntary guilty plea.

19 THE COURT: And those are the only grounds,
20 Counsel?

21 MR. BROOKS: Basically, Judge, in a nutshell, yes.
22 I do let the Court know that in his application -- his
23 initial application he had included, I guess for lack of
24 a better word, the standard things that people say,
25 Constitutional Rights 5th and 14th, and etcetera,

1 etcetera, but basically for Your Honor's purposes what we
2 are going forward on today, Judge, is basically an
3 involuntary guilty plea as well as whether or not the
4 State could take a lesser included offense than what he
5 was originally indicted for.

6 THE COURT: All right. And how many witnesses do
7 you have?

8 MR. BROOKS: Just one.

9 THE COURT: All right. Call your first witness.

10 MR. BROOKS: We'd call Mr. Jenkins to the stand,
11 Judge.

12 CASEY JOEL JENKINS, after having been duly
13 sworn, testified as follows:

14 THE CLERK: I'm just going to ask you to state your
15 full name again and spell your last name.

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q. What's your name?

19 A. Casey Jenkins.

20 THE COURT: Spell your last name.

21 THE WITNESS: J-e-n-k-i-n-s.

22 Q. All right. Mr. Jenkins, you pled guilty to
23 trafficking 28 to a hundred, and Judge Dennis gave you
24 eight years; is that correct?

25 A. Right.

1 Q. And you had Mr. Lanier as your attorney?

2 A. Yes, sir.

3 Q. Okay. Now, you are here -- you understand why you
4 are here today?

5 A. Yes, sir.

6 Q. And I'm going to ask you some questions to follow
7 up on what we've discussed, okay, for purposes of the
8 record. You understand that the only remedy that Judge
9 Harrington can give you today is to put you in a position
10 that you would start over?

11 A. Yes.

12 Q. And you would go back and face trafficking in
13 excess of 200 grams?

14 A. Yes.

15 Q. And you understand that that carries a mandatory
16 minimum of 25 years?

17 A. Yes.

18 Q. Okay. You max out in about five years on the
19 current track that you are on.

20 A. Yes.

21 Q. And we've talked about if you didn't prevail or if
22 you did prevail, the appellant process of the PCR and the
23 time that it would take, we talked about that?

24 A. Yes.

25 Q. And you are fully aware of that?

1 A. Yes.

2 Q. And you totally understand your risk here today?

3 A. Yes.

4 Q. And you still want to go forward and ask the Court
5 for a new trial?

6 A. Yes, sir.

7 Q. Okay. Now, why did you plead guilty to this,
8 Mr. Jenkins?

9 A. In numerous conferences with Mr. Lanier he told me
10 that everything was stacked against me, they have
11 recorded conversations, they have audio evidence against
12 me. And he told me that they saw me bring it up when in
13 turn they didn't see me bring anything up or they didn't
14 have any recorded conversations, and I tried to get
15 copies of it, copies of it.

16 And after I filed a PCR, George Bishop, Jr. was
17 first appointed to me, and he told me he wanted the
18 transcript, got the evidence, and he told me that
19 something that he was saying in transcript doesn't exist,
20 with the recorded conversation and stuff like that.

21 I asked him for that numerous times and he ignored
22 a lot of my requests. Even when I got to prison I wrote
23 him there asking for it.

24 Q. Now, you understand that if these things did show
25 up and you got a new trial that would pretty much put a

1 nail in your coffin for 25 years to life; you understand
2 that?

3 A. Yes.

4 Q. And knowing that and even though you say you still
5 want this stuff you still think it's worth it; is that
6 correct?

7 A. Yes.

8 Q. Okay. Now, so what you are saying is that
9 Mr. Lanier convinced you or coerced you into pleading
10 guilty; is that correct?

11 A. Yes.

12 Q. Okay. And if it had not been for him you would
13 have taken this to trial; is that right?

14 A. Yes.

15 Q. Okay. Now, what do you know now that if you had
16 know then would have caused you to stay on your path
17 looking for trial?

18 A. Knowing what all he told me and I'm telling him
19 that they have it against me, that I'm okay with that.
20 But, I mean, I always associated with it but, you know,
21 his -- the way it was portrayed and the way things were
22 done, you know, I just wanted to be that it was me they
23 were talking to and he said --

24 Q. Now, Mr. Jenkins, I'm going to have to ask you
25 because I'm sure I got some puzzled looks in this

1 courtroom. What do you mean about what you just said? I
2 mean, you were saying the way he did it, the way this
3 happened. Can you explain what you are saying?

4 A. Because when they -- when I went to his house and
5 they -- after I got out of my truck they came up on me
6 with guns drawn and they're telling me to get down, get
7 down, and the first three officers came up to me and
8 asked me, Where's the drugs?

9 They looked under my truck, looked inside and
10 outside, and under, and they couldn't find anything.
11 Then they looked under the guy who lived there truck and
12 that's where they found -- I guess where they found drugs
13 because I never seen what they got.

14 Q. Okay. Now, was Mr. Lanier hired, retained by you?

15 A. Yes.

16 Q. Okay. So how did -- and he basically told you,
17 Hey, you need to take this plea?

18 A. Yeah.

19 Q. And now you regret doing so?

20 A. Yes, I do.

21 Q. And you understand that one of the allegations you
22 raised is whether or not the State can change the
23 indictment or do something different than what you are
24 indicted for; you understand that?

25 A. Yes.

1 Q. Because you were originally indicted for over 200
2 grams?

3 A. Yes.

4 Q. And in your application you maintain that the State
5 cannot change that and take your plea for less than --
6 for 28 to a hundred?

7 A. It wasn't about the State not being able to do it.
8 It was what -- as far as -- as a matter of fact, can you
9 get my amendments out of my envelope?

10 THE COURT: All right, Counsel. I told you I was
11 going to stop right at noon, so we're going to stop here.

12 I'm going to stop. We're going to take our lunch
13 break and that will give you some time, if you need, to
14 speak with Mr. Brooks at any point. All right?

15 We'll resume back at 1:30. Thank you. We are at
16 ease.

17 (WHEREUPON, a lunch break was taken.)

18 (WHEREUPON, the Applicant returns to the witness
19 stand.)

20 THE COURT: All right, sir. I remind you you are
21 still under oath, okay?

22 THE APPLICANT: Can you give this to the Judge?

23 THE COURT: All right. Mr. Brooks, your witness.
24 Back on the record.

25 MR. BROOKS: Your Honor, may I approach with some

1 documents. I've shown them to Ms. Wilson. It's actually
2 the indictment.

3 THE COURT: All right. I already have a copy of
4 the indictment.

5 MR. BROOKS: And I believe terms of the grand jury.

6 THE COURT: I already know the terms.

7 (WHEREUPON, documents were handed to the Court.)

8 THE COURT: All right. Thank you. You want them
9 back?

10 BY MR. BROOKS:

11 Q. Do you want it back, Casey?

12 A. Yeah.

13 Can I ask you a question, Your Honor?

14 Q. Let me ask you question, Casey. Why did you want
15 the Judge to see that?

16 A. Because it states right here, At the Court of the
17 General Sessions convening September 10th, 2008, the
18 Grand Jury of Berkeley County upon their oath.

19 Q. Let me ask you this. Is that in regards to your
20 allegation about the indictment in your case?

21 A. Yeah. I mean, there's a process that you go
22 through to get a true-billed indictment.

23 Q. And that's correct.

24 A. And this letter states that -- from the Clerk,
25 Ms. Mary Brown, there was not a general sessions court

1 held in September that day.

2 Q. Okay.

3 A. So and then I got a copy of the a calender from the
4 Court Administration in Columbia and it also shows there
5 was not a court of general sessions held.

6 Q. Do you understand that the indictment is something
7 that's true billed by the county grand jury?

8 A. Yeah, but --

9 Q. Do you understand that?

10 A. Yeah.

11 Q. And the county grand jury --

12 THE COURT: Is that a yes?

13 A. Yes.

14 THE COURT: Thank you.

15 Q. And you understand that the county grand jury could
16 meet any time? Do you understand that?

17 A. Yeah, I know the Judge can order but this case --

18 Q. Okay. And you understand that if your case here
19 today is granted because of this that all the solicitor
20 would have to do is submit a new case with the facts in
21 your case to a new grand jury and get an indictment for
22 the trafficking in excess of 200 grams?

23 A. Yeah, I understand that.

24 Q. Okay. And yet it's still your position that the
25 indictment --

1 THE COURT: Counsel, approach.

2 (WHEREUPON, a bench conference was had.)

3 THE COURT: Thank you, Counsel.

4 BY MR. BROOKS:

5 Q. Mr. Jenkins, you understand that the indictment
6 that you got in your hand that if you win your PCR here
7 today you'll go back and face that same indictment all
8 over again, which is the 25 to life?

9 A. Uh-huh.

10 Q. You understand that?

11 A. Uh-huh.

12 THE COURT: Is that a yes?

13 A. Yes.

14 THE COURT: I'm not trying to be difficult. My
15 court reporter has got to write down everything that I
16 say and you say and she has no word for Mmm, okay?

17 A. Yes, ma'am.

18 THE COURT: Thank you.

19 Q. And that if there are any problems in that
20 indictment that you are looking at now, do you know that
21 the second time around that if there were any problems
22 the State would clear those up and could clean those up,
23 if there are such problems; you understand that?

24 A. Uh-huh. Yes.

25 Q. So that you would still be facing 25 to life?

1 A. Yes.

2 Q. Okay. All right. Now, is there anything else you
3 want to tell the Court as to why your guilty plea should
4 be overturned and you should be granted a new trial?

5 A. Even with the chain of custody, as I filed in my
6 application, wasn't done properly.

7 Q. Okay. But do you understand that if you went back
8 and got this new trial that the State could fix that, if
9 you claim that there was a chain of custody problem?

10 A. Yes.

11 Q. You understand that?

12 A. Yes.

13 Q. Okay.

14 A. I understand the State can clean up just about
15 anything they've done wrong in my case.

16 Q. And you can go back and face the 25 to life?

17 A. Yes.

18 Q. Okay. Is there anything else?

19 A. Of what we discussed, subject matter jurisdiction.
20 The indictment -- no. She said that the State had
21 subject matter jurisdiction to accept my plea when
22 trafficking is a violent offense, yes, but the lesser
23 included offense of trafficking according to statute is
24 possession with intent to distribute.

25 Q. Well, now, you understand that what you were

1 indicted for, trafficking in excess of 200, and then what
2 you pled to, trafficking between 28 and a hundred, that
3 the 28 to a hundred is still a lesser included offense of
4 trafficking in excess of 200? You understand that?

5 The only difference between the two is the amount
6 of the weight, and the higher the weight the more serious
7 the punishment; you understand that?

8 A. Yes, but I thought that -- yeah, the statute, it
9 provides for a graduated structure of increased penalties
10 for trafficking in greater amounts of cocaine, and that's
11 treated by the 10 grams or more, but the Supreme Court
12 has ruled that --

13 THE COURT: We can't hear you.

14 A. But the Supreme Court has ruled that an indictment
15 charged in trafficking in cocaine without specified
16 amount is sufficient to confer subject matter
17 jurisdiction, but the Supreme Court ruled that an
18 indictment which alleged that --

19 (PAUSE.)

20 Q. Mr. Jenkins, let me ask you this. Do you
21 understand what you were indicted was worse than what you
22 pled to?

23 A. Yes, I understand that.

24 Q. Okay. And that what you pled to is a lesser
25 included offense. It carried a lesser punishment because

1 it had lesser weight; you understand that?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes. Yes.

5 Q. All right. You understand that if the case was not
6 a lesser included offense then the State would of had to
7 go to the grand jury, but what you were charged with and
8 what you ended up pleading guilty to was a lesser
9 included offense of what you were charged with. The only
10 difference was the weight, which had an affect on the
11 minimum sentence; you understand that?

12 A. Yeah. I understand what you are saying.

13 Q. Okay. You sure you understand?

14 A. Yeah, I understand.

15 Q. Okay. All right. You got anything else you want
16 to tell the Judge about why you should have your PCR
17 granted?

18 A. No, that's it.

19 Q. You sure?

20 A. Yeah.

21 Q. Okay. All right. Answer any questions that
22 Ms. Wilson has.

23 THE COURT: Hold on one second. You're not done.

24 THE APPLICANT: No, I'm trying to get my papers
25 together.

1 THE COURT: Okay. Great.

2 CROSS-EXAMINATION

3 BY MS. WILSON:

4 Q. Mr. Jenkins, do you recall how many times you got
5 to meet with your attorney before you pled guilty?

6 A. Probably four times in the four years.

7 Q. Okay. Did you write him? Did you correspond with
8 him by mail or phone?

9 A. Mr. Lanier?

10 Q. Uh-huh.

11 A. We talked the first -- when I first got arrested we
12 talked about three times, and then the next year we
13 talked once. The following year we talked once. And
14 when they started -- he changed over to -- I think it's
15 Ben Shelton. He called me probably about beginning --
16 well, I'd say about the second week of January and told
17 me they were going to take it to court, and I met with
18 him on January the 11th.

19 Q. So you spoke to him pretty frequently?

20 A. In four years we might have had five conversations.

21 Q. Do you recall going over the evidence with
22 Mr. Lanier or talking about it when you all met?

23 A. He really didn't talk to me about the evidence. He
24 just told me that they're offering you seven years.

25 Q. So he told you about the plea offer?

1 A. Yeah. He told me it's seven years and then he said
2 if I don't take the plea this is the only plea I will get
3 and they'd take that offer off the table and it would be
4 a mandatory 25.

5 Q. Was it your decision to plead guilty?

6 A. No, because we had a discussion and I told him
7 about what was going on. And he said, They got you on
8 audio and they got the evidence. And he said, This is
9 your only bet. And he told me --

10 THE COURT: He said this was your only what?

11 A. This was my only offer they were going to give me
12 and he stated that if I don't take it, you know, I'd
13 never see my mother or father alive again so...

14 Q. Do you recall telling the plea judge that you
15 wanted to plead guilty?

16 A. Yes.

17 Q. Do you recall telling the plea judge that you were
18 indeed guilty?

19 A. Yes.

20 Q. Were you telling the truth then?

21 A. No. He --

22 Q. Is that no, you were not telling the truth?

23 A. Mitch coached me in -- in the meeting we had on
24 January 11th he told me, This is how it's going to go,
25 this is what you need to say.

1 Q. Okay. Do you recall waiving your constitutional
2 rights when you pled guilty, like your right to remain
3 silent, your right to a jury trial, your right to
4 confront witnesses against you?

5 A. Yes.

6 Q. Did you tell the Judge you were satisfied with your
7 attorney?

8 A. Yes, because that's what he told me. He said
9 that's what he's going to ask you and this is what you
10 need say.

11 Q. Did you tell the Court that nobody had threatened
12 or coerced you to plead guilty?

13 A. Yes.

14 Q. And were you being truthful at the time of your
15 guilty plea?

16 A. Yes.

17 Q. Your responses were truthful you said? I'm sorry.

18 A. I mean, he -- you know, for me not to get 25 years.

19 Q. Okay. Thank you.

20 THE COURT: Mr. Brooks?

21 REDIRECT EXAMINATION

22 BY MR. BROOKS:

23 Q. Mr. Jenkins, you answered Ms. Wilson saying you
24 said the things that you had to say so that you didn't
25 get 25 years; is that right?

1 A. Yes.

2 Q. And you do understand that if Judge Harrington
3 grants it you'd go back and face that crime by which you
4 could get 25?

5 A. Yes.

6 Q. Okay. And you still want to do that, right?

7 A. Yes.

8 MR. BROOKS: No other questions, Judge.

9 THE COURT: Ms. Wilson?

10 MS. WILSON: Nothing further from this witness,
11 Your Honor.

12 THE COURT: You may step down. Thank you.

13 MR. BROOKS: Judge, that's the applicant's case.

14 THE COURT: All right. Any motions or matters
15 before Ms. Wilson presents her case?

16 MR. BROOKS: Judge, we would put on the record a
17 motion for directed verdict granting my client's
18 post-conviction relief.

19 THE COURT: All right. Let's let him get to the
20 table and see if there's anything else he needs you to
21 make a motion about.

22 MR. BROOKS: Yes, ma'am.

23 (WHEREUPON, Mr. Brooks confers with the Applicant.)

24 MR. BROOKS: That's our motion, Judge.

25 THE COURT: Any response, Ms. Wilson?

1 MS. WILSON: Your Honor, we'd just ask that you
2 deny his motion for directed verdict. Mr. Jenkins has
3 failed to carry his burden of proving both deficiency or
4 prejudice with regard to Mr. Lanier's representation. He
5 also has failed to prove that his guilty plea was not
6 entered freely or voluntarily.

7 And with regard to the matter of subject matter
8 jurisdiction, he was indicted and pled guilty to a lesser
9 included offense, so it's the State's position that
10 that's covered in the indictment. Thank you.

11 THE COURT: Any response to her response?

12 MR. BROOKS: Judge, we would rest on the eloquent
13 testimony of Mr. Jenkins.

14 THE COURT: Your motion for directed verdict is
15 denied at this time.

16 Ms. Wilson, do you have any witnesses?

17 MS. WILSON: Yes, Your Honor. Briefly the State
18 would call Mr. Ben Shelton.

19 THE COURT: All right. Mr. Shelton.

20 BENJAMIN T. SHELTON, after having been duly
21 sworn, testified as follows:

22 THE CLERK: Please give us your full name and spell
23 your last.

24 THE WITNESS: My name is Benjamin T. Shelton,
25 S-h-e-l-t-o-n.

1 THE COURT: Ms. Wilson.

2 MS. WILSON: Thank you.

3 DIRECT EXAMINATION

4 BY MS. WILSON:

5 Q. Mr. Shelton, were you the solicitor assigned to
6 this case?

7 A. I was, not initially. That would have been
8 Jacqueline or Jackie Dixon. When I came to the
9 solicitor's office in September of 2011 this case was
10 already on the docket and I was assigned the case.

11 Q. And could you briefly describe the State evidence
12 against Mr. Jenkins.

13 A. Yes. This was a plea so I do not remember the case
14 in detail like I do with the trial earlier today;
15 however, I do remember that this was a drug task force
16 controlled sting operation where they were setting up a
17 controlled buy with Mr. Jenkins being the person who was
18 bringing the drugs.

19 They utilized a confidential informant. There were
20 video conversations between the confidential informant
21 and Mr. Jenkins that were overheard by a member of the
22 drug task force. Without looking at the record I can't
23 remember exactly who that was.

24 Mr. Jenkins arrived at the location that he had
25 agreed to bring the drugs to. He got out of a car, I

1 believe it was a Tahoe or some other type of SUV, and he
2 had a brown bag according to the officers' testimony in
3 his hands. He threw -- when he saw the officers approach
4 he threw that bag underneath the SUV he drove up in and
5 officers seized the bag. Inside the bag was over 390
6 grams of cocaine, powder cocaine.

7 Mr. Jenkins then confessed to doing deliveries of
8 cocaine for about five and half months prior to this
9 incident, after being Mirandized. Would you like me to
10 go any further into the plea negotiations?

11 Q. Yes, please. Can you recall and recount for the
12 Court your plea negotiation with Mr. Lanier?

13 A. I do. Once I arrived the plea that Ms. Dixon had
14 given Mr. Jenkins -- if I may refer to my notes. I
15 believe it had already expired, actually. Either had
16 expired or -- it had expired, I believe, and may have
17 expired in the time that Mr. Dixon left and the time that
18 I came onboard.

19 But in any event, when I came in, whenever I come
20 into a new position I usually go back and look at the
21 cases and reopen the plea offers for the defendants with
22 their attorneys to give them another chance before we go
23 to trial. And in this case not only did I negotiate a
24 lesser included offense of trafficking 28 to 100 grams,
25 which is significant considering he's facing a mandatory

1 25, I believe we offered either a negotiated 10 or a cap
2 of 12 years for the sentence.

3 So he was looking at a sentence of seven to 12
4 years, and I believe they selected the cap. I gave him
5 the choice between the negotiation or the cap,
6 Mr. Lanier. So they are looking at seven to 10 years --
7 excuse me, seven to 12 years for a plea.

8 There wasn't the -- any negotiations other than
9 that. I did tell Mr. Lanier the plea offer would be
10 taken off the table or rescinded when we go to trial in
11 the case if he didn't accept for a certain amount of
12 time. I cannot remember when that was but I know that I
13 do that in all my plea offers, and later on Mr. Jenkins
14 did plead guilty.

15 Q. Okay. Can you describe for the Court the
16 circumstances around the indictment of Mr. Jenkins.

17 A. I did not prepare the indictment because I was not
18 with the office at the time; however, he was indicted
19 under the general terms of trafficking using the language
20 from the statute of over 200 grams.

21 Of course with any indictment of 200 grams if he
22 possess 200 grams he also possess 28 to 100 grams. And
23 often times, especially with someone who doesn't have a
24 prior record, we will negotiate a deal that will take
25 mandatory minimums off the table for an ultimate

25 A. My understanding is yes.

1 Q. Okay. But what was originally offered, you weren't
2 in the solicitor's office at that time?

3 A. Correct.

4 Q. All right. Now, did you or was it indicated or was
5 it indicated in the file that discovery had been sent to
6 Mr. Lanier?

7 A. Yes. It's indicated in the file that all of the
8 paper discovery was sent to Mr. Lanier. I do not know, I
9 don't have it with this file whether the audio recording
10 was sent to Mr. Lanier or not, but I do know the audio
11 recording was in evidence.

12 Q. An audio was in evidence?

13 A. Yes.

14 Q. Was there a video?

15 A. I do not see a video ever in evidence.

16 Q. Okay. Let me make sure I understand. Based on
17 your file the paper had been sent to Mr. Lanier and in
18 the paper it indicated the existence of an audio?

19 A. Correct. To be specific it's a mini cassette.

20 MR. BROOKS: Beg the Court's indulgence, Your
21 Honor?

22 THE COURT: Take your time.

23 (WHEREUPON, Mr. Brooks confers with the Applicant.)

24 MR. BROOKS: No other questions, Judge.

25 THE COURT: You may step down. Thank you.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Ms. Wilson, any additional witnesses?

3 MS. WILSON: Nothing from the State.

4 THE COURT: Any rebuttal?

5 MR. BROOKS: Your Honor, if Your Honor would allow

6 we want to call Mr. Jenkins back to say -- he's going to

7 say he never got the audio, never heard the audio and

8 never reviewed the discovery, for purposes of the trial.

9 THE COURT: All right. But I'm going to allow just
10 a very limited rebuttal on that topic alone.

11 MR. BROOKS: Yes, ma'am.

12 THE COURT: All right. You don't get to get up and
13 say whatever you want to say. Rebuttal is very limited.

14 THE APPLICANT: Yes, ma'am.

15 THE COURT: Thank you.

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q. Mr. Jenkins?

19 A. Uh-huh.

20 Q. You heard Mr. Shelton say the discovery was sent in
21 your case; is that correct?

22 A. Yes.

23 Q. Did you look at your discovery when Mr. Lanier had
24 it?

25 A. He showed me a few papers. He didn't show me

1 everything.

2 Q. He never showed you or let you hear an audio?

3 A. No. I never knowed there was an audio until the
4 first appointed lawyer, George Bishop, Jr., we had a
5 conversation and he --

6 Q. George Bishop, who was your previous lawyer prior
7 to me?

8 A. Prior to you.

9 Q. And he told you that he really didn't hear much on
10 the tape?

11 A. He said he tried to listen to it five times. He
12 said he couldn't hear my voice.

13 Q. Okay. But listen to my point now. Prior to your
14 plea did you review the discovery with Mr. Lanier?

15 A. No.

16 Q. Did you listen to an audio with Mr. Lanier?

17 A. No.

18 MR. BROOKS: No other questions, Judge.

19 THE COURT: Ms. Wilson, anything?

20 MS. WILSON: Nothing further from the State.

21 THE COURT: You may step down. Thank you.

22 MR. BROOKS: That's it from us, Judge.

23 THE COURT: All right. Renewing your motion for
24 directed verdict, I'm assuming?

25 MR. BROOKS: Yes, ma'am.

1 THE COURT: I'll be happy to hear from you, which
2 I'm denying, I'll be happy to hear from you concerning
3 arguments.

4 MR. BROOKS: May it please the Court, Judge. In
5 this situation we've got my client who's testified that
6 his plea was involuntarily given. He did not have the
7 luxury of going through the discovery with his trial/plea
8 counsel. He indicates that obviously he would have
9 changed his direction in his case and would have gone
10 forward with the trial. And be it as it may, Judge,
11 based on his testimony we would respectfully ask the
12 Court to grant him his post-conviction relief
13 application.

14 MS. WILSON: Briefly, Your Honor. May it please
15 the Court? The State would just request that you deny
16 this application for post-conviction relief. The
17 applicant has failed to carry his burden.--

18 THE COURT: Slow down.

19 MS. WILSON: Sorry, Your Honor. The applicant has
20 failed to carry his burden of proving ineffective
21 assistance of counsel because he failed to identify any
22 deficiency or any deficient activity by his attorney or
23 that he was prejudiced as a result.

24 With regard to his allegation of involuntarily
25 guilty plea, he was advised all of his constitutional

1 rights, including his right to a jury trial, right to
2 remain silent, right to confront his accusers.

3 He told the Court that he didn't suffer from any
4 mental illness, wasn't under the influence of drugs or
5 alcohol.

6 He also told the Court that he was not promised,
7 threatened or coerced to plead guilty. So the State
8 would just submit that his guilty plea was entered freely
9 and voluntarily.

10 He also admitted his guilt during his guilty plea
11 and told the Court that he was satisfied with his
12 attorney and didn't have any complaints.

13 And with regard to his allegation of the Court's
14 lack of subject matter jurisdiction, the State submits
15 the Court has subject matter jurisdiction because
16 ultimately Mr. Jenkins pled to a lesser included offense
17 which is encompassed in his indictment for trafficking
18 cocaine, I believe he was 200 to 400 grams. The State
19 would just ask that you deny this application for
20 post-conviction relief.

21 THE COURT: Anything further, Mr. Brooks?

22 MR. BROOKS: No, Judge.

23 THE COURT: All right. I'm going to accept
24 proposed orders. I'll give you 10 days, which would be
25 January 23rd by five p.m.

1 MR. BROOKS: Yes, ma'am.

2 THE COURT: Please make sure you copy opposed
3 counsel, opposing counsel.

4 Mr. Jenkins, I'm accepting proposed orders. You'll
5 have my ruling within five days after acceptance of the
6 proposed orders. Good luck to you, sir.

7 MR. BROOKS: Thank you, Judge.

8 MS. WILSON: Thank you, Your Honor.

9 (WHEREUPON, the hearing was concluded.)

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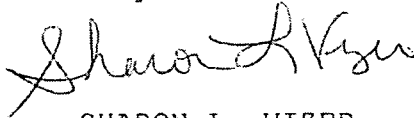
C E R T I F I C A T E

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I, Sharon L. Vizer, 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 the evidence introduced in the hearing of the
captioned case in Circuit Court on the 13th day of
January 2014.

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

May 23, 2014



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Casey Jenkins, #349382,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-08-2077

ORDER OF DISMISSAL

FILED
2014 MAR -6 PM 2:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY

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

The Honorable Kristi L. Harrington
Charles T. Brooks, III, Esquire
Ashleigh R. Wilson, Esquire
J. Mitchell Lanier, Esquire
January 13, 2014
Sharon L. Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 17, 2012. The Respondent made its Return on February 21, 2013. An evidentiary hearing into the matter was convened on January 13, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, 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. Also present to testify was Benjamin Shelton, Esquire- the assistant solicitor assigned to the Applicant's case.¹ This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

¹ The Applicant's plea counsel, J. Mitchell Lanier, passed away prior to the evidentiary hearing.

3/7/14
EMW
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B

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 Berkeley County. The Applicant was indicted at the September 2008 of the Berkeley County Grand Jury for trafficking cocaine in excess of 200 grams (2008-GS-08-1833). J. Mitchell Lanier, Esquire, represented the Applicant. On January 18, 2012, the Applicant pled guilty to the lesser included offense of trafficking cocaine 28-100 grams. The Honorable R. Markley Dennis sentenced the Applicant to confinement for eight (8) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. "Counsel failed to do any investigation in reference to establish that the plaintiff was never in possession of any drugs."
2. Sufficiency of the evidence.

At the hearing, the Applicant waived all grounds for relief except ineffective assistance of counsel, involuntary guilty plea, and lack of subject matter jurisdiction.

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).

[Handwritten signature]
2/28/14

The Applicant testified he met with the counsel several times prior to his guilty plea. He testified he never talked with counsel about the evidence. The Applicant testified counsel did not have any recorded conversations. He also testified counsel discussed the plea offer with him and told him if the offer was rejected he would get a mandatory twenty-five year sentence. The Applicant testified it was not his decision to plead guilty. He testified he recalled telling the plea judge that he wish to plead guilty and was indeed guilty, but he was coached by counsel. He testified further he told the Court he was not threatened or coerced to plead guilty and that his responses during his guilty plea were truthful.

The Applicant testified he pled guilty because his attorney told him everything was stacked against him. He testified his attorney coerced him to plead guilty. He testified he understood the process that the court has to go through to true bill an indictment. He testified he also understood that any problems with his indictment would be corrected by the State. He testified the lesser included offense of trafficking is possession with intent to distribute. The Applicant testified he also understood the offense that he was indicted for was worse than the offense he pled guilty to.

Benjamin Shelton, the assistant solicitor assigned to the Applicant's case, was also present and testified. He testified the case was initially handled by another solicitor and he took over the case after it was put on the trial roster. He testified the drug task force set up a controlled buy between the Applicant and a confidential informant. He testified the Applicant arrived at the scene of the controlled buy and got out of a car with a brown bag. Shelton testified the Applicant threw the bag under a vehicle when he saw police. He testified further the Applicant confessed after Miranda.

Shelton testified when he took over the Applicant's case he re-extended the plea offer that had expired from the previous assistant solicitor. He testified discovery materials were sent to plea counsel. Shelton testified he was not sure whether or not a copy of the audio of the controlled buy was sent to the Applicant's attorney. He testified there was audio of the buy, but no video. He testified the State offered a plea to the lesser included offense with a negotiated ten year sentence or a cap of twelve years. Shelton testified the Applicant chose to plea to the lesser included offense with a cap of twelve years. He testified further he did not prepare the Applicant's indictment, but the Applicant was indicted under the general trafficking statute. He testified the indictment for 200g or more included the offense of 28-100g and the Applicant was allowed to plead guilty to two charges below what he was indicted for.

At the close of the Applicant's case, the Applicant moved for directed verdict. This Court denied the Applicant's motion. On January 13, 2014, the Applicant also filed a Motion for Summary Judgment. This Court finds the allegations raised in this amendment are wholly without merit. This Court finds no testimony or argument was presented in support of these allegations. Viewing all evidence in the light most favorable to the State- the non-moving party, this Court finds a genuine issue of material fact is present in this case and the Applicant is not entitled to judgment as a matter of law. This Court denies the Applicant's motion for summary judgment and denies and dismisses all allegations raised in the motion.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. As an initial matter, this Court finds the testimony of the Applicant was not credible. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule

71.1(e), SCRCF; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

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, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. 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 (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 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).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thoroughly representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective because he did not have the audio of the recorded conversations with the confidential informant. This Court finds this allegation is without merit. This Court finds the Applicant has failed to carry his burden of proving the audio was exculpatory. This Court also finds the Applicant has failed to show how counsel's alleged failure to obtain this audio resulted in any prejudice. This Court finds in light of State's case

against the Applicant, it is unlikely the contents of the audio would have been beneficial to the Applicant's case. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel's performance was ineffective in any way.

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. The record reflects the Applicant was fully advised of the consequences of his guilty plea. The Applicant was advised by the court of the potential sentence he was facing (T. 2:17-23), his right to a jury trial (T. 6:14-19), his right to remain silent (T. 6:20-23), and his right to confront his accusers (T. 6:14-19). The Applicant told the Court he had not been promised anything or threatened to plead guilty. (T. 7:2-7). The Applicant told the Court he was not under the influence and did not suffer from any mental illnesses. (T. 6:2-13). This Court finds most telling the following statement by the Applicant to the court: "I accept my guilt as far as reading rights. I am guilty, your honor." (T. 14:7-9). This Court finds the Applicant has failed to carry his burden of proving his guilty plea was involuntarily entered.

This Court finds the Circuit Court had proper subject matter jurisdiction to accept the Applicant's guilty plea. The Applicant alleges the plea court did not have subject matter jurisdiction over his case because he was not indicted for the offense that he pled guilty to. The record reflects the Applicant was indicted for trafficking cocaine in excess of 200 grams, but pled guilty to trafficking cocaine 28-100 grams. A circuit court has subject matter jurisdiction over a criminal offense if: (1) there has been an indictment that sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the charge is a lesser-included offense of the crime charged in the indictment. Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). This Court finds since the Applicant pled to the lesser included offense of the charge he was indicted for the

circuit court had subject matter jurisdiction to accept his guilty plea. This Court finds the Applicant failed to carry his burden of proving the plea court did not have subject matter jurisdiction over his case.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing 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. This Court finds the Applicant's guilty plea was entered freely and voluntarily. This Court also finds the Applicant failed to carry his burden of proving the plea court lacked subject matter jurisdiction to accept his guilty plea.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any argument or testimony regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

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

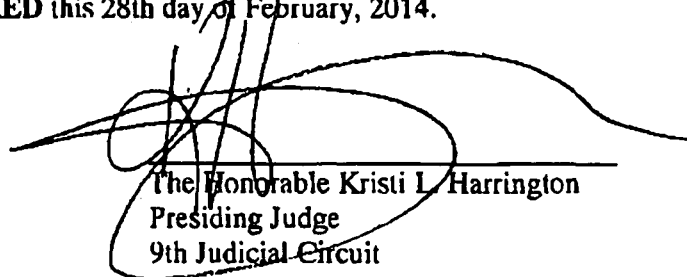
dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28th day of February, 2014.



The Honorable Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.

2008-05-CHU-04280

BCSO, MITCHUM

121

[Signature]

ARREST WARRANT NUMBER

1-729660

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

9-10-08

VERDICT

True Bill

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-08-1833

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2008

THE STATE

VS.

CASEY JENKINS

Indictment for

TRAFFICKING IN COCAINE

2008 SEP 10 PM 12:14

FILED

✓

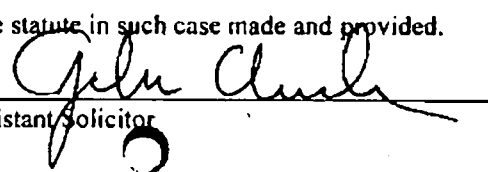
STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT FOR
TRAFFICKING IN COCAINE

At a Court of General Sessions, convened on September 10, 2008 the Grand Jurors of Berkeley County present upon their oath:

That Casey Jenkins did in Berkeley County on or about the 4th day of May, 2008, knowingly traffic, sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to traffic, sell, manufacture, cultivate, deliver, purchase, or bring into this State; or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a controlled substance analogue, to wit: Cocaine in excess of 200 grams. This is 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.


Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
 STATE VS.
Casey Jenkins

AKA:

Race: BLACK Sex: M Age: 42DOB: 0 SS# Address: City, State, Zip: Johns Island, SC 29455DL#: 0 SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Trafficking in cocaine, 28-100 g, 1st offense

IN THE COURT OF GENERAL SESSIONS ¹²³

700000 and \$50,000
 INDICTMENT/CASE#: 08GS081833

A/W#: 1729660Date of Offense: 5/4/2008S.C. Code §: 44-53-0370(e)(2)(a)1CDR Code #: 0278

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: Shelton, Benjamin I SC Bar# 77207 Defendant J. Jettichell Lewis Attorney for Defendant SC Bar# 3128

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u></u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u></u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u></u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u></u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>100.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ <u></u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u></u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>6.90</u>
TOTAL	\$	\$ <u>236.90</u>

(Clerk of Court/ Deputy Clerk)

Court Reporter: Rebecca Harrison

SCCA/217 (03/2011)

PTUP

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

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: Sentence Date: 1/18/12