

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

I

2014

S.C. Supreme Court

PRINCETON THROWER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001005

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

J. RUTLEDGE JOHNSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

GUILTY PLEA HEARING TRANSCRIPT (SEPTEMBER 10, 2012).....1

APPLICATION FOR POST-CONVICTION RELIEF20

RETURN27

POST-CONVICTION RELIEF HEARING TRANSCRIPT (APRIL 14, 2014)32

ORDER (APRIL 15, 2014)88

INDICTMENT94

SENTENCE SHEET96

STATE OF SOUTH CAROLINA)	GENERAL SESSIONS
)	
County of York)	2012-GS-46-00258
)	
)	
State of South Carolina,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
Princeton Thrower.)	
)	
)	

September 10th, 2012
York, South Carolina

BEFORE:

THE HONORABLE EDWARD W. MILLER, JUDGE.

APPEARANCES:

E.B. SPRINGS, ASSISTANT SOLICITOR
Attorney for the State

HEMPHILL PRIDE, ESQ.
Attorney for the Defendant

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

EXHIBITS

No.	Description	Page
C1	Department of Mental Health Evaluation	3
C2	Rap sheet	11

1 find that he's malingering. They actually used the word
2 "faking." They find him competent, so I do need to get a
3 ruling on this before we get going.

4 THE COURT: All right. Okay. Mr. Thrower, how you
5 doing?

6 THE DEFENDANT: I'm doing all right, sir.

7 THE COURT: Good. Good. Tell me in the last day or
8 so, have you had any drugs or alcohol or medication?

9 THE DEFENDANT: No, sir. Just the medication that
10 I'm taking.

11 THE COURT: And what do you take?

12 MR. PRIDE: I'm not aware of what he's taking. Can I
13 speak on it?

14 THE COURT: Yeah.

15 MR. PRIDE: Judge, he was involved in July of last
16 year with an automobile accident and suffered horrific
17 damages. I can tell you that the accident happened
18 because he was trying to avoid the arrest and was driving
19 a car and running from the police officers.

20 THE COURT: Uh-huh.

21 MR. PRIDE: And as a result of it, the car flipped
22 over; a helicopter was sent. He was taken to Charlotte,
23 stayed in the hospital up there an inordinate period of
24 time. When he came back to the detention center, he still
25 had to be carried for visits for his conditions to his

1 head.

2 THE COURT: Okay.

3 MR. PRIDE: At that time, Your Honor, he told me that
4 he did not remember the automobile accident. And I might
5 say the other side of the coin is a lot of people who were
6 involved in this case felt like he was faking and that he
7 was not being straightforward. Having that kind of
8 condition, I thought it was best to submit an order to the
9 court to have him evaluated, which I did have him
10 evaluated, and Your Honor patiently read the long report
11 that was filed. Since that time, I think his condition
12 has improved. I'll speak to sentencing later, but that's
13 sort of an update.

14 THE COURT: Yeah.

15 MR. PRIDE: I am able to converse with him and to
16 work with him.

17 THE COURT: Okay.

18 MR. PRIDE: Heretofore I was not able to.

19 THE COURT: Okay. All right. Do you understand
20 what's going on?

21 THE DEFENDANT: I just know I'm guilty.

22 THE COURT: Okay. Well, you know what you're here
23 for too, don't you?

24 THE DEFENDANT: Yes, they told me.

25 THE COURT: All right.

1 MR. PRIDE: What I -- excuse me. What I told him was
2 he has signed a plea agreement and he had an option of
3 either having a jury trial today because Mr. Springs
4 notified me sometime ago -- matter of fact he accommodated
5 me by setting this matter for today, and I came for a
6 trial. And rather than a trial, he has signed a plea
7 agreement.

8 THE COURT: Okay. Do you understand all that,
9 Mr. Thrower?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Now, you're up here on this
12 indictment and let me -- I got to talk to you about it,
13 okay?

14 THE DEFENDANT: Okay.

15 THE COURT: This is indictment 2012-258. It alleges
16 that you did, in York County, July 9, 2011 -- and this is
17 a -- you might call it mumbo jumbo, but it say you did
18 knowingly sell, manufacture, deliver, purchase, bring in
19 to the state or provide financial or other assistance to
20 do any of those things, or you were in actual or
21 constructive possession of between 10 to 28-grams of crack
22 cocaine and that you have at least two prior drug offense
23 convictions. And this crime carries a mandatory minimum
24 of 25 years in prison up to 30 years in prison. It's also
25 a violent offense which impacts parole eligibility, and

1 it's also a serious offense, and what that means is if you
2 get convictions for three or more serious offenses, you're
3 eligible for life in prison without parole. Okay. Do you
4 understand all that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Understanding the nature of the charge
9 against you and the possible punishments, how do you want
10 to plead, guilty or not guilty?

11 THE DEFENDANT: Pleading guilty.

12 THE COURT: Okay. And has anybody forced you in any
13 way to do that?

14 THE DEFENDANT: No.

15 THE COURT: Is that your free and voluntary decision?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. And do you understand that you
18 have an absolute right to a jury and you would be presumed
19 innocent unless and until the State could prove you guilty
20 beyond a reasonable doubt of each and every element of the
21 offense you're charged with, okay? You would have a right
22 to cross-examine the witnesses and the evidence the State
23 would put up against you. And you would have a right the
24 use the subpoena power of the State to compel in trial any
25 relevant and competent evidence in your own defense, okay?

1 You could also remain silent. You don't have to prove
2 anything. You don't have to put up any evidence, and your
3 silence could never be used against you, and you could
4 never be compelled to testify against your own interests.
5 Do you understand all that?

6 THE DEFENDANT: Yes, sir.

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

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. You totally satisfied with your
13 lawyer?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have any complaints you want to make
16 about the way you've been treated in the case?

17 THE DEFENDANT: I just can't remember nothing, sir.

18 THE COURT: Has everybody treated you okay?

19 THE DEFENDANT: It's hard back there.

20 THE COURT: I'm not saying -- everybody knows it's
21 hard back there. But other than just being in jail, have
22 you -- you have any other complaints you want to make?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay. And have you had enough time to go
25 over the evidence the State has against you with

1 Mr. Pride? He's gone over the evidence and the discovery?

2 THE DEFENDANT: Yes, sir. Yes, sir.

3 THE COURT: And -- okay. All right. Listen to
4 Mr. Springs. He's going to tell us the facts of the case.

5 MR. SPRINGS: Yes, Your Honor. If we had proceeded
6 with the trial, we would have produced evidence that
7 Deputy Tom Kenny was on patrol and in his patrol car about
8 1:00 in the morning on July 9th of 2011. He had Constable
9 Bob Hayes in the blue here riding with him. Down on
10 McConnells Highway which is in the lower part of York
11 County, they saw a car -- one of the few cars out on the
12 road at 1:00 in the morning cross the center line a few
13 times, and it was doing about 40 or 45 in a 55 zone. It
14 got their attention. The two officers thought they may
15 have a drunk driver.

16 Once the car got up to an intersection with a stop
17 sign, they decided to hit the blue lights and pull it over
18 for the probable cause of crossing the center line and see
19 if they have a drunk diver. They hit the blue lights and
20 the siren and the car took off and proceeded to come up
21 towards York on that highway hitting speeds of up to
22 115 miles an hour. As the car got into the city limits of
23 York, we had a York police officer who heard this radio
24 traffic. He was sitting on the side of the road. Saw the
25 defendant's car go by at about 115 followed by Deputy

1 Kenny.

2 The defendant got into York, and at 100 miles an hour
3 tried to make a right turn. That didn't go so well. He
4 went off the left side of the road, went into some bushes,
5 hit an embankment, hit a tree, and during that slide, the
6 car turned over. The officers were right behind him.
7 Walked up to the car through the dust. The York city
8 officer rolled up. They went up to the upside-down car.
9 Peering in, they could see Mr. Thrower. They could tell
10 he was alive, but he wasn't very happy. In his hand was a
11 right hand -- or left hand was a bag of crack. It was
12 analyzed by a chemist and found to be 13 and a third grams
13 of crack cocaine, also called cocaine base.

14 He has been convicted in the past. In 2004,
15 convicted of distribution of crack cocaine. On the same
16 date, distribution of crack cocaine in proximity to a
17 school. Possession of marijuana in 2009. Possession of
18 crack cocaine in 2009, and another possession of marijuana
19 this year, 2012, that's when the conviction was. And a
20 possession with intent to distribute crack cocaine in
21 2012. So he has quite a few prior offenses, Your Honor.

22 May I staple this and have it made a State's --
23 Court's Exhibit.

24 THE COURT: Yes, that's fine.

25 (Court's Exhibit Number 2 was marked.)

1 MR. SPRINGS: So basically, Your Honor, we have the
2 police following Mr. Thrower at an extremely high-speed
3 chase until Mr. Thrower wrecked his car. He was holding a
4 bag with 13 and a third grams of crack cocaine. He was
5 taken to the hospital, reached the hospital about what --
6 how long was it before he was released?

7 OFFICER KENNY: Three weeks, I believe.

8 MR. SPRINGS: Three weeks later, and here we are
9 today.

10 THE COURT: Okay. Mr. Thrower, does that pretty much
11 sum it up?

12 THE DEFENDANT: I take your word for it. I don't
13 know. I take your word for it.

14 THE COURT: What kind of car did you have?

15 THE DEFENDANT: To be honest, I can't remember
16 driving it.

17 THE COURT: You can't?

18 THE DEFENDANT: No, sir.

19 THE COURT: Well, you had a head injury in the wreck.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Yeah, I've had one of those. It makes
22 you forget some stuff, doesn't it?

23 THE DEFENDANT: My lip was cut up.

24 THE COURT: Pretty serious wreck.

25 How many days did he spend in jail?

1 MR. PRIDE: A year.

2 THE COURT: He got arrested September 1st, 2011, and
3 he's been in custody ever since September 1st, 2011.

4 MR. PRIDE: Today is the tenth, Your Honor.

5 THE COURT: Mr. Pride?

6 MR. PRIDE: May it please the Court.

7 THE COURT: First, before we do this, I'm going to
8 accept the plea as freely and voluntarily made with the
9 advice of an outstanding attorney with whom he says he is
10 satisfied. There is a substantial factual basis for the
11 plea. I have reviewed the South Carolina Department of
12 Mental Health's evaluation of Mr. Thrower and I'm adopting
13 it as a findings of -- as an exhibit of the Court. And I
14 would reference the finding contained therein with respect
15 to competency.

16 With that Mr. Pride, I turn it over to you.

17 MR. PRIDE: Please, Your Honor. I tried cases for a
18 number of years where people have been charged with drugs.
19 I've read cases from the United States Supreme Court. I
20 read cases from the South Carolina Supreme Court and the
21 Court of Appeals, and I think I am abreast of what is
22 required for the solicitor to produce an conviction. I've
23 reviewed this case. I've talked to my client. I've
24 talked to his mother. As Mr. Springs said, this matter
25 was scheduled to be tried at 2:00 today.

1 This was not a case for trial. I would have had no
2 evidence at all to produce, notwithstanding the fact I
3 don't have to produce any, and the evidence on the other
4 side, on the State's side would have been overwhelming and
5 convincing. And I'm pretty sure he would have -- from my
6 experience and my education, he would have been convicted.

7 Prince was -- I was hired by his mother who is
8 standing in the back and this is -- this gentleman is his
9 brother.

10 SPEAKER: I'm his stepfather.

11 MR. PRIDE: Stepfather, I'm sorry. And when I first
12 was hired, Judge, on this case -- let me back up. Here's
13 what I think, Judge. At the time that Prince ran and
14 tried to get away from the police officers, he had been
15 given an opportunity by Judge Hayes to participate in drug
16 court. He was represented by Mr. Hall who previously
17 stood before you in this case. And he knew having those
18 drugs in the car if he was caught what was going to happen
19 and I think that's what motivated him. That's not a good
20 motivation. That's no motivation to do what he did. But
21 I think that's what caused him to run and reach the high
22 speeds that he did.

23 Judge, at the same time that Prince was released from
24 jail and I was retained on this matter, I was up here
25 handling another case representing a defendant.

1 Mr. Springs was not the prosecutor on this case, but
2 Rebecca McNERNEY was the prosecutor. She came to me,
3 Judge, and said, "You know Prince has a 15-year sentence
4 from drug court, and I will run it concurrent if you'll
5 plead him." I explain to her, Judge, that I could not
6 accept the offer because I hadn't been on the case but a
7 week. I hadn't filed any discovery motions. I hadn't
8 filed even a notice of appearance. And it would have been
9 terrible for me to -- even though that certainly was a
10 good deal, I can tell you that, but I was just not in a
11 position as a lawyer to accept that.

12 THE COURT: Certainly.

13 MR. PRIDE: And not accepting that put me in the
14 position that I am today with Mr. Springs, and that is
15 having to plead to a mandatory sentence.

16 Presently, Princeton is in the Department of
17 Corrections serving a 15-year sentence, and that's a
18 sentence that came about as a result of his failing to
19 take advantage of the drug court.

20 THE COURT: All right.

21 MR. PRIDE: So Judge, first of all I'd appreciate it
22 if you'd hear from his mother.

23 THE COURT: Be happy to hear from her.

24 MR. PRIDE: This is Sheila Thrower.

25 MS. THROWER: My name is Sheila Thrower. I have four

1 kids. Princeton is my baby and it's not been easy with
2 Princeton. It's more like -- I know he been in and out of
3 jail, but I saw a big change in him when he ended in drug
4 court. I would take him to court, take him to his
5 classes, and it was, you know, it's like once we get home,
6 it's a different person. And he always would say, "I'm
7 going to kill myself. I'm going to kill myself. I can't
8 take this." So I really thought, you know, maybe he is
9 mental. I don't know. I know it's some things that
10 Prince can spell, but I know during the time he joined the
11 drug court, Princeton didn't know what he was getting
12 himself into. I asked him why did he do it and he never
13 gave me an answer. But I want to apologize for to the
14 Court for everything he done done, and I really think
15 instead of locked up, he need help. He really do. He
16 need help.

17 THE COURT: Okay. All right. Ma'am, thank you very
18 much. Appreciate you being here.

19 MR. PRIDE: Judge, I'd like to speak to you on behalf
20 of my client. It's very difficult in the case because I
21 represent a man who has had numerous opportunities and has
22 not taken advantage of any of them, and as a result of it,
23 finds himself in more trouble. At the top of the line in
24 terms of trouble and at the top of the line in terms of
25 time and sentencing. Of course he's sorry now. Anybody

1 who would have this amount of trouble on him would be
2 sorry. Has he learned a lesson? Yes. He says he has
3 learned a lesson. Wish he had an eraser and could do
4 without that past. But his past is his record, and his
5 record follows him in this case.

6 Judge, I'd ask you for mercy for him and to give him
7 a concurrent sentence. It doesn't take a whole lot of
8 time to get people to straighten up, fly right. He's 28
9 years old. And he's going to be a much older man by the
10 time he pays his debt to society for this one. I say to
11 the officers on behalf of the family, we apologize. We
12 realize you could have lost your life trying to stop him
13 and for that, you know, the family is sorry, and so is he.

14 Princeton wants to speak to you, Judge, before you
15 pronounce sentencing.

16 THE COURT: Okay.

17 THE DEFENDANT: Your Honor, I came before you
18 today -- I can't raise my right hand because I injured it.
19 I promise you, if you give me another chance to prove
20 myself -- other than to myself. I would never do it
21 again. I wouldn't do the things that I did. I don't know
22 what happened. When I found -- even if -- I won't do
23 nothing wrong. I was so hurt. I will never cause any
24 kind of trouble to anybody again. I promise I won't do it
25 again. I promise I done learned my lesson. I learned my

1 lesson. I don't want -- I'm sorry. I won't touch no more
2 drugs. I'm sorry. I won't do it again. Have mercy on
3 me.

4 THE COURT: All right. Thank you.

5 MR. PRIDE: Judge, there's not much more I can add to
6 what you've already heard said. Third offense is a hard
7 way to go. And I would ask you to please do your best to
8 find it in your heart the ability to run to the sentence
9 concurrently.

10 By the way, Judge, it should reflect that part of the
11 plea bargaining agreement in this case -- and there was a
12 plea bargain agreement is that Mr. Springs would drop the
13 charges of --

14 MR. SPRINGS: That was at 2:00. We agreed to drop
15 the failure to stop for a blue light --

16 MR. PRIDE: Right.

17 MR. SPRINGS: -- to magistrate court. There was a
18 driving under suspension and crossing the center line.
19 They dismissed it, if it hasn't already been dismissed.

20 MR. PRIDE: Right. That's it, Judge. That's as much
21 as I can say to you on this one.

22 THE COURT: Okay. Well. I guess I could give you a
23 total of 45 years is what it looks like, isn't that right?
24 If I made it consecutive?

25 MR. PRIDE: That's how I read it.

1 MR. SPRINGS: 40. 25 and 15.

2 THE COURT: No, 30 and 15.

3 MR. SPRINGS: That's true.

4 THE COURT: How old are you?

5 THE DEFENDANT: 28.

6 THE COURT: 28?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Well, I'm not going to give you
9 consecutive time. I'm just kind of weighing -- I don't
10 have much of a window that I can give you. All right. I
11 tell you what came into my -- after I heard the facts is
12 27 years. And I'm going to give that to you concurrent.

13 MR. PRIDE: Thank you.

14 THE COURT: All right. Good luck to you.

15 (Whereupon, the proceedings were concluded.)

16

17

18

19

20

21

22

23

24

25

2013CP4600916

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of YORK)

300701

Princeton A. Throver)

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

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2013 MAR 20 PM 2:33
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS B 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 EVANS Correctional institution FIA-277
610 Hwy 9 West Bennettsville, S.C 29512
2. Name and location of Court which imposed sentence York County Court
house P.O Box 649 York South Carolina 29745
3. Name(s) of co-defendant(s) (if any) N/A
N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012-21-3033

- (b) TRAFFICKING COCAINE BASE 10-28 gram
- (c) 44-53-375

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

- (a) Sept 10-2012
- (b) 29 Years Violent 85%
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Yes
- (b) after a plea of not guilty NO
- (c) after a plea of nolo contendere NO

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

N/A

8. If you answered Ayes@ to (7), list:

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

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) Grounds for P.C.R Not Appeal

- (b) ~~INeffective Assistance of Counsel~~ ~~South Carolina Base~~ ~~max~~ ~~gram~~
- (c) 44-53-375

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASISTANCE OF LOUSEL
- (b) VIOLATION DUE PROCESS
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) STICKLAND V. WASHINGTON 466, US 668, 686, (1984)
- (b) HILL V. LOCKHART 474 US 52 (1985)
- (c) HENDERSON V. MORGAN US 637, 645, 13, (1976)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) I did not have such knowledge of any ground at the
- (b) time
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Hemphill P. Pride II
P.O Box 4529
 - ii. Columbia S.C 29240
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Mr. Hemphill P. Pride II
represented me at my Sentencing
 - ii. _____
 - iii. _____

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

Time Reduced to 17 1/2 % or Case Dismiss

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Marlboro)

I, Princeton Thrower, 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.

Princeton Thrower

SWORN to and subscribed before me this 15th day of March, 2013.

Draime B (L.S.)
Notary Public

My Commission Expires: 2-7-2023

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

I, Princeton Thrower, 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.

Princeton Thrower
Applicant

SWORN or affirmed to and subscribed before me this
15th day of March, 2013.

Diane B
Notary Public

My Commission Expires: 2-7-2023

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Princeton A. Thrower, #300701,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-0916

RETURN

FILED-RECEIVED
 2014 JAN 16 AM 11:29
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

In response to the post-conviction relief application filed March 20, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the January 2012 term of the York County Grand Jury for Trafficking in Cocaine Base (2012-GS-46-0258). The Applicant was represented by Hemphill Pride, Esquire. On September 10, 2012, the Applicant pled guilty Trafficking Cocaine Base, 3rd offense. The Honorable Edward W. Miller sentenced the Applicant to confinement for twenty-seven (27) years.

A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient showing for appeal on May 6, 2013. The Remittitur was issued on June 4, 2013.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
2. "Violation Due Process"

III.

Respondent interprets Applicant's claims as allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

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

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

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the

requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

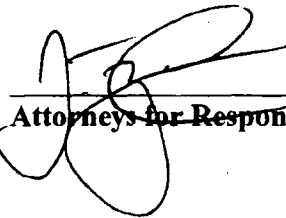
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

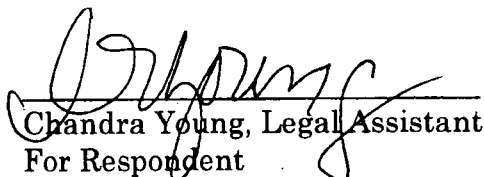
January 13, 2014

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	
)	
)	2013-CP-46-0916
)	
PRINCETON THROWER, 300701)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

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

W. Michael Hemlepp
3027 S. Paraham Rd
York, SC 29745

DATED this 13th day of January, 2014.


Chandra Young, Legal Assistant
For Respondent

FILED-RECEIVED
2014 JAN 16 AM 11:29
DAVID HAMILTON
C.O. CLERK
YORK COUNTY, SC

State of South Carolina.,)	In the Common Pleas
)	Of York
)	
)	Case No. 2013-CP-46-00916
County of York.,)	
)	
Princeton Thrower.,)	
)	
Applicant.,)	
)	
-vs-)	Transcript of Record
)	Post Conviction Relief
State of South Carolina.,)	
)	
Respondent.)	
)	

April 14, 2014
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge.

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

Mr. W. Michael Hemlepp, Junior
South Carolina Association of Justice
P.O. Box 11557
Columbia, South Carolina 29211-1557
803-799-5097
mike@scaj.com
For the Applicant

Mr. J. Rutledge Johnson
Assistant Attorney General
Office of Attorney General
State of South Carolina
P.O. Box 11549
Columbia, South Carolina 29211-1549
803-734-1867
803-734-4113
rjohnson@scaj.gov
For the Respondent

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

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I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Sheila Thrower	Mr. Hemlepp	P.6-15
Ronnie Dean Neely	Mr. Hemlepp	P.16-22
	Mr. Johnson	P.22-23
Princeton Thrower	Mr. Hemlepp	P.23-30
Mr. Hemphill Pride	Mr. Johnson	P.33-41
	Mr. Hemlepp	P.41-52
Court Reporter's Certificate Page		P.56

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I-N-D-E-X - CON'T

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF PRINCETON THROWER
2 VERSUS STATE ON APRIL 14, 2014 AT 11:07 A.M..)

3 (APPLICANT PRINCETON THROWER, BLACK MALE, ENTERS
4 COURTROOM.)

5 THE COURT: Yes, sir.

6 MR. JOHNSON: May it please the Court, Your Honor.
7 This is the case of Princeton Thrower versus the State of
8 South Carolina. Case No. 2013-CP-46-0-9-1-6. Mr. Thrower
9 was indicted at the January 2012 term of the York
10 County Grand Jury for trafficking in crack cocaine or
11 cocaine base.

12 On September 10th, 2012, he pled guilty to
13 trafficking cocaine base, third offense, before the
14 Honorable Edward W. Miller. He was sentenced to twenty-
15 seven years for trafficking in crack cocaine or cocaine
16 base, third offense.

17 A Notice of Appeal was filed in his behalf. The
18 appeal was ultimately dismissed and a remmittur was issued
19 on June the 4th, 2013. He filed a timely PCR application.
20 On March 23rd, 2013. The State filed its Return on January
21 13th, 2014 and he is represented here today by Mr. Mike
22 Hemlepp.

23 THE COURT: All right. Mr. Hemlepp, I'm looking at
24 his application, I'm trying to find out what - it just
25 says, Ineffective assistance of counsel and violation of

1 due process. I think you need to elaborate on that.

2 MR. HEMLEPP: Thank you, Your Honor. The evidence
3 that we plan to present today will show that in the
4 incident that gave rise to the arrest of Mr. Thrower,
5 there was a vehicle collision, a car accident, a very
6 serious car accident. In the car accident, he was badly
7 injured. He had cognitive deficits.

8 He was airlifted to Charlotte -- the Carolinas Medical
9 Center in Charlotte and to this day has no recollection of
10 the facts that gave rise to his arrest. Prepared to
11 testify, he's here prepared to testify with regards to
12 that. His mother is here. His stepfather is also here
13 if he needs to testify to the medical condition.

14 And the allegation is that while he was evaluated by
15 the Department of Mental Health, the evaluation made by the
16 Department of Mental Health was very - is subject to
17 challenge and my client believes that he should not have
18 been lead to plead guilty and that the lawyer actually
19 should have challenged that evaluation or hired a private
20 evaluation, a private physician to do an independent
21 evaluation to challenge that.

22 THE COURT: Call your first witness.

23 MR. HEMLEPP: Thank you, Your Honor. I would call
24 Sheila Thrower to the stand.

25 MADAM CLERK: Mr. Thrower, if I can have you come

SHELIA THROWER: DIRECT BY MR. HEMLEPP

-6-

1 forward here to be sworn. I have you place your left hand
2 on the Bible and raise your right.

3 (WHEREUPON, SHEILA THROWER,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 MADAM CLERK: Thank you. Come around and have a seat.

6 Just watch your step up.

7 MR. HEMLEPP: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 MR. HEMLEPP: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 SHELIA THROWER BY MR. HEMLEPP:

12 Q. Ms. Thrower, would you please give us your full
13 name and would you spell your last name for the record?

14 A. Sheila Ann Gilmore Thrower, T-h-r-o-w-e-r.

15 Q. Okay. Have you ever testified in court before?

16 A. No.

17 Q. Are you nervous?

18 A. No.

19 Q. Do you know the applicant in this PCR who's sitting
20 at the table, Princeton Thrower?

21 A. Yes.

22 Q. How do you know him?

23 A. That's my baby.

24 Q. Okay. He's your son?

25 A. Yes.

1 Q. Okay. And where do you live?

2 A. [REDACTED], York, South Carolina.

3 Q. Okay. Did Princeton live in York County in July of
4 2011?

5 A. Yes.

6 Q. Okay. Did you live in York County?

7 A. Yes.

8 Q. Did you have the occasion to interact with him on a
9 daily basis?

10 A. Yes.

11 Q. Okay. July 9th---

12 THE COURT: What date again?

13 MR. HEMLEPP: I'm sorry?

14 THE COURT: What was the first date you asked her?

15 MR. HEMLEPP: July 2011.

16 THE COURT: Okay.

17 Q. On July 9th of 2011, was Princeton in a car
18 accident?

19 A. Yes.

20 Q. Tell the Court what you know about that? How did
21 you find out?

22 A. I had got a phone call that night saying that
23 Princeton was in a real bad car wreck, so when I jumped up
24 and got to the scene, the - they had already airlifted
25 him, and when I got to the hospital, Prince was - he

SHELIA THROWER: DIRECT BY MR. HEMLEPP

-8-

1 was out of it. He was out of it for about two weeks.

2 He had to have plastic surgery in his face and he had to
3 have plastic surgery in his leg.

4 Q. When you say "he was out of it," what do you mean
5 by that?

6 A. I mean, I didn't know if he was dead or alive for
7 two weeks. I didn't know.

8 Q. Was he unconscious?

9 A. Yes.

10 Q. Did you visit him often?

11 A. Every day, I stayed up there.

12 Q. And how long did it take for him to wake up?

13 A. Probably about two weeks and a half.

14 Q. When he woke up, were you able to talk to him?

15 A. Well, during that time, he had caught pneumonia so
16 they was treatin him for that, and I never talked to
17 him about the wreck, because he didn't know - he didn't
18 know why he was there, and I didn't want to put more on
19 him than he already, you know, was going through.

20 Q. When you say that he didn't know why he was there,
21 what do you mean by that?

22 A. I had to tell him that he was in a real bad car
23 wreck, because he didn't know.

24 Q. He didn't know that. How long did he remain in the
25 hospital?

1 A. About three weeks, I think a little over three
2 weeks.

3 Q. Okay. Okay. At the conclusion of his stay in the
4 hospital, where did he go?

5 A. I think he went to mental health and after the
6 hospital they had took him to jail in Charlotte.

7 Q. Okay. And why was he in jail?

8 A. Why was he in jail?

9 Q. Uh-huh.

10 A. York, South Carolina had a hold on him.

11 Q. For - For this case?

12 A. Yes.

13 Q. Okay. When did you find out about him having a charge
14 that arose the same time as the accident?

15 A. It was a couple of days later, a officer had came
16 by the house and gave me a piece of paper to turn in
17 with my insurance and told me that during the time they
18 was taking him - cutting his clothes off, that they had
19 got some drugs out of his pocket and told me to make
20 sure I turn this paper in on my insurance because it was
21 my car.

22 THE COURT: All right. You said a couple of days
23 after, but she didn't say a couple of days after what.

24 Q. When you said - You said a couple of days after?

25 A. It was like three or four days after the wreck.

SHELIA THROWER: DIRECT BY MR. HEMLEPP

-10-

1 That's when the officer had come to my house.

2 Q. Okay. Okay. So it wasn't - He was still in the
3 hospital at the time?

4 A. Oh, yeah.

5 Q. Okay. When Princeton awoke while he was in the
6 hospital and you had the opportunity to talk to him, was
7 he aware that he had a charge against him?

8 A. No. No.

9 Q. Okay. During the time after he was released from
10 the hospital, did he get further treatment to your
11 knowledge, further mental health treatment?

12 A. Yes.

13 Q. Okay. And did he have rehabilitation?

14 A. Yes.

15 Q. Okay. How long did all of that last?

16 A. I don't know, about - I don't know.

17 Q. Was it a matter of days or weeks or months?

18 A. Weeks, weeks.

19 Q. Weeks. Okay. Have you had the opportunity - Did
20 you have the opportunity prior to him coming to court to
21 visit him in jail or visit him in any of the facilities
22 that he was at?

23 A. No.

24 Q. Okay. So did you ever talk to him about the
25 collision or his charge after he got out of the

1 hospital?

2 A. No.

3 Q. Okay. Now, when he was charged, did you get him a
4 lawyer?

5 A. Yes.

6 Q. Who did you hire?

7 A. Pride Hemphill.

8 Q. Okay. And how did you come to hire Mr. Pride.

9 A. I had heard from a friend.

10 Q. Uh-huh. And you retained him?

11 A. Yes.

12 Q. Okay. Did he talk to you about the charge that
13 Princeton had?

14 A. Yes.

15 Q. Okay. Did he ever talk to you about Princeton's
16 mental health condition?

17 A. Yes.

18 Q. Okay. Did you know that Princeton was evaluated by
19 the State ---

20 A. Yes.

21 Q. --- for his mental health?

22 A. Yes.

23 Q. Okay. And at that time, were you in communication
24 with Princeton while he was - before he went to court?

25 A. No.

SHELIA THROWER: DIRECT BY MR. HEMLEPP

-12-

1 Q. Okay. So you didn't talk to Princeton since -
2 from the hospital until you were in court?

3 A. No.

4 Q. Okay. How about your - how about - I withdraw
5 that. The medical bills as a result of this accident,
6 do they come to your home?

7 A. Oh, yes.

8 Q. Okay. And do you know how much the total medical
9 bills were for this accident?

10 A. Oh, Princeton's hospital bills, they was I know
11 over Six Hundred Thousand.

12 Q. Okay. Now, you don't know anything about the facts
13 of this case. You weren't at the collision. Were you
14 at the plea when he pled guilty?

15 A. Yes.

16 Q. Okay. And did Mr. Pride tell you about the plea
17 before - when you got here?

18 A. When I got here, he told me that he was going to
19 ask for a plea.

20 Q. Okay. What?

21 A. He - When I got here, he told me he was going to
22 ask for a plea for Princeton.

23 Q. Okay. And did you watch the proceeding?

24 A. Yeah - oh, yes.

25 Q. Okay. Did you have a chance to talk to Princeton

1 at all that day?

2 A. No.

3 Q. Okay. Have you talked to him since that day -
4 Princeton?

5 A. Yes.

6 Q. Okay. Did you talk to him about the case?

7 A. No.

8 Q. Okay. Did you talk to him about the facts of him
9 being arrested or the collision?

10 A. No.

11 Q. Okay. Why is that?

12 A. Because of the plastic surgery. And when he was
13 going through whatever with Mr. Pride, I had spoken to
14 Prince during that time and he was like, "Mama, I don't
15 know." I said, "Well son, if you don't know, you just
16 don't know, you know. Ain't no way you - if you don't
17 know something, they can make you know something."

18 Q. Okay. So, Ms. Thrower, I want to make this clear and
19 a little while ago I was asking you if you had talked to
20 him and you had said no. Now, you're telling me that
21 you did talk to him?

22 A. I mean, I had talked to him over the phone.

23 Q. Okay. Okay.

24 A. He had called home.

25 Q. So you did have an opportunity to talk to him, just

SHELIA THROWER: DIRECT BY MR. HEMLEPP

-14-

1 not in-person?

2 A. Right.

3 Q. Okay. And when you talked to him, you did talk to
4 him about his recollection of this, this matter and he
5 told you he didn't remember?

6 A. Right.

7 Q. And let's go from there. So in able - in talking
8 to him on the phone, was that from the jail?

9 A. Yes.

10 Q. And he would call you at home?

11 A. Right.

12 Q. And that was a privilege that he had at the jail?

13 A. Yes.

14 Q. Okay. How many times did you talk to him; what
15 would be your estimate between him calling you from the
16 jail?

17 A. If it wasn't every day, every other day.

18 Q. Okay. Okay. So many times?

19 A. Yes.

20 Q. Okay. At any time, did he have any recollection of
21 what happened on the day the - of the accident?

22 A. No.

23 Q. Okay. Is he different today than he was before the
24 accident?

25 A. I haven't saw him until just now since he was sent

1 down the road.

2 Q. Uh-huh.

3 A. This is my first time seeing him.

4 Q. I mean, when you were talking to him from the jail
5 on the phone?

6 A. He was more confused. "My mama, what's going on?
7 What I do? What's going on? What can - who --

8 Q. Was that different than how he acted before the
9 accident?

10 A. Oh, yeah.

11 Q. Okay. Okay.

12 MR. HEMLEPP: Ms. Thrower, thank you so much for
13 coming. Answer any questions that the Attorney General
14 may have.

15 SOLICITOR: No questions from the State.

16 THE COURT: And you can step down. We appreciate
17 your time. Thank you, ma'am.

18 (WITNESS LEAVING WITNESS STAND.)

19 THE COURT: Call your next witness.

20 MR. HEMLEPP: Thank you, Your Honor. I would call
21 Mr. Ronnie Neely to the stand.

22 MADAM CLERK: Mr. Neely, if I can get you to place your
23 left hand on the Bible and raise your right.

24 (WHEREUPON, RONNIE NEELY,

25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:0

RONNIE DEAN NEELY: DIRECT BY MR. HEMLEPP

-16-

1 MADAM CLERK: Come around and have a seat, just watch
2 your step.

3 MR. HEMLEPP: May it please the Court, Your Honor?
4 Thank you.

5 DIRECT EXAMINATION

6 RONNIE DEAN NEELY BY MR. HAMLIN:

7 Q. Mr. Neely, would you please give us your full name
8 and spell your last name for the record?

9 A. Ronnie Dean Neely, N-e-e-l-y.

10 Q. Okay. Mr. Neely, have you ever testified in court
11 before?

12 A. No.

13 Q. Okay. Are you nervous today?

14 A. Oh, yeah.

15 Q. If I could ask you to just make sure that you speak
16 loud enough for Judge Hayes to be able to hear you while
17 we ask you questions.

18 A. Okay.

19 Q. Do you know the applicant, Princeton Thrower?

20 A. Yes.

21 Q. How well do you know him? How do you know him
22 rather?

23 A. I been in Princeton's life about fifteen years now.

24 Q. Uh-huh.

25 A. Me and his mother has been together that long.

1 Q. Okay. And did you live in the same household at
2 anytime?

3 A. Yes.

4 Q. Okay. How about up to July of 2011?

5 A. Yes.

6 Q. Okay. And were you - Did you and Princeton have a
7 father/son type relationship ---

8 A. Oh, yeah.

9 Q. --- as far as closeness?

10 A. Oh, yeah, I knew Prince pretty good.

11 Q. Okay.

12 A. We talked a lot.

13 Q. How did you - Did you know that he had a accident,
14 a car accident July 9th of 2011?

15 A. Yes. We was - We was laying in bed and his mother
16 got a call saying that he had been in a car accident,
17 and so we jumped up and ran up there to the scene. They
18 had already ambulanced him to Charlotte.

19 Q. Okay. Did you - did you see him at all in the
20 hospital in Charlotte?

21 A. Oh, yeah.

22 Q. How often did you have the opportunity to visit him
23 in the hospital in Charlotte?

24 A. Oh, we was up there every day ---

25 Q. Okay.

RONNIE DEAN NEELY: DIRECT BY MR. HEMLEPP

-18-

1 A. --- pretty much. In fact, I actually work in
2 Charlotte and when I would go to work, which wasn't too
3 far from the hospital, you know, I would come straight
4 from work back to the hospital.

5 Q. Uh-huh. When he was in the hospital, did you talk
6 to any of the medical providers, any of the doctors or
7 treatment team?

8 A. Not really.

9 Q. Okay.

10 L. I mean, not in no lengthy conversations or nothing,
11 no.

12 Q. Okay. Did they ever talk to you about his
13 condition?

14 A. Well, other than - other than just saying that the
15 severity of the accident, you know, he was going to be
16 out for a while. Just expect for him, you know, to be
17 out for a while and, you know, and me just observing
18 him, I mean, I didn't know whether he was going to make
19 it or not, you know, to be honest with you and they, you
20 know, would say that hopefully everything would be okay,
21 but they wasn't giving us no guarantees.

22 Q. Right. Right.

23 A. Yeah.

24 Q. How long did he stay in the hospital?

25 A. I would say around three, three to four weeks

1 maybe.

2 Q. And was he awake at anytime in the hospital?

3 A. Well, he was - he was - he didn't know whether he
4 was in this world or not for at least maybe two weeks.

5 Q. Okay.

6 A. Yeah.

7 Q. After he left the hospital, where did he go?

8 A. From my recollect, he went to like mental health or
9 some kind of rehabilitation or something like that.

10 Q. Did you have a - did you have the chance to visit
11 him there?

12 A. No.

13 Q. Okay. And then he got transferred. Did he come to
14 the Detention Center?

15 A. Yes.

16 Q. Okay. And did you ever have a chance to visit him
17 at the Detention Center?

18 A. No.

19 Q. Okay. Did you have the ability to talk to him on
20 the phone?

21 A. Well, when I would talk to him, you know, he would
22 - he would be like he didn't know what was going on,
23 you know. He would be like, you know, why - It was
24 pretty much like he didn't know why he was - he was
25 there when I would talk to him.

RONNIE DEAN NEELY: DIRECT BY MR. HEMLEPP

-20-

1 Q. Did he ever exhibit, when you were talking to him,
2 short-term memory loss that he wouldn't remember your
3 previous conversation or he wouldn't remember something
4 within the conversation? Did he have any problem with
5 his memory?

6 A. Well, I don't know whether you would actually say it
7 was memory or nothing but just like, he didn't - It
8 was kind of like he didn't - didn't know what was going
9 on so I mean, I don't --

10 Q. Did he act confused?

11 A. Yes, very confused.

12 Q. Yeah.

13 A. Yeah.

14 Q. Did he act confused only about this or about many
15 things?

16 A. I would say many things.

17 Q. Okay. Was that different than the way he was prior
18 to the accident?

19 A. Oh, yeah, definitely, yes.

20 Q. Can you tell the judge about that? How so?

21 A. Well, just talking to him, you know, it was kind of
22 like, you know, I was, you know, thinking about, you
23 know, if that was, I mean, just - I don't know whether
24 I can use this analogy or not, but I was just thinking
25 about if that was me, you know, what, you know, why

1 would I be confused like that unless, you know,
2 something serious done happened to maybe my brain or
3 something, because he wasn't - he wasn't the same
4 person to me, you know, talking to him.

5 Q. Did you come to court on the day that he pled
6 guilty?

7 A. Yes.

8 Q. Okay. And had you seen him prior to that? When
9 was the last time you'd seen him prior to that, when he
10 was in the hospital?

11 A. Yes, in the hospital.

12 Q. Did he appear confused at that time when he pled?

13 A. When he was in the hospital?

14 Q. No, when he was here pleading?

15 A. Oh, yeah, yeah. To me, I mean, just looking at it
16 from sitting back there. Yeah, it seemed like he was
17 very confused.

18 Q. Did he act the same way that he had acted on the
19 phone with you when he appeared confused?

20 A. Pretty much, yeah.

21 Q. Okay. Did he ever discuss with you his memories of
22 this charge?

23 A. No.

24 Q. Why is that?

25 A. Well, I don't -

RONNIE DEAN NEELY: DIRECT BY MR. HEMLEPP
CROSS BY MR. JOHNSON

-22-

1 Q. Did he have any?

2 A. What's that?

3 Q. Did he have any memories of this charge?

4 A. Not that I know of. I mean, what I'm saying is,
5 you know, and when he would say like, "Why, why am I
6 here," you know, I, you know, try to - try to tell him
7 why he was there while he was in jail and all of that,
8 and he was - it was kind of like he didn't know.

9 Q. Okay. Did you participate in retaining Mr. Pride?
10 Did you have anything to do with that retaining Mr.
11 Pride?

12 A. I pretty much let his mother handle that.

13 Q. Okay.

14 A. Yes. I was just there for support.

15 Q. Okay.

16 MR. HEMLEPP: Thank you, Mr. Neely. Answer any
17 questions that the Attorney General may have.

18 MR. NEELY: Okay.

19 MR. HEMLEPP: Thank you.

20 MR. JOHNSON: Just briefly, Your Honor.

21 CROSS-EXAMINATION

22 RONNIE DEAN NEELY BY MR. JOHNSON:

23 Q. Mr. Neely, you just testified that at his guilty
24 plea Mr. Thrower seemed confused that day. Correct?

25 A. Yes.

RONNIE DEAN NEELY: CROSS BY MR. JOHNSON
PRINCETON THROWER: DIRECT BY MR. HEMLEPP

-23-

1 Q. But you also testified that back there is where
2 you were sitting. Correct?

3 A. Yes.

4 Q. You didn't interact with him on the day of the
5 guilty plea ---

6 A. No.

7 Q. --- did you? You didn't talk to him?

8 A. No.

9 Q. Okay. No further questions, Your Honor.

10 MR. HEMLEPP: I have nothing further.

11 THE COURT: You can step down, thank you.

12 MR. NEELY: All right.

13 (WITNESS LEAVING WITNESS STAND.)

14 MR. HEMLEPP: Your Honor, I would call Princeton
15 Thrower to the stand.

16 MADAM CLERK: Mr. Thrower, if I can have you come have
17 a seat up here. Mr. Thrower. Place your left hand on the
18 Bible and raise your right hand as much as you can.

19 (PRINCETON THROWER, BEING
20 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 MADAM CLERK: Watch your step up.

22 DIRECT EXAMINATION

23 PRINCETON THROWER BY MR. HEMLEPP:

24 Q. Princeton, can you tell that lady right there your
25 whole name?

PRINCETON THROWER: DIRECT BY MR. HEMLEPP

-24-

1 A. Princeton -- Thrower.

2 MADAM COURT REPORTER: I'm sorry.

3 A. Princeton -- Thrower.

4 MADAM COURT REPORTER: Middle name?

5 A. Alex. Alex.

6 BY MR. HEMLEPP:

7 Q. Okay. Spell that for us. Can you spell that?

8 A. I ain't really a good speller.

9 Q. Okay. You're fine. Princeton, this is a really
10 big room, it's a really big room, and everybody really
11 wants to say what you have to say, so I'm going to ask
12 you to try and speak up as loud as I can - as loud as I
13 am right now. Can you do that for me?

14 A. Yes, sir.

15 Q. Okay. Thank you. You filed what is called a Post
16 Conviction Relief action, and that's a PCR, and that's why
17 you're here today. Do you remember that, filing a PCR?

18 A. Some people helped me with it.

19 Q. Okay. People helped you with it?

20 A. Uh-huh.

21 Q. And it's because you got convicted of a crime; you
22 plead guilty to a crime. Do you remember that?

23 A. No, sir.

24 Q. Do you remember coming to court?

25 A. I - I remember coming, but I don't know nothing

1 else.

2 Q. Okay. Do you know who your lawyer was at the time?

3 A. Uh, Hemphill Pride.

4 Q. Okay.

5 MR. HEMLIN: If the record could show that

6 the applicant pointed out his lawyer, Mr. Pride.

7 (WITNESS INDICATED TOWARD ATTORNEY HEMPHILL PRIDE.)

8 Q. At the time that you came to court, what was that
9 for? Why did you come to court?

10 A. I couldn't tell you. I don't know.

11 Q. Okay. Do you remember being in the hospital?

12 A. No, not really. I mean, I remember being in the
13 hospital, but I don't recall really none of it.

14 Q. Okay. Princeton, you're - what you have to say to
15 the Court today is really important. Princeton, what
16 you have to say to the Court today is really important, so
17 I want you to answer these questions as fully as you want
18 to make sure that the Judge knows your whole story, okay.

19 You remember being in the hospital. What was the
20 first thing you remember in the hospital?

21 A. Me laying in the bed.

22 Q. Was anybody in the room?

23 A. My mom.

24 Q. Your mom was there? Were you glad to see her?

25 A. My girl.

1 Q. Your girlfriend. Did they get a chance to talk to
2 you in the hospital?

3 A. Yeah.

4 Q. Okay. And did you remember them?

5 A. It took a minute.

6 Q. Okay.

7 A. It took a minute.

8 Q. Uh-huh. How long until you - Did you have anything
9 in your mouth at the time when you woke up that kept you
10 from talking?

11 A. I couldn't talk.

12 Q. You couldn't talk?

13 A. I could just mumble.

14 Q. You could just mumble. Is that because of the
15 injuries to your mouth?

16 A. Uh-huh.

17 Q. Okay. And did your mouth hurt?

18 A. It still hurt till today sometimes.

19 Q. Okay. How did - How did your mouth get this way?

20 A. What they say I was in a accident. I couldn't
21 tell you.

22 Q. Okay.

23 A. I don't know.

24 Q. Do you remember the accident?

25 A. No. I don't remember nothing.

1 Q. Okay. Do you remember getting in the car?

2 A. Huh-uh.

3 Q. Were you driving?

4 A. I don't remember nothing.

5 Q. Okay. When you came to Court, did you - had you
6 told Mr. Pride that, that you didn't remember anything?

7 A. He - I'm pretty sure, yeah.

8 Q. Okay. How many times did you tell him that?

9 A. I really didn't even get to talk to him but the
10 first time I came to court and that's when I seen him he
11 took me to the court. I don't - I can't recall
12 seeing him.

13 Q. Okay. Do you remember - Did you ever go to
14 Columbia to talk to some doctors for an evaluation?

15 A. I talked to some people. I talked - I talked to
16 the - I talked to somebody.

17 Q. Do you remember where that was?

18 A. No. No.

19 Q. Okay. Were you - Was it while you were in the
20 Detention Center you were taken somewhere?

21 A. Yeah.

22 Q. Okay. And do you remember going down there to talk
23 to them, wherever that was?

24 A. Yeah, wherever it - I don't know where it was.

25 Q. How long did you stay there?

PRINCETON THROWER: DIRECT BY MR. HEMLEPP

-28-

1 A. About a couple of days probably.

2 Q. Did you tell them everything you knew?

3 A. I can't even - I can't even remember none of that.
4 I just know I went somewhere and I can't recall what the
5 conversations.

6 Q. That's all I have.

7 MR. HEMLEPP: Your Honor, for the record, I
8 just confirmed with the Attorney General that the
9 Court's Exhibit, the evaluation from the Department of
10 Mental Health done by Dr. Musick, dated July 10th, 2012
11 is already in the record.

12 THE COURT: It is. Yes, sir.

13 MR. HEMLEPP: I am prepared to introduce it if the
14 Court needs me to, but it's on the record, then I'm going
15 to fast-forward.

16 THE COURT: I - I saw it somewhere. Yes, it's
17 attached to his Post Conviction Relief packet.

18 MR. HEMLEPP: Thank you, Your Honor.

19 Q. After you came back from talking to those people,
20 did you talk to Mr. Pride about what happened down
21 there?

22 A. No, I ever did get to see him until I came to
23 court.

24 Q. Uh-huh.

25 A. That's the only time I seen him.

1 Q. What happened when you come to court?

2 A. To be honest, like my mama was tell - saying, I
3 would ask her what happened. I didn't even know then
4 because I was - just I - I didn't know nothing.

5 Q. Do you remember the judge asking you questions?

6 A. I can't recall none of it.

7 Q. Uh-huh. Okay. Okay. Do you remember me coming to
8 the Department of Corrections to see you?

9 A. Yeah.

10 Q. Do you remember what we talked about? Don't say
11 it, but do you remember anything we talked about?

12 A. I remember you coming to see me, but I - No, sir.

13 Q. Okay. Okay. You came to court and pled guilty to
14 a drug charge based upon having drugs in the car at the
15 time of the accident. Do you remember having drugs?

16 A. No, sir. I don't remember nothing about that.

17 Q. Do you remember who else was in the car?

18 A. I don't remember no car or no nothing.

19 Q. When was the first that you learned that you were
20 in a car accident?

21 A. Still till this day, I don't know.

22 Q. Okay. Aside from all of the stuff about this case,
23 do you ever have problems remembering other things?

24 A. They tell me a lot of things, things that I used to
25 go and I don't remember that. There's a lot of things I

PRINCETON THROWER: DIRECT BY MR. HEMLEPP

-30-

1 don't - I don't remember. There's a lot of faces and
2 people, people say they ask about me. I don't know
3 them.

4 Q. Okay. At Broad River, do you have problems
5 remembering the rules?

6 A. Just whenever they tell me walk on the line, I walk
7 on the line. That's - I don't - I don't know even know
8 no rules or nothing, I just.

9 Q. Okay. Okay.

10 A. Whatever they say, I do.

11 Q. Judge Hayes is going to rule in this case about
12 your guilty plea to the drug charge. Is there anything
13 that you think that Judge Hayes needs to know about this
14 whole matter, this whole case, your guilty plea, the
15 accident. What do you think Judge Hayes needs to know?

16 A. It's, it's, it's -

17 Your Honor, there's a lot of things that I'm not
18 aware of. I don't know what happened. I don't remember
19 nothing about that day. Yes, I feel like Mr. Pride could a
20 come and seen me and just come to see me and taking me to
21 court, sit down and talk to me and talk to my family, at
22 least talk to my family, let them know what's going on.

23 Q. Okay. Thank you.

24 MR. HEMLEPP: Thank you, Princeton. Princeton, you
25 need to answer any questions that the Attorney General may

1 have.

2 Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 MR. JOHNSON: No questions from the State, Your
5 Honor.

6 THE COURT: You can step down and have a seat with
7 your attorney.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Mr. Hemlepp.

10 MR. HEMLEPP: Your Honor, with the competency
11 evaluation being part of the record and part of our case
12 issue, I would then rest about that.

13 THE COURT: Mr. Johnson.

14 MR. JOHNSON: Your Honor, before we get into our
15 case, I would actually like to move for a directed
16 verdict and/or if it's more appropriate a Motion for
17 Summary Judgment under 56(b) and (c), (b) stating that
18 the Defendant at any time can move for a summary
19 judgment and 56(c) stating that there is no - that we're
20 entitled to as a matter of law and to a judgment, because
21 because there's no material issue of fact.

22 If the entire claim is that counsel was ineffective
23 for not hiring an expert to challenge the State's
24 competency exam, they must produce an expert and witness
25 under - it would be *Underwood v. State* which is 309 S.C.

1 560 and also *Bannister v. State* which is 333 S.C. 298 to
2 show how that challenging the State's competency evaluation
3 of Mr. Thrower would have changed the outcome of this
4 case. They have not done so, and so any of that
5 testimony would be complete speculation as to how that
6 would show that he would actually rather take it to
7 trial versus plead guilty, so we would ask a judgment as
8 a matter of law, either summary judgment or a directed
9 verdict, whichever Your Honor finds more appropriate.

10 THE COURT: All right. I'm going to deny that. I
11 want to make a full record. I - Well, I'll tell you this,
12 I'll take it under advisement. I'm not outright denying it
13 at this time. I'll take it under advisement.

14 MR. HEMLEPP: Your Honor, if you go and you take it
15 under advisement, may I be heard on it?

16 THE COURT: Yes, sir.

17 MR. HEMLEPP: Your Honor, I'd agree with the State
18 if what we were challenging were a Blair hearing, that was
19 conducted at the time of the guilty plea but, actually,
20 no Blair hearing was conducted. The Defendant pled
21 guilty. His lawyer represented him. There was - This
22 is not the result of a Blair hearing. This is the result
23 of my client pleading guilty at a time when he really did
24 not know what was going on with the underlying facts and
25 that he was confused about the plea itself. So I would

1 ask - I would ask to put in the record that in the
2 absence of a contested Blair hearing, I believe that
3 summary judgment will be appropriate.

4 THE COURT: Thank you.

5 MR. JOHNSON: Nothing from me, Your Honor.

6 We call Mr. Hemphill Pride to the stand.

7 MADAM CLERK: Mr. Pride, place your right hand, raise
8 your right.

9 (WHEREUPON, HEMPHILL PRIDE,
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 DIRECT EXAMINATION

12 HEMPHILL PRIDE BY MR. JOHNSON:

13 Q: Good Morning Mr. Pride,

14 A. Good Morning.

15 Q. Can you please tell the Court how you became involved
16 in this case?

17 A. I was hired by the Defendant's mother to represent him
18 in this matter. And we agreed upon a fee and she signed a
19 retainer agreement, and that's how I became his lawyer.

20 Q. And at that time, where was Mr. Thrower?

21 A. He - He was detained here in the York County
22 Detention Center.

23 Q. So he was already out of the hospital?

24 A. That's correct.

25 Q. And had he already been evaluated by the State?

HEMPHILL PRIDE: DIRECT BY MR. JOHNSON

-34-

1 A. No, he had not.

2 Q. And around what time frame was he evaluated by the
3 State? Did you request that?

4 A. Yes, I made a Motion before the Court to have him
5 evaluated because I thought that needed to be done in order
6 for me to be sure that he could assist in his defense.

7 Q. And what were the results of the evaluation?

8 A. The evaluation found that he was competent. It went on
9 to say that they felt that doing the evaluation and many
10 things that he said that he didn't remember that he was
11 faking.

12 Q. Was the term malingering ever used?

13 A. Yes.

14 Q. Based on that evaluation, what actions, if any, did
15 you take in this case?

16 A. Well, based on the evaluation when it came back, the
17 Solicitor's office was ready to go. I might just tell you
18 that when I got involved in this case, the status of the
19 Defendant was the fact that they had given him an
20 opportunity to enter into the drug program here in York
21 County. The Solicitor's Drug Program. And he had violated
22 the conditions and as a result of that, they had revoked
23 his right to be in the program and they were getting ready
24 to sentence him for that violation when he had the
25 accident. So you know, I was aware of that. I talked to

1 the Public Defender who, I do not remember his name at this
2 time, who handled that matter and was going to represent
3 him in the revocation and the sentencing. He asked me
4 would I also handle that case. I told him no, that I was
5 only retained to represent the Defendant as a result of the
6 accident and the charges therefrom.

7 Q. So that was a previous case? Previous charge?

8 A. That's correct.

9 Q. Separate from the accident?

10 A. That's correct.

11 Q. Okay.

12 A. And I might add to that - I think her name was Rebecca
13 McNulty, if I'm pronouncing her last name --

14 Q. McNerney?

15 A. That's who she was. I saw her one day and she asked
16 me to come by the office. And I had just started on this
17 case and we sat down and talked, and she said if your
18 client will plead guilty today I'll give him a fifteen-year
19 sentence. And I explained to her that I was in no position
20 to plead him because I hadn't even filed for discovery, I
21 hadn't done any investigation, hadn't talked to my client,
22 wasn't prepared in any respect, and she said, "You know if
23 you don't take it today, I'm taking it off the table and we
24 are going for the max."

25 And quite frankly, the Solicitor's office was irate

HEMPHILL PRIDE: DIRECT BY MR. JOHNSON

-36-

1 about this case, and the reason that they were irate is
2 that they thought that they had given the Defendant an
3 opportunity by putting him in that program, and before they
4 put him in that program, if you look at his record, he had
5 an horrendous past criminal record to be allowed to get
6 into the program. And they thought that he had not lived
7 up to the opportunity given to him and they were ready to
8 go.

9 Q. And speaking of his prior record, does that include a
10 2004 distribution of crack cocaine with an accompanying
11 proximity?

12 A. Well, it includes whatever the record says, because I
13 do not have it before me and I really - I don't remember.
14 But I remember looking at it and I remember concluding that
15 this man, you know, has been around for a lot of times and
16 has a pretty bad criminal record.

17 Q. And the amount found on him, I believe it's - this is
18 during the car accident that is the subject of this case,
19 13.3 grams of crack cocaine.

20 A. I do not have the record before me but if that's what
21 the record reflects that's what it is.

22 Q. And that would be enough amount to charge him with
23 trafficking?

24 A. That's correct.

25 Q. Which because this is his third offense, he has a

1 mandatory twenty-five year sentence, correct?

2 A. That's correct.

3 Q. Okay. So once you got the evaluation back, the report
4 back, and you once you got discovery, did you then go talk
5 with Mr. Thrower about this case?

6 A. Yes. And --

7 Q. And what were the context of those conversations?

8 A. Well I might say, let me say this. Mr. Springs from
9 the Solicitor's office was then the attorney handling it.
10 And I first talked to him about trying to work out
11 something for this young man.

12 Based on the reading of the discovery and the facts
13 that I knew them in this case, this was not a case to go to
14 trial. I mean they would have been like shooting fish in a
15 barrel for me to pick a jury and attempt to have a jury
16 trial in this case. And I knew I had to try and fudge some
17 kind of plea agreement out of the Solicitor's office which
18 was very difficult to do because they were very upset with
19 the Prince - Princeton - Mr. Thrower because of his being
20 in the - having the opportunity to be in the drug program
21 and not living up to the conditions of the program.

22 I talked to Mr. Prince about the fact that he had
23 violated his conditions in the program, and he knew that,
24 and wanted me to try and work something out. And I also
25 attempted to talk with him about the facts in the case and

HEMPHILL PRIDE: DIRECT BY MR. JOHNSON

-38-

1 I never did get a clear conversation. When I say a clear
2 conversation, I mean that he would always tell me, "I don't
3 remember anything about the automobile accident."

4 I explained to him that the Solicitor's office was not
5 convinced at all that he did not remember and felt that he
6 was trying to pull a fast one and that he was faking, and
7 that's exactly how they thought.

8 And I also explained to him on the day that he plead
9 that we were in the position of doing one of two things, we
10 could either plead or go to trial, and that's exactly the
11 posture that I found myself in as a lawyer representing
12 him. And as I said before, it was not a case to go to
13 trial.

14 So, I'm convinced that Prince knew where we were that
15 day because we talked about it and he talked about what
16 kind of sentencing and what kind of plea can you get me,
17 and those kinds of conversation. Even though he never,
18 during the entire time that I represented him, acknowledged
19 that he remembered the accident, or remembered having
20 drugs, or remembered anything about it.

21 Now, I have to say this in protection of myself as a
22 lawyer because I'm being accused of - its being alleged
23 that I didn't effectively represent him. I went - I think
24 the records over to the jail would show that I went to see
25 him over there at least three times, and the jailers over

1 there were quite upset with him because they too didn't
2 believe that he was as sick as he was - as he said he was.

3 And the jailers over there told me that they would
4 observe Prince walking around, going to the bathroom,
5 talking with the inmates, things that he contended that he
6 could not do, but yet when it was time to come to court, he
7 had to be brought in a wheelchair. And they were quite
8 disturbed over the fact that he was - they thought he was
9 pretending.

10 So, I had did have at least some outside independent
11 evidence that maybe he wasn't telling the truth. Maybe he
12 was faking because more than one officer told me that, and
13 the general consensus of the officers over there were that
14 they were very upset with Prince because they felt like he
15 didn't need a wheelchair, and when he wasn't being looked
16 at that he was able to do things normally that the other
17 inmates were doing, and more especially going to the
18 bathroom by himself.

19 Q. In your opinion based on your experience as a lawyer
20 and on Mr. Thrower's own actions, was he able to
21 effectively assist in his own defense?

22 A. Well, he was to the extent that he cooperated. To
23 that extent he was. If you read the transcript in this
24 case, the Judge was overbearingly patient and careful.
25 That plea hearing took an inordinate period of time, and

1 during the plea hearing often times the record should show
2 where we paused and those pauses were times that I would
3 ask the Judge to give me some additional time to talk with
4 him and I would stand up there and go through what was
5 going on and what he was doing and explain what the judge
6 was saying to him.

7 Based on the Judge's questions, and based on Prince's
8 answers, and based on the time of the proceeding, and the
9 care and caution that the Court took, I was convinced that
10 Prince entered his plea freely, and voluntarily, and
11 knowingly, and that he knew what he was doing.

12 Q. And at the plea, he didn't have to agree to the facts
13 because he still claims he does not remember the accident?

14 A. That's correct.

15 Q. And the Judge still accepted --

16 A. That's correct.

17 Q. Even on the premise that he didn't remember the facts?

18 A. That's correct. I am not certain it was an Alford
19 plea. I am not - I didn't - I don't remember.

20 Q. Well he didn't contest the facts because he simply
21 did not remember.

22 A. Correct.

23 Q. Okay. So there is nothing that lead you to believe
24 that he didn't understand what was going on during the
25 plea?

HEMPHILL PRIDE: DIRECT BY MR. JOHNSON
CROSS BY MR. HEMLEPP

-41-

1 A. Absolutely, no.

2 Q. And that was based on your interactions with him in
3 this case?

4 A. My interactions with him and the Court's interaction
5 with him.

6 MR. JOHNSON: I believe that's all I have at this
7 time, Your Honor.

8 THE COURT: You may proceed.

9 MR HEMLEPP: May it please the court, Your Honor.

10 CROSS-EXAMINATION

11 HEMPHILL PRIDE BY MR. HEMLEPP:

12 Q. Good morning, Mr. Pride.

13 A. Good morning. How are you?

14 Q. I am doing well. You're not contending that you
15 believe that your client - your client was competent
16 because law enforcement officers at the Detention Center
17 told you that?

18 A. No, because I'm not in a position to determine
19 competency. I don't have the qualifications, education, or
20 experience.

21 Q. But as counsel for somebody accused of what is a very
22 very serious you do have an ethical responsibility to
23 determine - to insure that he's competent enough to go
24 forward on the hearing, or find somebody who is an expert.

25 You would agree with me on that, it's part of your

1 duty?

2 A. It is part of my duty, and if you look in the records
3 you find that I made a motion to have him evaluated because
4 I felt that he could not effectively work with me in the
5 preparation of his defense, that I was uncertain about his
6 mental condition. I knew that Prince educationally and
7 learning ability was very low. I knew that. And I knew
8 that out of an abundance of caution under those
9 circumstances, the best thing to do is to have him
10 evaluated by an expert, and that's what I did.

11 Q. Okay. And that resulted in a - a report that came
12 from the Department of Mental Health?

13 A. It did. It did.

14 Q. And did you have the opportunity to review that? I
15 see that it was sent to the Assistant Solicitor McNerney,
16 Rebecca McNerney.

17 A. Right. But she was not the solicitor at that time.
18 Mr. Springs was the solicitor that ultimately handled the
19 plea.

20 Q. Okay. And so - But you did get an opportunity to
21 review this report.

22 A. That's correct.

23 Q. Okay. And did you - In going over the report, did you
24 feel like it was complete?

25 A. I had no reason not to feel that it was complete. I

1 relied on the report from the South Carolina Mental
2 Hospital and accepted its findings as I represented Mr.
3 Thrower.

4 Q. You stated that there was an offer that only lasted
5 for one day ---

6 A. Yeah.

7 Q. --- and that they withdrew the offer almost
8 immediately.

9 A. That's right.

10 Q. And so at the whole - During virtually your entire
11 representation of Mr. Thrower, his sentence range was
12 twenty-five to thirty years.

13 A. That's correct.

14 Q. Okay. So in choosing to plead guilty instead of going
15 to trial, his inability to remember you believe would have
16 hurt him at the trial?

17 A. Well no, not that at all. What would have hurt him
18 at the trial is the fact that there was no search and
19 seizure question involved, no suppression question
20 involved, drugs were in plain view of the automobile
21 accident, and there was no question based on the accident
22 report and from the surroundings who was driving the car,
23 so those were the facts that I relied on.

24 Often times in a case as you very well know as an
25 experienced lawyer, it's possible to try a case without

1 putting your client up to testify at all. But this case -
2 I have to describe it again, that it would have been for
3 the Solicitor like shooting fish in a bowl. I mean I would
4 not have had a - He would not have had a chance in this
5 case before a jury.

6 Q. Okay. So had he gone to trial, the lowest he would
7 have gotten had he been convicted was twenty-five years,
8 and the highest he would have gotten would have been thirty
9 years. Is that true?

10 A. He is the third offender. I believe if that's what
11 the law says then I agree, but I'm not certain at this time
12 because I didn't look that up.

13 Q. He was facing a very narrow sentencing range?

14 A. That's correct.

15 Q. And in fact at the plea he got in the very middle of
16 that sentencing range?

17 A. Yes.

18 Q. Twenty-seven years?

19 A. Yes.

20 Q. In the evaluation that was done by Dr. Frierson down
21 in - at the Department of Mental Health - and I keep saying
22 down in because usually its in Columbia. It doesn't have
23 to be in Columbia.

24 A. Yes.

25 Q. I mean by the Department of Mental Health,

1 A. I understand.

2 Q. The conclusion, it says, "Therefore it is our opinion
3 that although he does not respond to competency questions
4 correctly, he should presumed competent."

5 In a case this serious, do you believe that being
6 presumed competent based upon not answering questions that
7 - did you ever consider getting your own evaluation?

8 A. No, I didn't. I didn't challenge the doctor's
9 finding. The doctor's findings were consistent with my
10 professional beliefs about Mr. Thrower in terms of his
11 conduct. And I think - Not I think. That report,
12 obviously if you read all of it, it's a very definitive
13 report, and based on the fact that Mr. Thrower was not
14 cooperating with the doctor so that the doctor could make a
15 determination, and since he was not cooperating with them,
16 then they had to presume the results rather than
17 determining the actual results.

18 Q. But you would agree with me that that's not, his
19 failure to cooperate is not something that you know, but
20 something that was in the report that came from the
21 doctors?

22 A. Uh.

23 Q. Were you present --

24 A. Well not to debate things with you, but the report
25 describes his behavior.

HEMPHILL PRIDE: CROSS BY MR. JOHNSON

-46-

1 Q. Exactly.

2 A. Right.

3 Q. So, your knowledge of that is basically it's their
4 fight? Not your knowledge.

5 A. Right. Oh yes. Absolutely.

6 Q. Okay. That the departmental health reported that he
7 failed to cooperate therefore he must be presumed
8 competent.

9 A. That was their findings.

10 Q. But you had found that he was cooperative with you as
11 a client.

12 A. Well, he cooperated to the extent of the plea. But he
13 did not cooperate as it related to the drug charges that
14 were pending against him or the revocation of his sentence
15 from the drug intervention program. All of those things he
16 contended that he couldn't recall and didn't remember and
17 that it was a result of his automobile accident.

18 Q. Okay. So - And in fact at the time of plea, he told
19 Judge Miller that he couldn't remember.

20 A. I told the Judge that also. I mean I made that very
21 clear because I thought it was important to make a record
22 which contained everything in this case, and I made that
23 very clear to the Judge in a sort of a preamble statement
24 before we started.

25 Q. It was very complete.

1 A. Uh-huh.

2 Q. Would you agree with me that given the facts as you
3 described, given the position of the Solicitor's office
4 with regards to this, and that given the very narrow range
5 of sentencing, that his - the truthfulness of his inability
6 to remember was a very material issue in this case?

7 A. No. I would not agree with you.

8 Q. Why not?

9 A. I practice law all over the state of South Carolina.
10 I think that this is one of the toughest districts that you
11 can come to with drugs. It's a no nonsense, no tolerate
12 drugs kind of district, and that is in no way to say that
13 you can't get a fair trial here because I think you can get
14 a fair trial.

15 But the Solicitor's office in this case was adamant,
16 and they were adamant not because they thought that he was
17 faking necessarily. I don't think they paid that much
18 attention to it. They were adamant because he had been
19 given an opportunity in that pre-trial program and did not
20 perform. And once he did that, and then the second
21 offense, which was the automobile accident, was a drug
22 offense then I mean it was Katie bar the door.

23 Q. Sure. But the prior offense that made them so angry,
24 that happened before the car accident?

25 A. It certainly did.

HEMPHILL PRIDE: CROSS BY MR. JOHNSON

-48-

1 Q. And before his injuries that resulted from the crash?

2 A. Right. But in reasonable proximity of the accident.

3 Q. Right. But still his physical and mental health
4 condition could have changed as a result of the accident?

5 A. Certainly could have.

6 Q. Okay. And in having the hearing with the court - I
7 want to go back. So you would disagree with me that that
8 issue, the issue of his - the impact of the injuries to his
9 cognitive abilities would not be material in representing
10 your client in this matter.

11 A. Well you ask me whether or not the Solicitor's office.

12 Q. Oh I'm sorry. I did not mean to. I meant I was
13 asking if you thought it was important.

14 A. Okay. I say you always take into consideration your
15 client's condition, and educational background, and
16 emotional stability. Yes, I took all of that into
17 consideration with representing Prince. I mean Mr.
18 Thrower.

19 Q. During the plea, in fact -

20 MR. HEMLEPP: If I may have a moment here, Your Honor.

21 (PAUSE.)

22 Q. When questioning by the Judge, there was a recitation
23 of the facts by Ms. McNerney. Then - Then the officer
24 testified. Then the court asked, "Okay, Mr. Thrower, does
25 that sum it up?" The Defendant said, "I take your word for

1 it, I don't know. I take your word for it."

2 "What kind of car did you have?"

3 Defendant: "To be honest, I can't remember either."

4 The Court: "You can't?"

5 Defendant: "No Sir."

6 The Court: "Did he have any head injury in the wreck
7 event?"

8 "Yes, sir. It was a pretty serious wreck."

9 And then the Court went on to view -

10 THE COURT: What page are you on?

11 MR. HEMLEPP: I'm sorry, Your Honor.

12 I didn't make reference to that.

13 MR. JOHNSON: Eleven.

14 MR. HEMLEPP: Eleven.

15 THE COURT: Okay. Thank you.

16 BY MR. HEMLEPP:

17 Q. So during the plea, your client reported to the Court
18 under oath that he didn't remember?

19 A. That's correct.

20 Q. And yet, at no time was there a Blair hearing to
21 determine his competency. Judge Miller ever made a finding
22 that he was competent to go forward, did you -

23 A. Well - Well -

24 Q. Did you make an objection to this?

25 A. Well my position at that time is that the issue of

1 competent, there was no issue of competency because that
2 had been resolved as a result of his going to the State
3 hospital.

4 And I want to make it very clear too in the record
5 that the kind of accident Prince had, he is lucky to be
6 here. He is very very fortunate to be here today. There
7 is no question about the severity, the brain damage and the
8 jaw, and the things that happened to him. But when he
9 plead, I did not move for a Blair hearing because there was
10 - I relied on the mental health professionals who said out
11 there - they said what they said as the report indicates
12 without going back over it. That was fine. That satisfied
13 me.

14 Q. Okay.

15 A. And I'm certain that is satisfied the Judge because he
16 did not ask - he did not give a Blair hearing.

17 Q. And you would agree with me that the evaluation that
18 was done pursuant to the Court order and the report that
19 was issued, that was actually - that was actually for the
20 Court. That was not on his behalf or the State's behalf,
21 that that's actually a Court's exhibit and those experts
22 would be Court witnesses where it could have a contested
23 Blair hearing?

24 A. Well you got to remember that -

25 Q. That's not part of the defense team.

1 A. Well, you remember if you look at the order I was the
2 moving party for that order. But those are people who
3 ordinarily make examinations for the State, if that's what
4 you mean.

5 Q. Yes.

6 A. Yes. And I don't necessarily give a great - I give
7 the credibility that should be given to that report when I
8 find that it is possible for that result - results to come
9 about. If I feel that the results that I got in a report
10 from a professional from the mental health was inconsistent
11 with professionally what I - If they didn't cover - cover
12 it like I thought they should of, I would have gone a step
13 further. But this is a case in which the Defendant's
14 conduct was questionable, okay, as to whether or not he
15 wanted his defense to be I didn't remember.

16 And based on that, and the way he acted, you know, he
17 was fairly engaging with me when it came time for
18 sentencing. And we sat - and I went in that room, where
19 lawyers go when they come up here and they want to talk to
20 their clients, and we stayed in there a good considerable
21 period of time, and I was not in there with a vegetable.
22 And that's not a very nice statement, but I was not in
23 there with somebody who was not talking to me and I was
24 talking to them. We had an engaging conversation about
25 sentencing.

HEMPHILL PRIDE: CROSS BY MR. JOHNSON

-52-

1 Q. Okay. But in conclusion, you would agree with me that
2 the doctor, Doctor Frierson, who did the evaluation and
3 signed off on the evaluation, he's not a part of the
4 defense team?

5 A. Uh.

6 Q. He's actually a witness for the State?

7 A. Well yes.

8 Q. For the court, for the court?

9 A. Yes.

10 Q. He is an independent witness. Not part of the defense
11 team. And given the terror of this case, my client's
12 mental health condition was very material in this case.

13 A. It's always material in every criminal case.

14 Q. Okay. Thank you.

15 MR. HEMLEPP: Mr. Pride, thank you so much. Answer
16 any questions the Attorney General may have.

17 A. Okay.

18 MR. JOHNSON: No further questions, Your Honor.

19 THE COURT: Okay. You can step down. Thank you.

20 MR. JOHNSON: The State has no further witnesses.

21 MR. PRIDE: Could I be excused, Judge?

22 THE COURT: Yes. You don't have any other?

23 MR. JOHNSON: We've got one more case.

24 MR. JOHNSON: May we approach, Your Honor?

25 THE COURT: Yes.

1 (BENCH CONFERENCE OFF THE RECORD.)

2 THE COURT: Before we adjourn, we will take a short
3 break after and kind of get the logistics.

4 Tell me again in a nutshell, you do not question
5 whether or not he was competent at the time, so the issue
6 is whether or not trial counsel Mr. Pride was competent in
7 his reputation of Mr. Thrower based on his failure to get a
8 independent - I won't call it a second one but it would be
9 - but an independent evaluation after the -

10 MR. HEMLEPP: That would be - The contention is that,
11 with all do respect, that Mr. Pride was ineffective in
12 representing his client in that given the tenor of this
13 case, the very narrow window of sentencing twenty-five to
14 thirty, the strongest defense is the defense that had been
15 maintained from the very beginning that was evident in
16 talking to the client and talking to his parents, evident
17 to the people at the Department of Mental Health, that his
18 inability to remember would effect his ability to be
19 competent by assisting him, and yet Mr. Pride went forward
20 - went forward with the plea and at the time the Defendant
21 told the Court he didn't remember, and the Court accepted
22 the plea that was not an Alford plea. It was not a No
23 Contest plea. It was a guilty plea where he - his
24 testimony is a *mens rea*, and there was no finding of
25 competency because it was never brought before the Court.

-54-

1 Had Mr. Pride withdrawn the plea, or had Mr. Pride prior to
2 that taken that into consideration to hire another expert,
3 there could have been a contested Blair hearing to
4 determine whether that was --

5 THE COURT: You say it could have been. You go back
6 and you say it could have been a contested Blair hearing.
7 You are kind of feeding off what you just said, it wasn't
8 important in this case, i.e., what Mr. Johnson said is that
9 you would need to show that it would be contested or your
10 client needs to show or you on his behalf that it would
11 have been contested, that i.e., having a report contrary to
12 the one that was relied on by Mr. Pride.

13 MR. HEMLEPP: Well, there was no report that was
14 done. And the actual findings by the Department of
15 Mental Health, the findings of the Department of
16 Mental Health were that his inability to answer the
17 questions presumed his competency. When in fact at
18 the plea it was never a finding of competency, there
19 was no question as to for the Court to make a finding
20 of competency. And he was in fact not competent at
21 the time of the plea because he was unable to remember
22 the facts. If that, then clearly there is nothing in
23 the record to support the fact that he has sufficient
24 *mens rea* to plead guilty for the charge.

25 THE COURT: Well, the report was handed up. And Mr.

1 Springs says that they find the applicant competent. So I
2 do not need to be ruling on this before we get going and
3 the Court accepted that by saying all right.

4 And its kind of yours, if I understand what you're
5 saying, at that point Mr. Pride was not competent for
6 saying something about "Your Honor, you need to review the
7 report and make your own finding."

8 MR. HEMLEPP: I agree, Your Honor. I mean the Court
9 needs to make a finding. It is not the Solicitor's offices
10 position. In fact the report isn't even part of the
11 prosecution file. It's part of the Court's file. And as
12 the Court knows, in mental health issues like this, these
13 findings are important.

14 THE COURT: All right. Well I'm going to take it
15 under advisement.

16 MR. HEMLEPP: Thank you.

17 MR. JOHNSON: Thank you, Your Honor.

18 THE COURT: All right. Before we take our break,
19 lets see what you are looking at as far as...

20 (COURT IN RECESS @ 12:18 P.M.)

21 (END OF TRANSCRIPT OF RECORD.)
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
 County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 14th day of April, 2014.

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

Wanda Nelson
 Wanda Nelson, CVR
 Certified Verbatim Reporter,
 Official Court Reporter,
 Notary Public, in and for
 The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: July 28th 2014

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Princeton A. Thrower, #300701)

C.A. No.: 2013-CP-46-0916

Applicant,)

v.)

ORDER

State of South Carolina,)

Respondent.)

FILED-RECEIVED
2014 APR 15 PM 2:51
DAVID HEMPHILL
C.C.P. & G.S.
YORK COUNTY, SC

This is a post-conviction relief application filed March 20, 2013. The case was heard April 14, 2014. Applicant was represented by W. Michael Hemlepp, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The applicant was indicted by the January 2012 term of the York County Grand Jury for Trafficking in Cocaine Base (2012-GS-46-0258). The Applicant was represented by Hemphill Pride, Esquire. On September 10, 2012, the Applicant pled guilty to Trafficking Cocaine Base, 3rd offense. The Honorable Edward W. Miller sentenced the Applicant to confinement for twenty-seven (27) years.

A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient showing for appeal on May 6, 2013. The Remittitur was issued on June 4, 2013.

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

1. "Ineffective Assistance of Counsel"
2. "Violation Due Process"

J. Rutledge Johnson

At his hearing Applicant's counsel stated the only issue for the Court's consideration was ineffective assistance of counsel in that Applicant's trial counsel failed to have an independent mental evaluation conducted on the Applicant. Applicant did not proceed on his Due Process claim. At the end of Applicant's case the State moved for summary judgment and/or a directed verdict, both of which were taken under advisement by the Undersigned. These motions are hereby denied as the Court feels compelled to make a ruling on the merits in this case.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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

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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, she 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).

Applicant's charge and conviction relating to this matter arises out of an automobile accident Applicant was involved in. At the PCR hearing held on April 14, 2014, Applicant's mother, Applicant's mother's boyfriend, Applicant, and Applicant's trial counsel, Hemphill Pride, Esq., testified.

The Applicant's mother testified that the Applicant could not remember anything relating to the night of the car accident. She testified that she was informed the Applicant had drugs with him and was facing criminal charges several days after the automobile accident. She subsequently hired Hemphill Pride, Esq. to represent the Applicant. Applicant's mother also testified that she spoke to the Applicant by telephone approximately every other day since he has been incarcerated and that Applicant does not recall anything from the night of the automobile accident.

Applicant's mother's boyfriend, Mr. Rodney Dean Neely, testified that he had a father-son type of relationship with the Applicant. He testified that the Applicant appeared to be very confused during his plea and "didn't know what was going on." On cross examination Mr. Neely testified that he did not interact with the Applicant on the day of the plea but rather observed the Applicant from sitting in the courtroom audience.

At the hearing Applicant testified that he remembers coming to court for his plea and also remembers being represented by Hemphill Pride, but he could not remember anything else about the car accident, the drugs that were found, or the plea. Applicant also testified that he does not

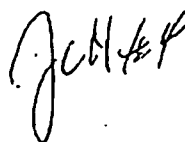
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remember the trial judge asking him any questions nor does he recall any of the conversations he had with his attorney in regards to the charge he was facing.

Hemphill Pride, Esq., counsel for the Applicant during his plea, testified that he was retained by the Applicant's mother while the Applicant was being held in the York County Detention Center. He testified that he went and met with Applicant at least three times to discuss the case and options with the Applicant. Counsel testified that the solicitor's office was "irate" over the Applicant failing out of the York County Drug Court Program. The undersigned notes that trial counsel testified that he was informed by jail staff members that they believed the Applicant was "faking it." The Court acknowledges this testimony but does not rely on such hearsay in reaching its opinion in this case. Trial Counsel testified that he moved for a mental health evaluation to be conducted on the Applicant to ensure the Applicant was competent to stand trial or enter into a plea deal. The evaluation, conducted by the South Carolina Department of Mental Health, found that:

Because competency is presumed absent evidence to the contrary, we have no reason to believe that the deficits Mr. Thrower is currently presenting are genuine or that they would impair his ability to work with his attorney if he chooses. Therefore, it is our opinion that although he does not respond to competency questions correctly, he should be presumed competent. (Page 7 of Forensic Evaluation Report.)

Trial counsel relied on the results of the mental health evaluation finding that the Applicant was presumed to be competent. The Undersigned has reviewed the "Competency to Stand Trial Evaluation" conducted on June 29, 2012, by the South Carolina Department of Mental Health, and finds that Trial Counsel had a right to rely on the results of this evaluation in carrying out his representation of the Applicant. The report did not indicate in any way that the Applicant was incompetent. Rather, Dr. Richard L. Frierson concluded in his Axis I Diagnoses that the Applicant had "Malingering of Cognitive Deficits" as well as "Polysubstance Dependence



(Cocaine, Alcohol, Cannabis) in a Controlled Environment." (Page 1 of Forensic Evaluation Report). This report states:

It was noted that Mr. Thrower used the term to be honest repeatedly during the evaluation. For example, he would state, "to be honest I have no idea - I don't know nothing." He could not state his mother's address although he was able to do so for the doctor in the Columbia Regional Care Center. He gave an erroneous number for his mother. His use of the phrase *to be honest* repeatedly is potential evidence for malingering also. (Page 6 of Forensic Evaluation Report).

The Forensic Evaluation Report went on to state:

Therefore, we are assigning a diagnosis of Malingering of Cognitive Deficits including factual and rational knowledge of how legal system functions and how criminal cases are handled in court. It is likely that his secondary gain is to avoid prosecution for his serious charge of trafficking cocaine base.

Competency is presumed unless there is evidence to the contrary. "In every criminal case, it is presumed the defendant is sane." *State v. Milian-Hernandez*, 287 S.C. 183, 336 S.E.2d 476 (1985). The defendant bears the burden of proving his lack of competence to stand trial by a preponderance of the evidence. *State v. Weik*, 356 S.C. 76, 587 S.E.2d 683 (S.C. 2002).

In this instance, the South Carolina Department of Mental Health report did not contain any information that would rebut the presumption of Applicant's competency. Rather, in the report Dr. Frierson even stated "once again, he was confronted about his responses and the fact that we would have to inform the court that he was malingering (faking). However, this did not lead to a change in his response style." (Page 6 of Forensic Evaluation Report). Trial counsel's failure to seek an additional independent evaluation of the Applicant's mental health does not render his assistance of counsel ineffective.

In *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998), the South Carolina Supreme Court held that:

4/24 #5

This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); see also *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover v. State*, supra, 318 S.C. at 498-99, 458 S.E.2d at 540.

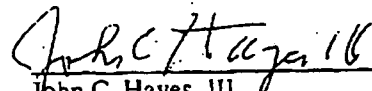
The logic the South Carolina Supreme Court used in *Bannister* is analogous to the case at hand.

The Court finds that in order to establish ineffective assistance of counsel by the trial counsel's failure to seek an independent mental evaluation, the Applicant must produce an independent mental evaluation that indicates he was incompetent at the time of entering his plea.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice. This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

York, SC
 August 15th 2014


 John C. Hayes, III
 Presiding Judge
 #6

WITNESSES
Bill Cashier
YPSOL/Kimberly

DOCKET NO. 2012-GS-46-00258

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

January 19, Term 2012

ab
ARREST WARRANT NUMBER
DIRECT INDICTMENT M-602629

THE STATE

vs.

ACTION OF GRAND JURY
TRUE BILL

PRINCETON ALEX THROWER

Paul W
Foreperson of Grand Jury
Date: 1/19/12

VERDICT

Indictment for

TRAFFICKING IN COCAINE BASE (CRACK)

SC Code: 44-53-375
CDR Code: 0452

Foreperson of Petit Jury
Date:

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

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Princeton Thrower
Defendant

Witness:
James M. Stand G.S.
C.C.C. PLS AND G.S.
James M. Stand G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN COCAINE BASE (CRACK)

On or about July 9, 2011, the Defendant, Princeton Alex Thrower, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, 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 ten (10) grams or more but less than twenty-eight (28) grams of cocaine base (crack), as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

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



ASSISTANT SOLICITOR

SOUTH CAROLINA

York, Jul
VS.

Princeton Alex Thrower

BLACK Sex: M Age: 28
SS#

Address: York, SC 29745-0000
City, State, Zip: SID#

DL# *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 Base, 10-28 grams, 3rd offense

in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0452

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

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.

ATTORNEYS: J.B. Spang 13568 Princeton Thrower Reshull 4569
Spring, E.B. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 27 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. Since 9/1/11
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Recipient: _____

*Fine:	\$	\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100-
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25-
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150-
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5-
3% to County (if paid in installments)		\$
TOTAL		\$ 280-

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4600258

A/W#: DIM602629

Date of Offense: 7/9/2011

S.C. Code. § : 44-53-375

CDR Code #: 0452

ORIGINAL

SENTENCE SHEET

CONVICTED OF or PLEADS

Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

Negotiated Sentence, Recommendation by the State.

Attorney for Defendant Reshull 4569
SC Bar#

State Department of Corrections, County Detention Center,
not to exceed _____ years
and/or payment

CONSECUTIVE to sentence on:
§ 24-13-40 to be calculated and applied
§17-25-135.

PTUP _____
days/hours Public Service Employment

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

Appointed PD or appointed other counsel,
§ 47-12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Aminah Hardy
SCCA/217.(03/2011)

Presiding Judge Edw. W. McEl
Judge Code: 2130
Sentence Date: 9-10-12