

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. Supreme Court

Honorable Perry M. Buckner, III

Appellate Case Number 2014-002155

DeAngelo Mickell,.....Petitioner

v.

State of South Carolina,.....Respondent

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) CASE NO.: 2011-GS-07-01538

DEANGELO MICKELL,)
)
 APPLICANT,)
)
 vs.) TRANSCRIPT OF RECORD
)
 THE STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
)

TELEPHONE HEARING HELD ON MAY 7TH, 2014
HEARING HELD AT COLLETON COUNTY COURTHOUSE ON MAY 8TH, 2014
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

MR. JIM BROWN, ESQUIRE
Attorney for the Applicant

MS. ASHLEY McMAHAN, ESQUIRE
Attorney for the State of South Carolina

MR. WHITSETT, ESQUIRE,
SLED Attorney

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Attorney for the County of Beaufort

Rebecca H. Hill
Official Court Reporter

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1 THE COURT: Good afternoon, this is Judge Buckner. I
2 have Becky Hill, my resident court reporter, in my office,
3 along with my law clerk, Wilder Harte, and my JOE program
4 participant, Barnwell Fishburne.

5 I have scheduled two motions for 2:00 p.m. That would
6 be two motions to quash a subpoena. One on behalf of
7 Beaufort County, represented by Ms. Coppage; and one on
8 behalf of SLED, who is represented by Mr. Whitsett. Who is
9 on the phone, please?

10 MS. COPPAGE: Your Honor, this is Allyson Coppage with
11 Beaufort County.

12 THE COURT: Good afternoon, Allyson; who else?

13 MS. MCMAHAN: Ashley McMahan

14 THE COURT: Good afternoon, Ashley.

15 MR. WHITSETT: Agent Whitsett with SLED.

16 THE COURT: Wonderful. It appears that I have Jim
17 Brown for the Applicant. I have SLED. I have Beaufort
18 County, and I have Ashley McMahan for the State of South
19 Carolina.

20 My court reporter has the caption of this case. It is
21 a 2011 post-conviction-relief matter from Beaufort; 2011 at
22 01538, DeAngelo Mickell, who is the Applicant, vs. the State
23 of South Carolina. Mr. Mickell is represented by James
24 Brown, and The State of South Carolina is represented by
25 Ashley McMahan.

1 I'm going to take the motions in the order that I
2 received them. The first motion that I received was yours,
3 Ms. Coppage, which is a motion to quash subpoena. Because
4 of time, I am not going to allow anyone to argue more than
5 five minutes. Now, I'm going to give an argument to Ms.
6 Coppage. I will give an argument to Ms. McMahan, and then
7 to Mr. Brown. And Mr. Brown, I will let you go after I've
8 heard from both the moving party and the State, so that you
9 get one argument in reply to both. I'll do the same thing
10 for the motion to quash by SLED, which will be the second
11 motion we hear. Ms. Coppage, do you understand?

12 MS. COPPAGE: Yes, Your Honor.

13 THE COURT: Mr. Brown, do you understand?

14 MR. BROWN: Crystal clear, yes, sir.

15 THE COURT: Wonderful, Mr. Brown, then we may get along
16 today. All right. Let me make sure I have both motions in
17 front of me, because I have a lot of paper. Mr. Whitsett,
18 do you understand the conditions of argument?

19 MR. WHITSETT: Yes, Your Honor.

20 THE COURT: Wonderful. All right. Finally, Ms.
21 McMahan, do you understand the conditions of argument?

22 MS. MCMAHON: Absolutely.

23 THE COURT: Wonderful. Ms. Coppage, Becky can hear
24 you, but please speak up. I've turned the speaker all the
25 way up on my phone. Y'all know I talk loud because I'm

1 deaf. I've shot a shotgun all of my life, but some of you
2 have meek voices. I expect my court reporter to be able to
3 hear you just as you can hear me right now. Please remember
4 no one interrupts a lawyer during their argument. You will
5 each get a turn.

6 Ms. Coppage, you have the floor. Happy to hear from
7 you on your motion to quash subpoena.

8 MS. COPPAGE: Thank you, Your Honor. Can you hear me
9 okay?

10 THE COURT: I can hear you loud and clear, Allyson.

11 MS. COPPAGE: Thank you. Your Honor, my motion is
12 primarily based on your Order dated April 16th, 2013, in
13 which discovery was pursuant to 17-27-150, in the Court's
14 discretion. The subpoena that was issued as to Magistrate
15 Fitzgibbons to appear on May 7th, 2014, requests that
16 testimony and the production of documents. Based on that
17 alone, I think the motion should be quashed, but absent
18 quashing the motion on that, I believe that the Court stated
19 with specificity that the Applicant failed to meet the
20 requirements of In Re: Whetstone. Specifically, the
21 testimony of Beaufort County Magistrate Fitzgibbons should
22 not be required to testify over a case in which he
23 previously presided, unless the testimony is critical and
24 may be obtained by no other means.

25 Counsel for Mr. Mickell has failed to show that the

1 testimony is critical and not obtainable from another
2 source. I believe that the warrant itself is the best
3 evidence fact to be proved by the testimony of the judge,
4 and there is a presumption that the judge should not be
5 called for information that can be obtained by another
6 source.

7 This information that is being requested by the
8 subpoena could be obtained either from a records custodian
9 or the requesting officer of the warrant. I think that
10 these two grounds alone are sufficient to quash the motion,
11 and I'm gonna go with your five-minute rule and stay very
12 brief on this point, Your Honor.

13 THE COURT: First of all, Ms. Coppage, when I ruled
14 before, I had before me a request by Mr. Brown for discovery
15 in this case that dealt with the deposition of a SLED
16 officer, deposition of a sheriff's department employee, and
17 it also dealt with, I assume, this same magistrate; am I
18 correct?

19 MS. COPPAGE: That is my understanding, Your Honor.

20 THE COURT: All right. So you believe my Order of
21 April 2013 covers this situation and for that reason alone I
22 should quash the subpoena. You concede, Ms. Coppage, that
23 17-27-150 does allow, under certain circumstances, some
24 discovery in a post-conviction relief proceeding; do you
25 not?

1 MS. COPPAGE: Yes, sir, I do believe it is in the sound
2 discretion of Your Honor to allow some discovery. And I do
3 want to say that I did not rely solely on your Order; I
4 believe your Order was very specific that there was to be no
5 discovery as to the magistrate; but secondarily, if you do,
6 in your discretion, allow discovery, I do not believe the
7 magistrate should be the party that is subpoenaed because we
8 don't reach the threshold requirements of In Re: Whetstone.

9 THE COURT: And you believe the second prong of
10 Whetstone, which you believe, of course, can be obtained by
11 no other means and is not met in this case; is that correct?

12 MS. COPPAGE: Yes, Your Honor.

13 THE COURT: Thank you very much, Ms. Coppage. I
14 believe I understand your argument completely. Ms. McMahan?

15 MS. McMAHAN: Your Honor, I adopt Ms. Coppage's
16 argument.

17 THE COURT: Good job, Ms. McMahan. Succinct and to the
18 point.

19 THE COURT: Mr. Brown, your time begins now on this
20 motion.

21 MR. BROWN: Yes, sir. Briefly in response, Your Honor.
22 Your Honor pointed out that the motion that was ruled on was
23 a motion for discovery, specifically for depositions power.
24 It was actually requested in an effort to reduce the in-
25 court time for testimony and any inconvenience that would go

1 to those witnesses. Any actual Whetstone issues were not
2 presented at the hearing by me, so I can't argue that I met
3 the threshold there, because I didn't actually put up
4 argument on that issue. I didn't suggest, because there has
5 been a motion to quash the subpoena at that point, that
6 there is no ruling on, because this is not the first time
7 this judge was subpoenaed. That's my response as to the
8 prior Order motion.

9 THE COURT: Let's talk about whether or not you comply
10 -- you agree that In Re: Whetstone, and tangentially there's
11 also a real older case that I'm sure you've looked at, Mr.
12 Brown, from 1893, State v. Talbert. I'm sure you've
13 reviewed that, a good Berkeley County case. Tell me your
14 position in regards to the second argument that I hear Ms.
15 Coppage, and adopted by Ms. McMahan, made and that is that
16 you don't comply with the criteria of what's known to permit
17 this subpoena and that I should quash it, and for that
18 reason, in addition to the argument they've made on my prior
19 Order.

20 MR. BROWN: Your Honor, as to the credibility from any
21 other source, I can't initially say they were pled to the
22 Clerk as a magistrate order, all of copies -- all documents
23 related to this subpoena, which there is a provision that
24 provides how long those documents are to be kept. In
25 response, we received a notification that all those

1 documents have been destroyed.

2 And those documents that I'm seeking to authenticate is
3 a document that is not contained in either trial counsel's
4 file, which means that there is no existing copy or original
5 of those documents that I'm aware of anywhere on the face of
6 the earth.

7 THE COURT: Hold on a second, Mr. Brown, before you
8 want to tell me that it's not available. What is the
9 document and where did you find it?

10 MR. BROWN: It is a signature page providing the
11 appropriate scope of the search as allowed by the
12 magistrate. It is different from the ones that are
13 available, because it does not allow permission to search
14 the trunk of the car in which the substantial amount of
15 trafficking cocaine was found that in turn led to my
16 clients' conviction.

17 The documents that are available show a handwritten
18 modification. In other words, the only ones that are
19 available, someone has written in that there is permission
20 to search the trunks of the cars. Now, I can't concede that
21 those are originals, because I can't find those originals.
22 But Your Honor, mine has an original blue signature from the
23 judge who told me in person, to my face, with my associate
24 attorney there that that was in fact his signature; and in
25 fact, counsel for the county, the magistrate, Mr. Gruber,

1 agrees that that is the judge's signature on the one that
2 does not give sufficient authority for the search that led
3 to my client's conviction.

4 THE COURT: All right. Ms. Coppage, I need to ask you
5 now, was an effort made in regards to Judge Fitzgibbons to
6 have him do an affidavit as to authentication of the
7 signature on this document that Mr. Brown says is critical
8 to his proceeding on this application?

9 MS. COPPAGE: I know that conversations have been had
10 between Mr. Brown and Mr. Gruber as to whether or not he
11 would be willing to do an affidavit. However, because we
12 still believe that the document may be authenticated as a
13 public record, by the records custodian, or the requesting
14 officer, we have not gone so far as to do that at this time,
15 Your Honor.

16 THE COURT: Let me ask you this, under whose theory is
17 this -- do you have a copy of the document, Ms. Coppage?

18 MS. COPPAGE: No, sir, I do not.

19 THE COURT: Well, how would you know whether or not it
20 could be authenticated as a public record if you don't have
21 it?

22 MS. COPPAGE: I believe that the investigating officer
23 may be able to authenticate it, Your Honor.

24 THE COURT: It is your understanding, you've talked to
25 the investigating officer, who can authenticate the document

1 that Mr. Brown says is critical and cannot be obtained by
2 any other means; is that what you're telling me?

3 MS. COPPAGE: No, sir. I have not spoken to the
4 investigating officer.

5 THE COURT: Well, how can you tell me that, that you
6 believe this, or is this your belief by what you've been
7 told by other people?

8 MS. COPPAGE: We have no reason to believe that it's
9 not authentic, Your Honor.

10 THE COURT: Mr. Brown, do you have any witness that's
11 going to say the document is not authentic?

12 MR. BROWN: We assert it is authentic, Your Honor. Our
13 argument is ---

14 THE COURT: Hold on a second, Mr. Brown; I'm asking
15 questions. I'm not asking for argument yet. I'm
16 interrupting you. Ms. McMahan, does the State of South
17 Carolina take a position on the authenticity of this
18 document? Are you willing to stipulate to the authenticity
19 of this document? Are you willing to stipulate to the
20 authenticity?

21 MS. McMAHAN: I'm confused. I'm not sure -- are we
22 talking about the search warrant that Mr. Brown brought with
23 him to Court?

24 THE COURT: See, Ms. McMahan, I don't know either.
25 That's why I asked Mr. Brown the question. Mr. Brown, have

1 you sent this document to Ms. McMahan?

2 MR. BROWN: Your Honor, I have not. When discovery was
3 denied, I figured we could exchange documents during the
4 proceeding.

5 THE COURT: I see. Well ---

6 MR. BROWN: I think discovery would've helped. I know
7 you didn't ask that.

8 THE COURT: Well, Mr. Brown, do you have a fax machine
9 in your office?

10 MR. BROWN: I absolutely do.

11 THE COURT: Ashley, give me your fax number.

12 MS. McMAHAN: 803 ---

13 THE COURT: Write it down, Jim, because you're getting
14 ready to fax it to me and to her.

15 MR. BROWN: Yes, sir. We also have a scanner if you'd
16 like for us to e-mail it.

17 MS. COPPAGE: That would be great if you could e-mail
18 it.

19 THE COURT: You may e-mail it as well. You know my e-
20 mail address, Jim.

21 MR. BROWN: Absolutely, and my associate attorney is
22 right now getting up from her seat right now to go do that.

23 THE COURT: Ashley, do they have your e-mail address?

24 MS. McMAHAN: Yes, sir.

25 THE COURT: Now, hold on. Do you have Allyson's e-mail

1 address, Jim?

2 MR. BROWN: Yes, sir. And Mr. Gruber's -- I don't
3 think Mr. Whitsett has gotten an e-mail from us, because I
4 know he is brand new. He's like on his third day on the job
5 or something. Let me try to get that e-mail address, also.

6 THE COURT: I'm only requiring you to send it to
7 Allyson and Ashley and to me, at this point, by e-mail, so
8 we can take a look at it.

9 MR. BROWN: Yes, sir. And it's scanned as black and
10 white, but, again, mine does have a blue signature from the
11 judge.

12 And Judge, I'm sorry, you had asked where it came from?

13 It was left at the house searched in compliance with
14 the magistrate.

15 THE COURT: Ashley, would you rather have it e-mailed
16 to your computer?

17 MS. McMAHAN: Yes, sir.

18 THE COURT: All right. How about you, Allyson?

19 MS. COPPAGE: Yes, sir. I'm sitting in front of my
20 computer.

21 MR. BROWN: Your Honor, you want us to send it to
22 Wilder's e-mail or yours?

23 THE COURT: Wilder is in my office with me. I want to
24 take a look at this document, which is the subject matter of
25 this motion, which it appears Ms. McMahan nor Ms. Coppage

1 have seen at this point.

2 MR. BROWN: Yes, sir, that's true. And while that's
3 going on, Your Honor, I did speak with Mr. Gruber about an
4 offer to authenticate -- a certificate of authenticity as
5 part of the acknowledgement prong at 902-8 and they are more
6 than willing to accept that.

7 (Brief pause.)

8 MR. BROWN: Your Honor, I'm going to step away to help
9 my associate attorney with these e-mail addresses.

10 THE COURT: Absolutely, Mr. Brown. We are all waiting
11 on you to send it.

12 (Brief pause while e-mail is being sent to respective
13 parties.)

14 MR. BROWN: I'm back, Your Honor. We are trying to get
15 it sent out.

16 THE COURT: Ashley, you and Allyson let me know when
17 you've gotten it, because I want you to answer my question
18 for purposes of this hearing; Ashley, do you understand?

19 MS. McMAHAN: Yes, sir.

20 THE COURT: All right. Jim, I have it; I hope they do.

21 MR. BROWN: Yes, sir.

22 MS. McMAHAN: Your Honor, I believe the person who can
23 best authenticate this would be Chris Cankowski who is the
24 affiant on this piece of paper. He is a master sergeant
25 with Beaufort County.

1 THE COURT: Boy, you can read better than I can.
2 Ashley, you can read the signature?

3 MS. McMAHAN: Yes, sir. I just happen to know that's
4 his signature because I've been in contact with him before
5 on this case.

6 THE COURT: All right. Well, what I'm showing is a
7 signature that says "affiant," and then a signature of a
8 judge, and then a date; is that what you're looking at?

9 MS. McMAHAN: Yes, sir.

10 THE COURT: So the judge, you tell me, is the same
11 judge that is the subject matter of this motion, Judge
12 Fitzgibbons?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: All right. Do you agree, Ms. Coppage, that
15 the affiant is someone who Ms. McMahan has identified?

16 MS. COPPAGE: I am not as great at reading that
17 signature, but I would agree that it was affirmed by an
18 officer.

19 THE COURT: All right. And that officer is still
20 employed by Beaufort County?

21 MS. COPPAGE: He was at that time. I would have to
22 check with the status of his employment.

23 THE COURT: Ashley, you've talked with him recently?

24 MS. McMAHAN: I talked to him a couple of months ago,
25 yes, sir.

1 THE COURT: And he was still employed with Beaufort
2 County a few months ago?

3 MS. McMAHAN: As far as I'm aware, yes, sir. I have
4 communicated with him by e-mail at Beaufort County.

5 THE COURT: So you believe, then, that the officer
6 could testify as to the authenticity, who you understand to
7 still be an employee of Beaufort County?

8 MS. McMAHAN: Yes, Your Honor. Even if he is not an
9 employee of Beaufort County, if he is still located within
10 South Carolina, he can still be subpoenaed.

11 MS. COPPAGE: Ashley, I apologize for interrupting you.
12 He is still employed with Beaufort County. I just confirmed
13 that he is still employed with Beaufort County

14 THE COURT: Thank you, Allyson; that answers my
15 question. All right, Jim, I'm ready to hear back from you
16 now. It appears that you're telling me that the second
17 prong of Whetstone, that it can be obtained by no other
18 means other than subpoenaing the judge is not factually
19 correct, based on what I've just been told.

20 MR. BROWN: In response, Your Honor, I'm looking to
21 authenticate the judge's signature and not the signature of
22 the affiant or anything else, just that that is the judge's
23 signature. I don't think he could be qualified as an expert,
24 considering that I have read the entire 850-page file of the
25 prosecutor, that they gave me as their entire file; it does

1 not have this document in there. I actually don't believe
2 that Officer Cankowski can authenticate it and I think it's
3 speculation that he could, given the absence of any
4 knowledge of this, except by me, before 10 minutes ago.

5 MS. COPPAGE: Your Honor ---

6 THE COURT: All right. Hold on. Nobody is going to
7 start jumping in and talking. Mr. Brown has the floor
8 unless I ask you a question and direct it to you.

9 Now, Mr. Brown, I understand that you feel like you
10 know, just as apparently Ms. Coppage thinks, both of y'all
11 have been elected judge, and can decide what can and what
12 cannot be authenticated, but that is neither one of your
13 jobs. That happens to be the Courts.

14 Now, what I'm being told is, certainly, this officer
15 can authenticate his own signature, and what you're trying
16 to do is seek the admission, you told me, of the document,
17 and what we're here on is whether or not you have to
18 subpoena the judge. You tell me you have no witness that
19 will testify that the signature is not authentic, and all
20 you wish to do is to authenticate this document, which
21 you've sent us; is that correct or not?

22 MR. BROWN: I can't answer that with a yes or no.

23 THE COURT: Why not?

24 MR. BROWN: Because I seek to authenticate that that is
25 what the judge signed.

1 THE COURT: Anything else you want to tell me, Mr.
2 Brown?

3 MR. BROWN: No, sir. But I would like to proffer this
4 document in relation to this argument at the appropriate
5 time.

6 THE COURT: Well, I have it on my e-mail. Ms. McMahan
7 has it on her e-mail. Ms. Coppage has it on her e-mail, and
8 I'll be happy -- I'm sending it to my law clerk. I will
9 have my law clerk make a copy for the court reporter and
10 have her make it as an attachment if there is no objection
11 from anyone that is a party to this hearing; Ms. Coppage?

12 MS. COPPAGE: No, objection, Your Honor.

13 THE COURT: Ms. McMahan?

14 MS. McMAHAN: None, Your Honor.

15 THE COURT: Very well. I've just sent it to my law
16 clerk and will have him make a copy and give to Becky,
17 without objection.

18 (COURT EXHIBIT NUMBER ONE, SIGNATURE PAGE, IS RECEIVED
19 INTO EVIDENCE.)

20 THE COURT: It appears to me, Ms. McMahan, what you
21 seek to do is to subpoena this magistrate, Judge
22 Fitzgibbons, for purposes of this post-conviction relief
23 proceeding. I think everyone agrees that In Re: Whetstone
24 deals with when a judge might be compelled to testify
25 regarding a case in which he previously presided over a

1 proceeding.

2 The older case actually did involve an arrest warrant,
3 which is why I referenced Talbert to you. However, I do not
4 believe that you've convinced this Court that you cannot
5 obtain this authentication by other means. Therefore, your
6 motion, Ms. Coppage, is respectfully granted. Please, Ms.
7 Coppage, you will prepare an Order. I'm granting your
8 motion to quash the subpoena.

9 I base it on two grounds. Mr. Brown is correct when he
10 says that I did not address the merits. I was dealing with
11 a general motion for discovery in 2013, and discovery in a
12 non-capital post-conviction relief proceeding is permitted
13 to some extent under 17-27-150. However, I certainly dealt
14 with the issue concerning Judge Fitzgibbons; and Whetstone
15 deals with the issue of compelling a judge to testify. The
16 criteria are that it has to be -- the testimony has to be
17 critical and that it can be obtained by no other means.

18 I don't see that any showing has been made to me
19 sufficient to convince this Court that Judge Fitzgibbons'
20 knowledge of anything involving whether or not there was
21 effective assistance of counsel is beyond this document. I
22 have no showing that this document constitutes a forgery,
23 and because of that, I feel that Mr. Brown can obtain this
24 information by other means. I, therefore, quash the
25 subpoena.

1 I'll expect your Order to be consistent with the ruling
2 I've placed on the record. You will prepare it and copy all
3 the parties, both Ms. McMahan and Mr. Brown. You will send
4 it to me at Post Office Drawer 470, Walterboro, 29488. I'll
5 expect your Order within 7 days of today and please include
6 a self-addressed, stamped envelope with sufficient postage
7 affixed thereto for the return of the Order.

8 At Mr. Brown's request, I am making a copy of the
9 document he e-mailed into me and to you a part of the record
10 of this hearing, without objection, which the Order should
11 reflect so it's clear what I'm ruling on and what I've been
12 told are the conditions of the people on the document, that
13 is, Mr. Fitzgibbons, and the name of the officer who is
14 still employed with Beaufort County; you understand my
15 ruling, Ms. Coppage, for the purposes of preparing the
16 Order?

17 MS. COPPAGE: Yes, Your Honor, thank you.

18 THE COURT: Any questions on the proposed Order
19 procedure from the State of South Carolina?

20 MS. MCMAHAN: No, Your Honor.

21 THE COURT: Any questions on the proposed Order
22 procedure from counsel for the Applicant?

23 MR. BROWN: Just want to make clear that the ---

24 THE COURT: I'm not asking for anymore argument. I'm
25 talking about a proposed Order. Do you have a question

1 about that?

2 MR. BROWN: Well, will it reflect that Officer
3 Cankowski is available for testimony?

4 THE COURT: That was not discussed. He is still
5 employed with Beaufort County, according to Ms. Coppage, and
6 the Order will reflect what was said, Mr. Brown, on the
7 record. Any questions about the proposed Order procedure,
8 other than that?

9 MR. BROWN: No, sir.

10 THE COURT: We will now move to the second motion,
11 which is SLED's motion. Hold on and let me get a copy of
12 it.

13 (Brief pause as The Court obtains documents.)

14 THE COURT: All right. Mr. Whitsett, are you still
15 there?

16 AGENT WHITSETT: I am, Your Honor.

17 THE COURT: Wonderful. I have your motion to quash the
18 subpoena in front of me. Happy to hear from you at this
19 time.

20 AGENT WHITSETT: Thank you, Your Honor. May it please
21 the Court? I can be extremely brief in my arguments. The
22 two grounds to quash this subpoena, the first is the failure
23 of the form of the subpoena itself, as I read Rule 45, and
24 it is (a)(1)(d).

25 THE COURT: Yes, sir. The little known paragraph

1 45(a)(1)(d), which states set forth the text of subdivision
2 c and d of this rule.

3 AGENT WHITSETT: That is correct, Your Honor. I
4 believe this rule requires strict adherence and the complete
5 current versions of c and d are not contained in this
6 subpoena.

7 THE COURT: All right. So you believe the subpoena
8 violates the rule because it doesn't comply with 45
9 (a)(1)(d)?

10 AGENT WHITSETT: That is correct, Your Honor

11 THE COURT: All right.

12 AGENT WHITSETT: The second ground also relates to the
13 discovery issue that it is my understanding that discovery
14 has not been authorized, or has been, in fact, prohibited,
15 and the subpoena also commands a records custodian from SLED
16 to produce certain documents at the hearing. We believe
17 that is prohibited at this time, and as such would
18 constitute an undue burden under 45(d)(1).

19 THE COURT: Now, Mr. Whitsett, let me ask you this, I'm
20 assuming SLED's involvement -- I'm actually going to ask Mr.
21 Brown, or I might could ask Ms. McMahan, although they both
22 are probably familiar with the transcript. SLED's
23 involvement here on records on chain of custody would be for
24 the testing of some contraband; is that correct?

25 AGENT WHITSETT: That is certainly my understanding,

1 Your Honor

2 THE COURT: All right. In all cases in which I've had
3 SLED canvass on what happened was -- although there is
4 certainly a record made, I want to make sure I understand
5 this request, and I can address this to Mr. Brown if you're
6 not familiar, but I want you to generally tell me your
7 knowledge. Is there any record kept by SLED, other than the
8 normal chain of custody receipt, which is normally when the
9 alleged substance is sent back to a requesting agency,
10 normally a law enforcement agency, then there is a sign-off
11 by people at SLED who have handled it and then resealed it.
12 Is there any record kept in that to your knowledge?

13 AGENT WHITSETT: To my knowledge, no, Your Honor.

14 THE COURT: All right. So you believe that on the
15 basis of 45(a)(1)(d), and on the basis of 45(c)(1), because
16 the subpoena fails to avoid imposing an undue burden -- you
17 know, it's very true, Mr. Whitsett, that the burden, or
18 expense of discovery, can outweigh any benefit and the party
19 seeking discovery has to have had opportunity to obtain the
20 information from any other source. I don't know what Mr.
21 Brown has, but he is asking, as I understand it, that a
22 subpoena for any records on chain of custody that are in the
23 possession of SLED; is that your understanding as well?

24 AGENT WHITSETT: Yes, Your Honor,

25 THE COURT: Anything else you want to tell me?

1 AGENT WHITSETT: No, Your Honor.

2 THE COURT: All right. Ms. McMahan, happy to hear from
3 you. SLED is moving to quash the subpoena that was served
4 upon their custodian on the grounds that he has alleged to
5 me. Happy to hear from you.

6 MS. McMAHAN: Your Honor, a few things. First and
7 foremost, because this was a State Grand Jury investigation,
8 the actual file is housed here in the AG's office.

9 THE COURT: It's housed in the Attorney General's
10 office?

11 MS. McMAHAN: Yes, Your Honor, because it's part of the
12 underlying State Grand Jury investigation. I actually
13 brought it to court the last time we were at court.

14 THE COURT: Did you give a copy of that to Mr. Brown,
15 at my request?

16 MS. McMAHAN: Yes, sir. He was allowed to go through
17 it. And I've given him a copy of it on CD, also.

18 THE COURT: Speak up a little bit for us. We're having
19 a hard time hearing you.

20 MS. McMAHAN: I'm sorry. I backed away from my phone.
21 The original file, the SLED investigative file, I brought to
22 court with me the last time we were in court. You
23 instructed Mr. Brown to sit back in the courtroom and go
24 through it. At the same time, I gave him a CD with stamped
25 copies of what is in that file.

1 Now, I didn't make the CD and I had nothing to do with
2 this investigation, nor did I prosecute it. That's why I
3 got this disclosure Order to allow Mr. Brown access to this
4 file. I still have the file if he wants to go through it; I
5 can bring it to Court. He is more than welcome to go through
6 it if he wants to again.

7 THE COURT: All right. So in telling me that, now, Ms.
8 McMahan, are you telling me that you believe that file
9 contains any and all custody records, or records of chain of
10 custody, that could involve anyone in the chain who is
11 employed with SLED?

12 MS. McMAHAN: I can't speak for the large quantity. I
13 would have to go through each one, but I know there were
14 several drug purchases done and there were analysis request
15 forms in some of these, and photos of the drugs that were
16 purchased. As to where the drugs are now, I don't know. I
17 would assume they would have been consumed in testing, but I
18 do have the lab reports, and I have certificates for chain
19 of custody on one.

20 THE COURT: I'm not asking you about where the drugs
21 are. I'm asking you whether it's your opinion that the
22 entire chain of custody documents are contained within the
23 file that you've already provided to Mr. Brown.

24 MS. McMAHAN: I am under the opinion that the vast
25 majority of it is probably here. I have not had the

1 opportunity to look through the file yet. I'm about a third
2 of the way through.

3 THE COURT: You know, Ms. McMahan, it's the funniest
4 thing about lawyers; you sound like Mr. Brown. You can't
5 answer a judge's question yes or no. So the answer is you
6 don't know; is that correct?

7 MS. McMAHAN: I don't know.

8 THE COURT: All right. Tell me anything else you want
9 to tell me.

10 MS. McMAHAN: Your Honor, that's it. I'll be happy to
11 bring all of it to Court tomorrow and let Mr. Brown look
12 through the file. I can pull up the ones I know were drug
13 buys.

14 THE COURT: What all was he charged with, Ashley?

15 MS. McMAHAN: Mr. Mickell was charged with conspiracy
16 to traffic greater than 400 grams, and then traffic, 200 to
17 400. He pled to 28 to 100.

18 THE COURT: So he pled to the lesser trafficking
19 offense?

20 MS. McMAHAN: Yes, sir.

21 THE COURT: And what happened to the conspiracy?

22 MS. McMAHAN: That's what he pled to. He pled to both
23 of them.

24 THE COURT: So he pled to conspiracy and trafficking 28
25 to 100?

1 MS. McMAHAN: Yes, Your Honor.

2 THE COURT: All right. Anything else you want to tell
3 me in regards to SLED's motion to quash the subpoena, on
4 behalf of the State of South Carolina?

5 MS. McMAHAN: None, Your Honor.

6 THE COURT: Mr. Brown, happy to hear from you.

7 MR. BROWN: Your Honor, very succinctly. The only
8 reason I need these documents is the drugs that they
9 attributed to him came from the car at issue in the search,
10 because we don't do paragraph by paragraph admission or
11 denials like in a true civil summons and complaint, there's
12 no opportunity to whittle these facts down, and if that's
13 not an issue, I don't need the documents, as that's all I'm
14 trying to prove.

15 THE COURT: All right. Then, let me ask Ms. McMahan a
16 question. Ashley, can the State stipulate that as to the
17 drugs, which formed the subject matter of this case, or of
18 his plea, at least, that they were located in the trunk of
19 the car that was searched? Or are you not in a position at
20 this time to answer that question?

21 MS. McMAHAN: I'm not in the position until I get to
22 that point.. If you can allow me just a few minutes, I think
23 I can find that folder.

24 THE COURT: I understand and I certainly would be
25 willing to do that. How much time do you need, Ashley?

1 MS. McMAHAN: I've got the folder right here; one
2 second.

3 (Brief pause while Ms. McMahan reviews file.)

4 MS. McMAHAN: Okay. I can stipulate that inside the
5 trunk of the car, there was a powder bottle (sic), two clear
6 plastic bags, a prada bag. Inside the prada bag contained
7 additional scales, a white plastic container with Ziploc
8 bags. A clear plastic container with a quantity of white
9 powder in brick form. A clear plastic container of rock
10 substances; another clear plastic container GPM. There also
11 was a white box containing a quantity of cut pennies and
12 straws, a digital scale, a Crown Royal bag, another Crown
13 Royal bag containing a sifter, spoons, scissors, and
14 toothbrushes, and another box of clear bags. So the white
15 powder brick form was, in fact, found in the trunk. As to
16 what the weight of that was -- if you give me one second,
17 let me see if I can find the lab report. Give me one
18 second.

19 THE COURT: Well, another way to ask this questions was
20 anything else found in the way of contraband, or drugs; I
21 assume was this cocaine, crack or powder?

22 MR. BROWN: It was powder cocaine.

23 THE COURT: Powder cocaine; was any powder cocaine
24 found anywhere other than in the trunk?

25 MS. McMAHAN: Yes, Your Honor, I believe there was some

1 marijuana found inside the house.

2 THE COURT: But he didn't plead to marijuana, and
3 that's not the subject of this PCR.

4 MS. McMAHAN: Here's the chain on the clear plastic
5 container of white substance. Here's the drug analysis
6 report. My apologies, Your Honor, some of these officers
7 have pretty bad handwriting. Oh, here we go: large, white
8 brick of powder. Yes, I can stipulate that the brick powder
9 taken from the car was what was used in the underlying
10 conviction in the charge.

11 THE COURT: So you could stipulate that the contraband
12 came from the trunk of the car?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: Well, Mr. Brown, I assume that moots your
15 motion; is that correct?

16 MR. BROWN: I will withdraw my subpoena in light of
17 that confession.

18 THE COURT: Well, I'm sure that just warms Mr.
19 Whitsett's heart after we've spent 45 minutes in a hearing.
20 Mr. Whitsett, I'm putting on the record that the motion was
21 withdrawn from Mr. Brown. Therefore, I won't need to rule
22 on it, and I want to thank you for your kind patience while
23 we waited to get to the bottom of this.

24 AGENT WHITSETT: Thank you, Your Honor.

25 MS. COPPAGE: Judge Buckner?

1 THE COURT: Yes, who is this?

2 MS. COPPAGE: This is Allyson Coppage. In light of the
3 stipulation by the State, we have Officer Teo (sic) who is
4 also our records custodian. The stipulation would take care
5 of his subpoena also if Mr. Brown is willing to release him
6 from his subpoena.

7 THE COURT: Mr. Brown, are you willing to release him
8 from the subpoena, also, in light of the State's
9 stipulation?

10 MR. BROWN: Absolutely.

11 THE COURT: Do you hear that Ms. Coppage? My court
12 reporter has taken it down.

13 MS. COPPAGE: Thank you, Your Honor.

14 THE COURT: Ashley, I will see you and Mr. Brown on
15 your motion to dismiss in Colleton County tomorrow. Thank
16 you all for your time and patience. Have a nice day.

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1 THE COURT: I thank you folks from the South Carolina
2 Department of Corrections for being here. I assure you that
3 I will not waste your time.

4 This is 2011-07-01538. This is DeAngelo Christopher
5 Mickell, who is the Applicant, vs. the State of South
6 Carolina. Present before me is the Applicant, along with
7 representatives of the South Carolina Department of
8 Corrections, and his attorney, James Brown. Present for the
9 State of South Carolina is Ms. Ashley McMahan.

10 I understand that what is scheduled for today is the
11 State's motion to dismiss. Therefore, Ms. McMahan, you now
12 have the floor. I'm happy to hear from you.

13 MS. McMAHAN: Yes, Your Honor. The State filed this
14 motion back in 2013 ---

15 THE COURT: Hold on, Ashley. Bring your file and come
16 up here. Your voice, when you hold your head down -- you
17 can use my rostrum; turn it around. Gerald will do that for
18 you. That way you can put your file on the rostrum. Tap it
19 for me, Gerald, to make sure it's on.

20 (Bailiff adjusts the rostrum for the State.)

21 MS. McMAHAN: My apologies, Your Honor. I forgot that
22 I need to be very loud with you.

23 THE COURT: Lawyers like to look down. You don't
24 realize that, because you and Mr. Brown -- you both always
25 have a file and you're always constantly trying to look at

1 it or your notes. And when you look down, that's when Becky
2 looks at me, because you don't realize what you're doing is
3 speaking very softly. So we want to make sure we can hear
4 you. Go ahead.

5 MS. McMAHAN: Your Honor, I have a case that I would
6 like to hand up.

7 THE COURT: Have you given Mr. Brown a copy?

8 MS. McMAHAN: (HANDS COPY TO MR. BROWN AND THE COURT.)
9 Your Honor, what I've just handed up is the Spoone v. State
10 case; I've also included the lower court record that is
11 associated with that case.

12 THE COURT: For the record, this is 665 S.E. 2d, 605,
13 and it is Spoone v. State of South Carolina. Go ahead, Ms.
14 McMahan.

15 MS. McMAHAN: Your Honor, this case is almost analogous
16 to that one in that Mr. Mickell was allowed to plead to the
17 lesser of 28 grams to 100, trafficking and conspiracy, to
18 traffic, two separate charges. In exchange for that, in a
19 written plea agreement, he agreed to waive his right to a
20 direct appeal and to a PCR; that is attached to my amended
21 return and motion to dismiss, and that that is item number
22 eight on the plea agreement.

23 In the Spoone case ---

24 THE COURT: Well, that's actually reflected, is it not,
25 in the transcript on page 10?

1 MS. McMAHAN: Yes, Your Honor, I was about to touch
2 base on that as well. It is -- Judge Mullen does ask on
3 page 10, "Are you waiving your right? Do you understand?
4 Are you doing it freely?" He replied "yes" on all of those.
5 But in the Spoone case, if you've reviewed the appendix in
6 that ---

7 THE COURT: Now, what did you say of the plea
8 agreement? I'm sorry if I don't have a copy of that, what
9 you're referring to.

10 MS. McMAHAN: Your Honor, the plea agreement is
11 attached to my amended return and motion to dismiss.

12 THE COURT: Hold on a second. (THE COURT REVIEWS
13 DOCUMENTS.) Ah, you are correct. I now see attached to your
14 amended return and motion to dismiss, a document which is
15 six pages in length entitled "Plea Agreement"; and where in
16 this agreement are you referring?

17 MS. McMAHAN: Number eight, Your Honor.

18 THE COURT: All right. I've reviewed paragraph number
19 eight of the Plea Agreement, as well as the transcript of
20 the plea on page 10. Go ahead.

21 MS. McMAHAN: Your Honor, the reason why I handed you
22 the appendix to Spoone is I wanted you to see the
23 correlation between the two and the similarities. The
24 biggest difference here is instead of the solicitor coming
25 to enforce the plea agreement, I'm here on behalf of the

1 State Grand Jury, not just on the prosecution side, but as
2 the PCR attorney.

3 On page 9 of that appendix, you will see where the
4 judge asked if they agreed to waive all PCR Applications, et
5 cetera.

6 THE COURT: Hold on a second. All right. I'm on page
7 9. What line?

8 MS. McMAHAN: We're looking at line 17.

9 THE COURT: Page 9, line 17.

10 MS. McMAHAN: Then if you go forward to page 59, big
11 number 59; actually starting on big number 58, line 21
12 through page 59, line 13. This is where the solicitor came
13 in at the PCR hearing and asked that the PCR be dismissed
14 and that the plea agreement be enforced. That's essentially
15 why I'm here today is I'm asking that the PCR be dismissed
16 and that the plea agreement be enforced based on the waiver,
17 not only in writing, but also on the record as asked by
18 Judge Mullen. And in the Spoone case, it's almost the exact
19 same situation. It was affirmed by the Supreme Court. It
20 was held to be a valid waiver.

21 THE COURT: All right. So the reason you handed me
22 this case, as well as the appendix, and I'm referring to the
23 Spoone case, is because you believe this case dealt with the
24 same issue that's before me today involving Mr. Mickell?

25 MS. McMAHAN: As to the waiver, Your Honor; not

1 necessarily the underlying charges, yes.

2 THE COURT: All right. Anything else?

3 MS. McMAHAN: Nothing further, Your Honor.

4 THE COURT: Thank you very much. Mr. Brown, come on up
5 to my microphone and bring your file if you need it.

6 MR. BROWN: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. BROWN: Almost immediately, within one week of her
9 filing the amended return -- for what it's worth, this was
10 filed in the late winter, early spring of 2011, the
11 application for post conviction was, she filed the amended
12 return two years, plus, later, and we filed a motion to
13 dismiss the amended return as not being appropriate based on
14 the issue of laches, etc. She never asserted the
15 affirmative defense of waiver in her return. And so,
16 there's never been a motion to accept her amended return
17 under Rule 15. I know things are more ---

18 THE COURT: But you never filed any written motion
19 yourself saying -- or did you?

20 MR. BROWN: Yes, I absolutely did.

21 THE COURT: Okay. And what was the nature of the
22 motion that you're referring to?

23 MR. BROWN: If I may hand that up, Your Honor. I do
24 have a copy of all of that.

25 MS. McMAHAN: Your Honor, you should have a copy of it

1 in your packet.

2 THE COURT: All right. Hold on a second, Jim. She
3 says I have a copy. In my packet?

4 MS. McMAHAN: Yes, Your Honor. It's entitled "Motion
5 to deny respondent's amended pleadings."

6 THE COURT: I have it in front of me. It's dated March
7 28th, 2013, Jim?

8 MR. BROWN: Absolutely, yes, sir.

9 THE COURT: Give me a moment to look at it.

10 (BRIEF PAUSE AS THE COURT REVIEWS DOCUMENT.)

11 THE COURT: All right. I've had the chance to look at
12 your motion, and basically, you argue that because of the --
13 and it's dated March 28th, 2013, basically you argue that
14 because she didn't raise it as an affirmative defense that
15 you believe it should be waived. It's definitely waivable;
16 and you believe it should be waived under this case; why?

17 MR. BROWN: Well, quite frankly, because the two
18 years and plus of prep for litigation was done without
19 awareness that that was gonna be their issue. And in fact,
20 you know, more so in their return they ask -- well, first
21 they make a general denial of everything and then ask at the
22 end as a catch-all that the Court convene a merits issue to
23 resolve the issue in their favor.

24 So not only did they waive it by not asserting it, they
25 did in turn ask the Court to have a hearing so they could

1 prove these allegations were true. And it's boiler plate in
2 the sense that every return I get has that language in
3 there. It's kind of like a general denial, so to speak, and
4 so, in other words, then in turn I didn't work, and Mr.
5 Mickell, etc., we've worked together, prepped this case, in
6 the manner that we were not opposing a waiver assertion, but
7 in fact, prepping for the hearing they asked for. And so we
8 think that's significant because we actually took steps in
9 reliance upon their request for a hearing.

10 THE COURT: So your argument is when they responded to
11 your initial application for PCR, they requested an
12 evidentiary hearing?

13 MR. BROWN: Absolutely.

14 THE COURT: And then two years later, they moved to
15 amend their return and dismiss this case on the basis of the
16 written plea agreement waiver, as well as the transcript,
17 and your argument today is that you feel like because waiver
18 is something -- or because this is an affirmative defense,
19 you believe it can be waived and it should be waived under
20 the circumstances in this case. Have I succinctly made your
21 argument?

22 MR. BROWN: Absolutely. The only thing that I ---

23 THE COURT: Thank you, Mr. Brown.

24 MR. BROWN: Yes, sir.

25 THE COURT: Anything else you want to tell me?

1 MR. BROWN: Beyond that, if the Court does seek to
2 allow them to assert the waiver, then we would ask for the
3 opportunity to prove that that was not a knowing waiver,
4 which is an exception. And I have to tell you, including
5 Spoone, which actually talks about the fact that as long as
6 it is a knowing, intelligent, voluntary waiver, etc., and so
7 we would ask to be able to present very brief testimony from
8 Mr. Mickell and his lawyer regarding what they talked about
9 on an issue that's important, because as an officer of the
10 Court there's going to be testimony that this issue wasn't
11 discussed. If it would have been discussed, the advice
12 would have been different in that he would not have even
13 taken the plea. And in that respect, there is going to be a
14 stipulation that the search warrant page is authentic; if I
15 may present that an appropriate time. And so that's one
16 less witness, I'm sorry.

17 THE COURT: Of course, Mr. Brown, normally, on a motion
18 to dismiss, which is usually a matter of law, and I'm
19 confined to the pleadings, we don't normally take testimony,
20 recognizing this is a civil matter, a PCR. I realize that
21 you are suggesting that somehow I might need to take
22 testimony as if there were some dispute of fact. I
23 understand the argument. I'm not sure I agree that it's
24 necessary, but that's conditioned upon how the Court might
25 rule and that might require that you file other pleadings to

1 prepare people to get ready for whatever it is that you
2 think might be necessary from an evidentiary standpoint; but
3 I understand your argument. Anything else?

4 MR. BROWN: No, sir. And I would suggest that it would
5 be very brief testimony, less than 30 minutes total. It's
6 just these two witnesses.

7 THE COURT: Thank you.

8 MR. BROWN: Thank you, Your Honor.

9 THE COURT: All right. Ms. McMahan, in reply.
10 Apparently, number one, Mr. Brown believes that you have
11 waived the affirmative defense because you didn't plead it
12 originally, and that if I'm inclined to allow you to go
13 forward on the fact that there is a waiver of his PCR
14 application, he wants to present testimony today. So I need
15 to hear you on both matters.

16 MS. McMAHAN: Your Honor, as to your first issue, I'll
17 separate that into as the State as the PCR attorney, and the
18 State as a State Grand Jury attorney.

19 As the PCR attorney, I'm certainly allowed to amend my
20 pleadings whenever I feel necessary to, and to raise my
21 affirmative defenses, which is what I did six months after I
22 filed the return.

23 THE COURT: You did it on -- if I'm correct, Ashley,
24 your amended return was May the 26th, 2013; is that correct?

25 MS. McMAHAN: I believe it was March 26th, yes, Your

1 Honor.

2 THE COURT: I'm sorry, you're right, it is. I looked
3 at it and I'm reading an "r" as "y". March 26th, 2013, and
4 your original return was ---

5 MS. McMAHAN: September of 2012.

6 THE COURT: All right. So approximately six months?

7 MS. McMAHAN: Yes, Your Honor. And keep in mind that
8 in our office, procedurally, we had some change up as the
9 way State Grand Jury PCR's were handled. Typically, it
10 stayed with the PCR section, which would have been Ms.
11 Wilson. At the time all this was kind of happening, I was
12 told by superiors that since there were people in Grand Jury
13 who had done PCR's in the past, we were now keeping them to
14 ourselves. I was told to handle this case in late 2012,
15 noticed there was no return, so I made one as soon as I
16 could.

17 When I reviewed the file and I was able to pull the
18 rest of the clerk's records with it, along with the plea
19 agreement, is when I noticed that and that's why I raised
20 that six months later. Now, as the State Grand Jury
21 attorney, I'm here to tell you that he made an agreement.
22 He was asked by the Court on the record, unless for some
23 reason he wasn't telling the truth on the record, that he
24 didn't agree to waive that, then I see no reason for
25 testimony and I ask that the plea agreement be enforced.

1 THE COURT: So you don't believe that the doctrine --
2 basically, what Mr. Brown is arguing is laches, and he
3 thinks there has been an unreasonable delay. You don't
4 believe six months is unreasonable, number one, so you don't
5 think there's been any waiver, and number two, you don't
6 think it's necessary for me to go behind the transcript and
7 the plea agreement and take testimony as to the
8 voluntariness of this waiver. And obviously, Mr. Brown,
9 it's like the last hearing I had. Lawyers want to always
10 anticipate something else and bring it up, even though
11 nobody -- the only thing you've been noticed for today --
12 Mr. Brown was noticed to be here because your return says
13 you want to dismiss it. And he's arguing against dismissal,
14 which I certainly understand, on behalf of his client, but
15 he also wants to bring up the fact that he objected to your
16 filing an amended return and he wants to use waiver as a
17 reason. And he thinks that you can't use the defense, and
18 I, of course, it's a little confusing, call it waiver, but
19 he's saying you're asserting waiver because the Applicant
20 waived the PCR allegedly by plea agreement and in the
21 transcript.

22 Now, as to the second prong of his argument, which is,
23 "Oh, Judge, I've got a motion now if you're inclined to
24 grant her motion. My motion is I want you to take testimony
25 today and we have a substantive hearing as to whether or not

1 there was a knowing and intelligent and voluntary waiver."
2 What's your position on that?

3 MS. McMAHAN: Your Honor, again, as you've stated, this
4 is a matter of law. It can be read from the pleadings,
5 unless, of course, for some reason Mr. Mickell was not
6 telling the truth on that transcript, then I see no reason
7 for any type of testimony.

8 THE COURT: Now, when Mr. Mickell pled in this
9 transcript, Mr. Dore was his attorney; is that right?

10 MS. McMAHAN: Yes, Your Honor.

11 THE COURT: All right. And Mr. Dore was present when
12 Mr. Mickell pled?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: And it was in front of Judge Mullen; is
15 that right?

16 MS. McMAHAN: That's correct. It was a bifurcated plea
17 and then a sentence a few months later in April. So he pled
18 in January and he was sentenced later in April.

19 THE COURT: Oh, bifurcated between the time of taking
20 of the plea and the time of sentencing?

21 MS. McMAHAN: Yes, Your Honor.

22 THE COURT: Were there any codefendants?

23 MS. McMAHAN: Yes, Your Honor. His mother was a
24 codefendant, as well as another individual.

25 THE COURT: Now, the transcript reflects on an issue

1 that Mr. Brown wants this Court to weigh into today, he was
2 asked under oath whether anybody promised him anything,
3 whether anybody threatened him in any manner, whether he was
4 pressured into pleading guilty, and he responded "No"; is
5 that correct?

6 MS. McMAHAN: That's correct, Your Honor. He also
7 admitted that he was guilty and that he was pleading freely
8 and voluntarily.

9 THE COURT: So your position, then, is number one, if I
10 allow your amended return and grant your motion to dismiss,
11 you believe the record is satisfactory without taking
12 testimony at this time on the issue of whether or not a
13 waiver existed as to PCR?

14 MS. McMAHAN: Yes, Your Honor.

15 THE COURT: Even though Mr. Brown suggests that he
16 thinks that from testimony that he could create an issue of
17 fact as to whether or not this was a voluntary and an
18 intelligent waiver. Have you ever been on notice by Mr.
19 Brown of such a position before he argued it to me today?
20 Other than his motion, which y'all handed me, to deny your
21 amended pleadings?

22 MS. McMAHAN: Other than that motion, no, Your Honor.

23 THE COURT: Well, counsel, I love lawyers that try to
24 anticipate everything. Mr. Brown, I believe you're a little
25 bit premature, even though you think it's necessary for me

1 to go behind. I believe, number one, the first issue for me
2 today is on the State's motion to dismiss. That motion is
3 based on the fact that there is a written plea agreement,
4 which is a part of the file and that the plea Court
5 questioned the applicant regarding his waiver of his right;
6 not only to his right to file a PCR, but his right to file a
7 direct appeal. And he indicated on the record on page 10 of
8 the transcript that he was waiving his right to file an
9 appeal and a PCR and that he was doing so willingly and
10 freely. That's at lines 9 through 17 on page 10 of the
11 transcript from January 25th, 2010. There is also a written
12 plea agreement, which at paragraph number eight indicates
13 identically that.

14 Now, Mr. Brown argues that because there was a time
15 period from September until March that this Court should
16 find that in your amended pleading, Ms. McMahan, where you
17 attempt to assert this waiver that occurred on the record
18 and in writing, that because the time had gone by and in
19 your proposed amended pleadings, that waiver should have
20 been pled originally as an affirmative defense. And while I
21 agree with Mr. Brown that affirmative defenses can be
22 waived, no question about that, I don't believe there has
23 been any showing to me that the time alone was sufficient
24 for me to say that the equitable doctrine of laches,
25 unreasonable delay should be applied here in this situation.

1 We're talking about from September of 2012 until March of
2 2013. I think the record adequately addresses the issue.

3 Now, Mr. Brown, there very well be may be an issue that
4 needs to be noticed concerning this transcript, but nobody
5 is here today prepared for that. That's just like lawyers
6 trying to put the cart before the horse, and while I
7 appreciate that sometimes, it's not fair to either side,
8 because I'm not going to let them do that to you, when you
9 haven't had the chance to prepare for that. Just like you
10 want me to go ahead and have a mini-trial today because of
11 her motion.

12 I well understand your opposition. I grant the State's
13 motion to dismiss. I deny Mr. Brown's motion to deny the
14 respondent's amended pleading. I do not believe there is
15 sufficient time to constitute waiver under the facts of this
16 case and I believe the transcript and the plea agreement
17 adequately show an indication, under oath, by the Applicant
18 to waive any application for post-conviction relief in
19 connection with this hearing.

20 Ms. McMahan, I'll expect you to prepare an Order
21 consistent with my ruling. I'll expect you to forward that
22 Order to me at P.O. Drawer 470, Walterboro, South Carolina,
23 29488. I'll expect you to copy Mr. Brown on that
24 transmittal to the Court. I'll expect you to include a
25 self-addressed, stamped envelope with sufficient postage

1 affixed thereto for the return of that Order.

2 I do not reach the issue today of the voluntariness of
3 the waiver because I think the transcript speaks for itself.
4 That does not mean, however, that that issue cannot be
5 raised if appropriate and if timely in the future. I make
6 no comment about that for purposes of today's hearing.

7 Ms. McMahan, do you understand my ruling?

8 MS. McMAHAN: Absolutely, Your Honor.

9 THE COURT: Very well. Mr. Brown, do you -- I'm not
10 giving you an opportunity to reargue it, Mr. Brown, because
11 I've ruled. And one of the things I'm going to tell you,
12 because I teach this in judge's school. Mr. Brown, I know
13 you and Mr. Dore know this. Both of you -- even though this
14 is a civil proceeding, both of you are familiar with the
15 rules of criminal procedure, are you not?

16 MR. BROWN: Yes, Your Honor.

17 THE COURT: Mr. Dore?

18 MR. DORE: Yes, Your Honor.

19 THE COURT: All right. And I don't know why this was
20 omitted from the Rules of Civil Procedure. I ask that
21 question every year and nobody has ever been able to give me
22 an answer, Mr. Brown. But turn to the Rules of Criminal
23 Procedure and I want you to take a look at Rule 18(a):
24 "Counsel shall not attempt to further argue any matter after
25 it has been heard and the ruling of the Court has been

1 pronounced." Although that is in the Rules of Criminal
2 Procedure, it should apply to civil court as well, and that
3 is the reason I call that to your attention. There are
4 interesting rules there and people forget about them.

5 Now, Mr. Brown, having gone over that, and I want to
6 make sure Barnwell learns that, because there are lawyers
7 that always want to say after a judge rules, "But," there is
8 no but; time for appeal.

9 Now, Mr. Brown, do you understand my proposed Order
10 procedure that I've directed Ms. McMahan to do?

11 MR. BROWN: Absolutely, Your Honor.

12 THE COURT: Any questions about that proposed Order
13 procedure?

14 MR. BROWN: No, sir. I have the document to proffer
15 that we stipulated to that is not in the record yet.

16 THE COURT: And that would be -- we already made that a
17 part of the record yesterday.

18 MR. BROWN: I need the original to be proffered not
19 that it has been authenticated.

20 THE COURT: Any objection to that?

21 MS. McMAHAN: No objection, Your Honor.

22 THE COURT: You want to make it a part of yesterday's
23 record, because that's when we did it without objection.
24 All right. Becky has the copy that my law clerk gave to her
25 after the hearing, but I'll allow you. Show it to Ms.

1 McMahan. Ms. McMahan, do you have any objection? We will
2 give it to Becky and it will be a part of the record she
3 prepares from yesterday's hearing.

4 MS. McMAHAN: I've already seen it, Your Honor, and
5 agree to it.

6 THE COURT: All right. Hand it to my court reporter.
7 Becky, please mark that. But that's part of what we marked
8 yesterday, without objection, and it's without objection by
9 Ms. McMahan today and she has reviewed the document.

10 I want to thank y'all for our patience and your time.
11 Ms. McMahan, I'll look forward to receiving your Order. Mr.
12 Brown, thank you for your patience and your time. As well
13 as yours, Mr. Mickell. Everyone have a nice day.

14

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

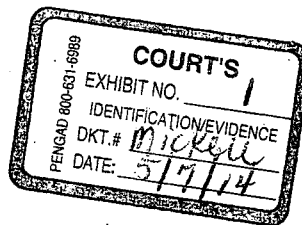
I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearings of the captioned case, in the Court of Common Pleas, non-jury, for Colleton County, South Carolina, on the 7th and 8th day of May 2014.

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

October 22, 2014

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter



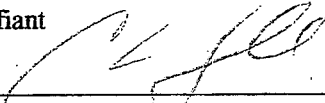
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBIT C

DESCRIPTION OF PREMISIS (PERSON, PLACE OR THING)
TO BE SEARCHED

A single wide mobile home located at #12 Christopher Drive Hilton Head Island, South Carolina. The residence is further described as beige in color with burgundy trim. The residence has had a canine located in the front of the residence in the past. The residence has wooden steps leading to the front door. The residence also has a white in color front door.

Affiant



Signature of Judge

(L.S.)

Date

9/17/08

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Perry M. Buckner, III

Case Number 2011-CP-07-01538

DeAngelo Mickell,.....Petitioner.

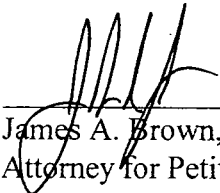
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

DeAngelo Mickell appeals the judgment of the Circuit Court, the Honorable Perry M. Buckner, III, presiding, denying Applicant's request for post conviction relief. The Order was signed on May 14, 2014, and received by counsel for the Applicant on May 9, 2014. The Honorable Perry M. Buckner, III, also denied Applicant's Motion to Alter and Amend Judgment pursuant to SCRCP Rule 59, by order signed, on August 29, 2014 and received by counsel for Applicant on September 17, 2014.

October 8, 2014


James A. Brown, Jr.
Attorney for Petitioner
1600 Burnside St, Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

Opposing Attorney of Record:
Ashley McMahan, Assistant Attorney General
PO Box 11549
Columbia, SC 29211-11549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Perry M. Buckner, III

Case Number: 2011-CP-07-01538

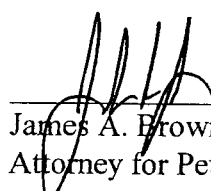
DeAngelo Mickell.....Petitioner.

v.

State of South Carolina,.....Respondent

PROOF OF SERVICE

Counsel for DeAngelo Mickell hereby certifies that he has prepared and served a Notice of Appeal on this 8th day of October, 2014, upon the State, as specified in S.C. Code Section 203 (b) (1) , by depositing a copy, postage pre-paid, in the United States Mail, addressed to Attorney for Respondent, Ashley McMahan, Office of the Attorney General, PO Box 11549, Columbia, SC 29211-11549, (803) 734-3970.



James A. Brown, Jr.
Attorney for Petitioner

October 8, 2014

Law Offices of Jim Brown, PA
1600 Burnside St., Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

STATE OF SOUTH CAROLINA 2014 SEP 17 PM 2:35)

COUNTY OF BEAUFORT)

Deangelo Mickell)

Petitioner)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No. 2011-CP-07-01538

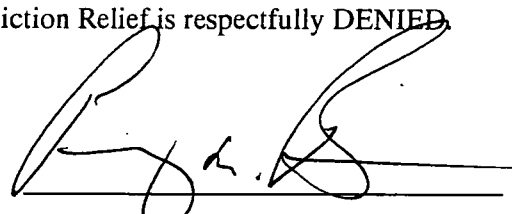
**ORDER DENYING PETITIONER'S
MOTION TO ALTER OR AMEND
ORDER OF DISMISSAL WITH
PREJUDICE**

This matter came before the Court by way of Petitioner's Motion to Alter or Amend the Court's Order of Dismissal with Prejudice of the Petitioner's Application for Post-Conviction Relief. The State of South Carolina filed a Reply to Applicant's Motion to Alter or Amend.

The Petitioner's Motion to Alter or Amend raises no new arguments or facts than were previously presented in the hearing convened at the Colleton County Courthouse on May 7, 2014. Accordingly, there are no grounds presented that would allow the Court to grant a motion to alter or amend a judgment.

IT IS THEREFORE ORDERED that Defendants' Motion to Alter or Amend this Court's Order of Dismissal of the Petitioner's Application for Post-Conviction Relief is respectfully DENIED.

IT IS SO ORDERED.



The Honorable Perry M. Buckner, III
Presiding Judge, Fourteenth Judicial Circuit

August 29, 2014

Walterboro, SC

RECEIVED

SEP 08 2014

STATE GRAND JURY
PROS SECTION

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668,

Applicant,

v.

State of South Carolina,

Respondent.

**REPLY TO APPLICANT'S
MOTION TO ALTER OR AMEND
THE JUDGMENT**

2014 JUN 11 PM 3:22
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCF filed on or about June 2, 2014, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Order of Dismissal filed May 21, 2014, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCF. *See also, McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991).

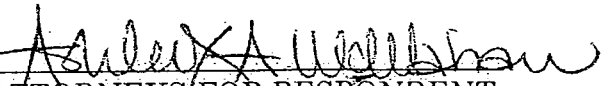
II.

The State therefore requests that the relief requested by the Applicant be denied and that his Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3693

June 9, 2014

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOR THE 14th JUDICIAL CIRCUIT
) Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

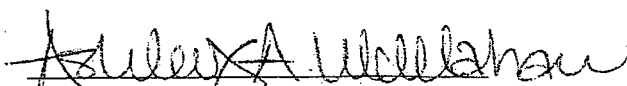
AFFIDAVIT OF SERVICE BY MAIL

2014 JUN 11 PM 3:22
CLERK OF COURT
BEAUFORT COUNTY, S.C.

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 Reply to Applicant's Motion to Alter or Amend the Judgment in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

James A. Brown, Jr., Esquire
Law Offices of Jim Brown, PA
PO Box 592
Beaufort, SC 29901-0592

DATED this 9th day of June, 2014.


ASHLEY A. McMAHAN
Assistant Attorney General

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
) Case Number: 2011-CP-07-01538

DEANGELO MICKELL)
Petitioner)

VS.)

STATE OF SOUTH CAROLINA)
Respondent)

**MOTION TO ALTER AND
AMEND JUDGMENT**

2014 JUN -3 PM 3:53
CLERK OF COURT

THE PETITIONER MOVES THIS COURT to alter or amend its Order of Dismissal with Prejudice in the above-captioned matter. The Petitioner requests that the Court amend this Order to deny Respondent's Motion to Dismiss or at least allow for the receipt of testimony and evidence in opposition to the Respondent's Motion. Petitioner also requests that the Court alter and amend the Order to grant Petitioner's motion to deny Respondent's amended pleading based upon laches; thus, denying Respondent's assertion of waiver.

While South Carolina recognizes the validity of waivers of post-conviction challenges, such waivers must be knowingly, intelligently and voluntarily made in order to be valid. The seminal case discussing the waiver of post-conviction challenges is Spoone v State, 665 SE2d 605 (SC 1998). In Spoone, the SC Supreme Court first addressed the issue of waiver of post-conviction rights by way of a written plea agreement. Spoone, at 607.

The Court in Spoone began its analysis by resort to federal law and law from foreign jurisdictions which had addressed this issue. Specifically, the Spoone Court relied upon established law in the US Court of Appeals for the Fourth Judicial Circuit. The Court noted that the Fourth Circuit held that no reason existed to treat the waiver of rights to collateral challenge

differently from the waiver of direct appeal rights. Spoone, at 607 (internal citations omitted).

The Spoone Court also referenced the Florida case of Stahl v. State of Florida, 972 SO2d 1013 (FL Ct App, 2d Dist, 2008). Spoone at 607). Spoone referenced Stahl for the proposition that: “a defendant can waive his right to collateral attack when the waiver is expressly stated in the plea agreement and it is knowingly and voluntarily made.” Spoone, at 607 (quotation from Spoone, paraphrasing holding in Stahl). However, Spoone did not note the exception to this holding.

In Stahl, the Florida Court of Appeals noted that not all waivers of collateral challenges were valid. The Stahl court expressly indicated that: “ineffective assistance of counsel claims attacking the advice received from counsel in entering into the plea and waiver cannot be waived.” Stahl, at 1015. The same Florida appellate court explored this exception in the subsequent case of Pagan v. State, 110 SO3d 3 (FL Ct App, 2nd Dist, 2012).

In Pagan, the Florida Court of Appeals reviewed the dismissal of a post-conviction challenge in a criminal case. The Pagan Court cited Stahl regarding the general validity of post-conviction waivers and the exception to the validity of such waivers. Pagan, at 5. The Florida Court reversed the denial of Pagan’s post-conviction challenges, finding that he “did not waive the claims he now asserts against his counsel,” and remanded for an evidentiary hearing. Pagan, at 5.

In the Petitioner’s case, the Respondent relied upon a written plea agreement and a transcript of a plea colloquy to assert that the Petitioner waived his right to bring a collateral challenge. The Petitioner did not dispute that he signed this agreement or that the agreement contained language purporting to waive his right to collaterally challenge his conviction. In fact, the Petitioner did not dispute that he discussed this agreement with counsel before the plea and

with the trial court during the plea.

However, Petitioner did dispute that the plea and its subsequent terms contained in the written agreement were knowingly, intelligently, and voluntarily entered. In fact, undersigned counsel pled this very claim as Ground D in the First Amended Application for Post-Conviction Relief. Further, undersigned counsel arranged for the presence of both the Petitioner and his trial counsel to provide testimony in this regard at this Motion hearing.

As indicated to the Court at the hearing on the Motion to Dismiss and a day earlier during a motion hearing regarding subpoenas, Petitioner contends that he was not given proper advice regarding the unconstitutional nature of the seizure of the evidence against him. Undersigned counsel desired to proffer this testimony to the Court during the Motion to Dismiss. However, undersigned was disallowed from calling witnesses or presenting evidence.

Counsel did proffer a portion of the relevant search warrant containing the issuing magistrate's original signature as an exhibit relating to motions heard the preceding day. Undersigned counsel referenced this exhibit during the Motion to Dismiss as a document which would have altered trial counsel's advice to the Petitioner and altered Petitioner's decision to plea. Thus, Petitioner was prepared to provide supporting evidence rebutting the knowing, intelligent and voluntary nature of the plea and the terms of the plea agreement.

Therefore, this Court should reconsider the portion of the Order of Dismissal finding a knowing, voluntary and intelligent waiver of post-conviction rights and allow the Petitioner to present evidence in support of his contention against this dismissal and his underlying convictions and sentences.

Further, the doctrine of laches should bar the Respondent's ability to enforce the waiver. Waiver is considered an affirmative defense. SCRCP Rule 8(c). As such, this defense must be

pled or is waived.

When a court reviews the waiver of an affirmative defense based upon the doctrine of laches, the court should take into consideration any injury, prejudice or disadvantage to the other party. Whitehead v State, 574 SE2d 200 (SC 2002). Laches must also be timely raised. The failure to timely raise this doctrine will be deemed a waiver of the right to assert this claim.

In the case at bar, Petitioner filed his original Application for Post Conviction relief on March 31, 2011. The Respondent filed its original Return on September 28, 2012. This Return did not assert the doctrine of waiver.

The Respondent then filed an Amended Return and Motion to Dismiss (based upon the waiver of post conviction rights) on March 26, 2013. On March 28, 2013 the Petitioner moved to deny this Amended Return and Motion to Dismiss based upon the doctrine of laches. Petitioner then filed the First Amended Application for Post-Conviction Relief on August 19, 2013.

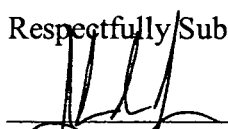
During analysis of the Petitioner's Motion to Deny the Amended Pleadings containing Respondent's Motion to Dismiss, this Court noted that only six months passed between the two returns filed by the Respondent. However, this Court did not note that 24 months passed between the Petitioner's filing of the Application and the assertion of this affirmative defense. As indicated by undersigned counsel at the hearing, the Petitioner and his counsel spent two years of time and resources in preparation for the litigation of his collateral challenge before the Respondent asserted waiver as an affirmative defense.

Therefore, undersigned counsel asserts the Court should modify its ruling to deny the Respondent's assertion of the affirmative defense of waiver.

Thus, Petitioner respectfully requests that the Court alter and amend its judgment based

upon the argument above and allow further litigation of the Petitioner's claims.

Respectfully Submitted,

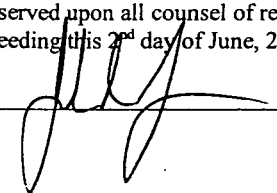


James A. Brown, Jr.
Attorney for the Petitioner

June 2, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document
was served upon all counsel of record in this
proceeding this 2nd day of June, 2014.



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP0701538

Deangelo Mickell

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/Perry M. Buckner
Circuit Court Judge

2122
Judge Code

05/14/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on **the 21st day of May, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **the 22nd day of May, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

James Arthur Brown Jr. PO Box 592 Beaufort, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ashleigh Rayanna Wilson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn Geren - Staff

Court Reporter

Jerri Ann Roseneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

See attached Order

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DeAngelo Christopher Mickell, #340668,

Applicant,

v.

State of South Carolina,

Respondent.

THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No: 2011-CP-07-01538

ORDER OF DISMISSAL
WITH PREJUDICE

FILED MAY 21 PM 2:35
CLERK OF COURT
JOSENEAU
COLLETON COUNTY, S.C.

#1
PMS
This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 31, 2011. The Respondent filed an Amended Return and Motion to Dismiss on or about March 26, 2013. The Applicant filed a Motion to Deny Respondent's Amended Pleading on or about March 28, 2014. A hearing was convened at the Colleton County Courthouse on May 7, 2014. The Applicant was present and represented by James A. Brown, Jr., Esquire. Assistant Attorney General Ashley A. McMahan was present on behalf of the State.

Respondent's Motion to Dismiss

At the hearing the Respondent requested that the plea agreement be enforced and moved to dismiss the PCR application based upon this plea agreement signed by the Applicant on January 25, 2010. (See subsection 8 of the plea agreement.) Respondent noted that the waiver is also reflected in the plea transcript. The plea court questioned the Applicant regarding his waiver of his right to appeal and to file a PCR. Applicant indicated that he was waiving his right to file an appeal and PCR willingly and freely. See transcript from January 25, 2010, page

10, lines 9-17.

This Court agrees and grants Respondent's Motion to Dismiss. The Applicant's waiver of his right to file a direct appeal and PCR have been established by the record as voluntary and knowing through a colloquy between the court and Applicant at the guilty plea as well as through the plea agreement. Therefore, since the waiver of his right to file a PCR was knowingly, willingly, and voluntarily made, the PCR application is dismissed pursuant to Spoone v. State, 379 SC 138, 665 SE2d 605 (2008).

Motion to Deny Respondent's Amended Pleading

#2
Pax
Applicant argued through his motion that the Respondent's pleading addressing the plea agreement should not be allowed based on waiver because of the six month time period between filing the Return and the Amended Return and Motion to Dismiss. This Court does not believe the time between the two pleadings is sufficient enough to trigger laches.

Applicant also argues that his plea agreement and the plea itself were not voluntary. This Court declines to reach the voluntariness issue raised because the transcript speaks for itself. Therefore, the Court denies the Applicant's Motion to Deny Respondent's Amended Pleading.

CONCLUSION

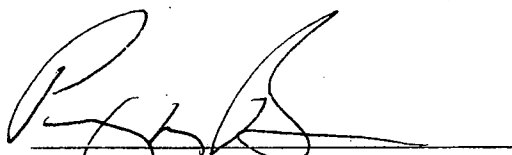
Based on all the foregoing, this Court finds and concludes that the Respondent's motion to dismiss the PCR application is well taken. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991); an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**;
2. The Applicant's Motion to Deny Respondent's Amended Pleading is **DENIED**; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Perry M. Buckner
Presiding 14th Circuit Court Judge

5/14, 2014

Walterboro, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)
2014 MAY 15 PM 2:34)
JERRY ANN ROSENBAU)
BEAUFORT COUNTY, S.C.)
DEANGELO MICKELLE)
Applicant)
VS.)
STATE OF SOUTH CAROLINA)
Respondent)

FOURTEENTH JUDICIAL CIRCUIT

Case Number: 2011-CP-07-01538

**RESPONSE TO MAGISTRATE'S
MOTION TO QUASH SUBPOENA**

COMES NOW the Applicant, by and through undersigned counsel, and moves this Court to deny the Magistrate's Motion to Quash Subpoena.

The Applicant was sentenced to eighteen years in prison after pleading guilty to trafficking cocaine and conspiracy to traffic cocaine. The drugs that gave rise to this charge were found during a search of a car pursuant to a search warrant.

During preparation for litigation in this matter, undersigned counsel learned that the court records regarding the search warrant and return were destroyed. See SC Code Section 17-13-141. Due to this destruction, undersigned counsel issued a subpoena seeking the testimony of the magistrate who issued the search warrant. This testimony is necessary to authenticate the signature of the issuing magistrate contained in a document believed to be the only remaining search warrant document with an original signature of the issuing magistrate.

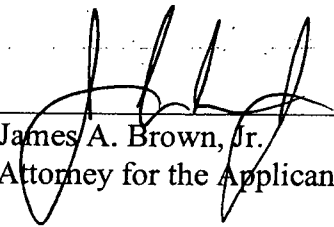
Absent the issuing judge's authentication, Applicant has no other way to introduce the documents at issue because of the destruction of the court records. This information is critical as to the involuntary nature of Applicant's plea and waiver of collateral review as Applicant did not possess knowledge of the significance of this document in relation to his constitutional rights.

See *Gibson v. State*, 514 SE2d 320, at 324 (SC 1999)(“waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences”)(internal citations omitted). Finally, this is not a matter “touching upon [the issuing magistrate’s] official duties,” thus the requirements of *In re Whetstone* do not apply. 580 SE2d 447 (SC 2003).

Undersigned counsel has consulted counsel for the issuing magistrate in an effort to obtain and a “Certificate of Acknowledgment” under SCRE Rule 902(8) in order to authenticate the document at issue. Said Certificate would eliminate the need for the judge’s testimony. However, counsel for the magistrate has declined this offer.

Therefore, Applicant respectfully requests the Court enter an Order denying the State’s Motion to Quash the Subpoena and allow the Applicant to authenticate the search warrant document.

Respectfully Submitted,

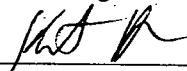

James A. Brown, Jr.
Attorney for the Applicant

May 5, 2014
Beaufort, SC

2014 MAY -5 PM 2:35
CLERK OF COURT
ANN ROSENEAU
BEAUFORT COUNTY, S.C.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on all parties of record in this proceeding on this the 5th day of May, 2014



2014 MAY -2 PM 1:34

CLERK OF COURT
COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
DEANGELO MICKELL,	)	CASE NO. 2011-CP-07-01538
Applicant	)	
vs.	)	MOTION TO QUASH
	)	SUBPOENA
STATE OF SOUTH CAROLINA,	)	
Respondent	)	
	)	

The undersigned attorney, appearing on behalf of the Honorable Mark F. Fitzgibbons, Beaufort County Magistrate Judge, hereby requests that this Court issue an Order quashing the Subpoena dated April 30, 2014 and delivered to the County Attorney's Office via email on the same day commanding him to appear and testify in the above case on May 7, 2014 at 9:30 a.m..

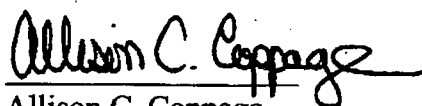
In support of the motion, the undersigned attorney relies on the Order issued on April 16, 2013 by this Court which states that the Applicant's Motion for Discovery pursuant S.C. Code Ann. § 17-27-150 is denied. (See Exhibit A)

Furthermore, the order explicitly states: "as to the request regarding the magistrate, applicant failed to meet the requirements in In re Whetstone, 580 S.E.2d 447, 354 S.C. 213 (2003). The undersigned attorney would show, again, to the Court that Judge Fitzgibbons, should not be required to testify in a case in which he issued the search warrant that ultimately lead to the arrest and underlying charges in this matter. In In re Whetstone, the court held that a judge should not be compelled to testify regarding a case in which he previously presided unless the testimony is (1) critical; and (2) can be obtained by no other means *Id* at 447. In this matter, Judge Fitzgibbon's knowledge of the facts and circumstances surrounding this case are limited to the search warrant issued on September 17, 2008. Judge Fitzgibbon's testimony as to the issuance of the search warrant is not critical to this case. Additionally, any information regarding

probable cause that may be solicited from Judge Fitzgibbons could be obtained from either the officer requesting the warrant or the warrant itself. (The warrant itself is the best evidence of the fact sought to be proved, not the testimony of the issuing judge (State v. Talbert, 41 S.C. 526, 19 S.E. 852 (1894))).

WHEREFORE, Allison C. Coppage respectfully requests the court to enter an Order quashing the subpoena requiring the Honorable Mark F. Fitzgibbons, Beaufort County Magistrate Judge, attendance at the trial in this matter.

RESPECTFULLY SUBMITTED:



Allison C. Coppage
Joshua A. Gruber
Beaufort County Government
P.O. Drawer 1228
Beaufort, SC 29901
(843) 255-2056

*Attorneys for Beaufort County and
Mark F. Fitzgibbons, in his capacity as Beaufort
County Magistrate Judge*

This 2nd Day of May 2014
Beaufort, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

ORDER

13 APR 19 PM 3:22
CLERK OF COURT
BEAUFORT COUNTY, S.C.

B This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 31, 2011. The Applicant filed a Motion for Discovery on or March 1, 2013. Respondent filed a Motion to Dismiss on or about March 26, 2013. A hearing into the Applicant's motion was convened on April 1, 2013, at the Beaufort County Courthouse. James A. Brown, Jr., Esquire, represented the Applicant. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Applicant's request for Discovery is to depose one officer with the Beaufort County Sheriff's Office and a SLED agent, both of whom were involved with the underlying investigation. Applicant also requested Discovery to depose the Magistrate Judge that signed one of the search warrants.

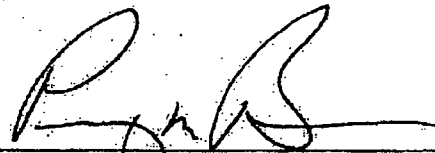
Also at the hearing, Applicant requested documents from the Beaufort County Sheriff's Office. These documents were provided to the Applicant prior to the start of the hearing. Further, the Applicant was given access to the entire investigative file and allowed to read the transcripts of the testimony presented to the State Grand Jury

immediately after the hearing.

Applicant's Motion for Discovery is denied. As to the request regarding the Magistrate, Applicant failed to meet the requirements of In re Whetstone, 580 S.E.2d 447, 354 S.C. 213 (2003). As to the request for the remaining depositions, the parties can be subpoenaed to testify at the PCR hearing.

IT IS THEREFORE ORDERED that this matter be continued and that the Respondent's Motion to Dismiss be heard at the next available term prior to any substantive testimony taken; and Applicant's Motion for Discovery is DENIED.

AND IT IS SO ORDERED!



Perry M. Buckner
Presiding 14th Circuit Court Judge

April 16, 2013

Waltham, South Carolina.

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF COLLETON

DeAngelo Mickell

, Applicant

v.

SUBPOENA IN A CIVIL CASE

Case Number: 2011-CP-07-1538

State of South Carolina

, Respondent

Pending in BEAUFORT County

TO: The Honorable Mark F. Fitzgibbons

X YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY Colleton County Courthouse 101 Hampton Street Walterboro, SC 29488	COURTROOM: TBA May 7, 2014 9:30 a.m. until released
--	---

____ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF TESTIMONY	DATE & TIME

X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

A copy of all search warrant documents related to a search warrant for 12 Christopher Drive, Hilton Head Island, South Carolina 29928, issued and executed on September 17, 2008.

PLACE: Colleton County Courthouse 101 Hampton Street Walterboro, SC 29488	DATE AND TIME May 7, 2014 9:30 a.m. until released
--	--

____ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT, SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

James A Brown, Esq., PO Box 592, Beaufort, SC 29901 (843)470-0003

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ISSUING OFFICER'S SIGNATURE AND TITLE

Attorney for Applicant

DATE 4/30/2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Case Number 2011-CP-07-01538

DEANGELO MICKELL #340668)

Petitioner,)

v.)

STATE OF SOUTH CAROLINA)

Respondent.)

**FIRST AMENDED APPLICATION
FOR POST- CONVICTION RELIEF**

[Note: This application follows SCRCF Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCF.]

1. Petitioner is detained at the Lee Correctional Facility.
2. The sentence was imposed by the Beaufort County Court of General Sessions, the Carmen T. Mullen, presiding.
3. The co-defendants are Abigail Joughin Maillefert, # 00340675 and Ophelia Green Mickell, #00340676.
4. The indictment number upon which the offenses for which sentences was imposed is:
 - (a) 2009-GS-47-05, Count I - Conspiracy to Traffic Cocaine 28 - 100 grams, first offense
 - (b) 2009-GS-47-05, Count XVII - Trafficking Cocaine 28-100 grams, first offense
5. The date upon which sentences were imposed and the terms of the sentence are:
 - (a) Sentenced on April 29, 2010 eighteen years, concurrent.
 - (b) Sentenced on April 29, 2010 eighteen years, concurrent.
6. A plea of guilty was entered on April 29, 2010.
7. The applicant did not appeal from judgment of conviction and sentence.
8. (a) The Courts to which petitioner appealed:
 - (i) N/A

- (b) The result in each Court to which petitioner appealed:
 - (i) N/A
- (c) The date on which each Court affirmed the sentence or denied certiorari:
 - (i) N/A
- (d) Citations of any written opinion or orders entered pursuant to such results:
 - (i) N/A

9. Not applicable.

10 & 11 Grounds for Relief and Concise Statement of Supporting Facts.¹

Ground A

Petitioner was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon trial counsel's deficient investigation of the facts supporting the charge against the defendant. Strickland v. Washington, 466 US 668 (1984) and Alexander v St., 402 SE2d 484 (SC 1991).

Supporting Facts for Ground A

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.
- (2) Law enforcement and prosecution documents obscured these violations.
- (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
- (4) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.

Ground B

Petitioner was denied the effective assistance of counsel as guaranteed by the Fourth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon trial counsel's failure to challenge the search warrant. Strickland v. Washington, 466 US 668 (1984) and Alexander v St., 402 SE2d 484 (SC 1991) and State v Gentile, 646 SE2d 171 (SC Ct App 2007).

¹ Petitioner reserves his right to further amend this application as allowed by law.

Supporting Facts for Ground B

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.
- (2) Law enforcement and prosecution documents obscured these violations.
- (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
- (4) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.

Ground C

Petitioner was denied the effective assistance of counsel as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon the prosecution's failure to comply with the due process requirements announced in Brady v. Maryland and its progeny. Brady v. Maryland, 373 US 83 (1963) and Gibson v. State, 514 SE2d 320 (SC Ct App 1999).

Supporting Facts for Ground C

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.
- (2) Law enforcement and prosecution documents obscured these violations.
- (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
- (4) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.

Ground D

Petitioner was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon trial counsel's failure to provide Petitioner sufficient information for the Petitioner to knowingly, intelligently and voluntarily waive his Boykin rights and enter a valid guilty plea. Strickland v. Washington, 466 US 668 (1984) and Alexander v. St., 402 SE2d 484 (SC 1991)

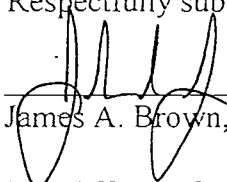
Supporting Facts for Ground D

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.

- (2) Law enforcement and prosecution documents obscured these violations.
- (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
- (4) Trial counsel failed to inform Petitioner of this information.
- (5) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.

- 12 & 13. Petitioner has not filed any petitions related to his convictions. Petitioner has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court.
14. None of the grounds set forth in (10) have been presented to this or any other Court, state or federal.
15. N/A
16. Generally claims of IAC are not cognizable on direct appeal.
17. (a) Petitioner was represented at the circuit court level by Anthony O Dore, of Dore Law Firm, P.O. Box 2478, Beaufort SC 29901.
18. Petitioner seeks the vacation of his convictions and sentences.
19. Petitioner is not under sentence from any other court.

Respectfully submitted,


James A. Brown, Jr.

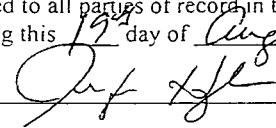
Law Offices of Jim Brown, P.A.
1600 Burnside Street, Suite 100
P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

Attorney for the Petitioner

August 19th, 2013
Beaufort, SC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was mailed to all parties of record in this proceeding this 19th day of August, 2011.



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)
_____)

ORDER

13 APR 19 PM 3:22
JULIE ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

1
PnB
This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 31, 2011. The Applicant filed a Motion for Discovery on or March 1, 2013. Respondent filed a Motion to Dismiss on or about March 26, 2013. A hearing into the Applicant's motion was convened on April 1, 2013, at the Beaufort County Courthouse. James A. Brown, Jr., Esquire, represented the Applicant. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Applicant's request for Discovery is to depose one officer with the Beaufort County Sheriff's Office and a SLED agent, both of whom were involved with the underlying investigation. Applicant also requested Discovery to depose the Magistrate Judge that signed one of the search warrants.

Also at the hearing, Applicant requested documents from the Beaufort County Sheriff's Office. These documents were provided to the Applicant prior to the start of the hearing. Further, the Applicant was given access to the entire investigative file and allowed to read the transcripts of the testimony presented to the State Grand Jury

immediately after the hearing.

Applicant's Motion for Discovery is denied. As to the request regarding the Magistrate, Applicant failed to meet the requirements of In re Whetstone, 580 S.E.2d 447, 354 S.C. 213 (2003). As to the request for the remaining depositions, the parties can be subpoenaed to testify at the PCR hearing.

IT IS THEREFORE ORDERED that this matter be continued and that the Respondent's Motion to Dismiss be heard at the next available term prior to any substantive testimony taken; and Applicant's Motion for Discovery is DENIED.

AND IT IS SO ORDERED!

A handwritten signature in black ink, appearing to read 'Perry M. Buckner', written over a horizontal line.

Perry M. Buckner
Presiding 14th Circuit Court Judge

April 16, 2013

Walkers, South Carolina.

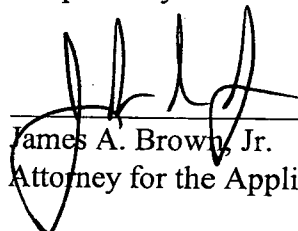
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	Case Number: 2011-CP-07-01538
	)	
DEANGELO MICKELL	)	
Applicant	)	
	)	MOTION TO COMPEL
VS.	)	COMPLIANCE WITH A
	)	SUBPOENA
STATE OF SOUTH CAROLINA	)	
Respondent	)	

THIS MATTER IS BROUGHT TO THE COURT'S ATTENTION by undersigned counsel who respectfully requests that the Court issue an Order compelling The South Carolina Attorney General's Office's compliance with a duly served subpoena.

The Attorney General's Office was the prosecuting agency in the criminal case giving rise to this Post-Conviction Relief litigation. On April 20, 2011, undersigned counsel served a subpoena upon the Attorney General's Office requesting any and all information, reports, documents, notes and the like relating to the Applicant's underlying criminal case. The Post-Conviction Relief hearing is now set for April 3, 2013, and the Attorney General's Office has not fully complied with the subpoena.

Thus, undersigned counsel seeks an Order compelling the South Carolina Attorney General's Office to produce all materials in compliance with the terms of the subpoena.

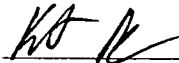
Respectfully Submitted,


 James A. Brown, Jr.
 Attorney for the Applicant

March 28, 2013
 Beaufort, SC

CERTIFICATE OF SERVICE

I certify that a copy of this document was mailed
to all counsel of record in this proceeding on
March 28, 2013.

_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
)
)
DEANGELO MICKELL)

Applicant

VS.

STATE OF SOUTH CAROLINA)
Respondent)
_____)

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT
Case Number: 2011-CP-07-01538

**MOTION TO DENY RESPONDENT'S
AMENDED PLEADING**

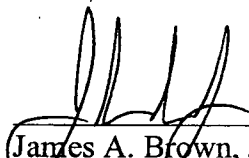
COMES NOW the Applicant, by and through undersigned counsel, and moves to strike the proposed amended pleading filed by the State.

In the proposed amended pleading, the Respondent asserts the defense of waiver. Waiver is an affirmative defense.

An affirmative defense, if not properly plead, is waived. *Whitehead v. State of South Carolina*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002).

Therefore, the Court should deny Respondent's proposed amended pleading.

Respectfully Submitted,

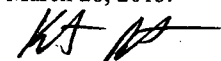


James A. Brown, Jr.
Attorney for the Applicant

March 28, 2013
Beaufort, SC

CERTIFICATE OF SERVICE

I certify that a copy of this document was mailed to all counsel of record in this proceeding on March 28, 2013.



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

**AMENDED RETURN AND
MOTION TO DISMISS**

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 31, 2011, incorporates by reference the previous Return filed by Respondent on or about September 28, 2012, and adds the following:

I.

The Applicant waived his right to file a post-conviction relief action in his plea agreement signed on January 25, 2010 and filed with the State Grand Jury Clerk of Court on the same day. The filed Plea Agreement is attached to this Amended Return and also incorporated by reference.

The plea court questioned the Applicant regarding his waiver of his right to appeal and to file a PCR. Applicant indicated that he was waiving his right to file an appeal and PCR willingly and freely. See transcript from January 25, 2010, page 10, lines 9-17 attached to the Respondent's original Return.

The Applicant's waiver of his right to file a direct appeal and PCR have been established by the record as voluntary and knowing through a colloquy between the court and Applicant at the guilty plea as well as through the plea agreement.

Therefore, since the waiver of his right to file a PCR was knowingly, willingly, and voluntarily made, the Respondent requests pursuant to Spoone v. State, 379 SC 138, 665 SE2d 605 (2008) and Narciso v. State, 397 SC 24, 723 SE2d 369 (2012) that this matter be dismissed.

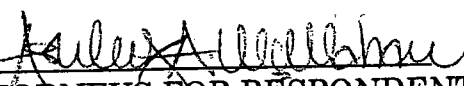
II.

WHEREFORE, having made its Amended Return, the State requests that the PCR Court abide by the underlying plea agreement and enforce the waiver of PCR and summarily dismiss the application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Mar 26th, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOR THE 14th JUDICIAL CIRCUIT
) Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668,)
)

Applicant,)
)

v.)
)

State of South Carolina,)
)

Respondent.)
)

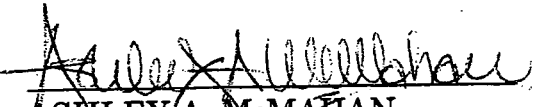
AFFIDAVIT OF SERVICE BY MAIL

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 Amended Return and Motion to Dismiss and in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

James A. Brown, Jr., Esquire
Law Offices of Jim Brown, PA
PO Box 592
Beaufort, SC 29901-0592

And also via jimbrownlaw@hargray.com

DATED this 26th day of March, 2013.


ASHLEY A. McMAHAN
Assistant Attorney General

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF
GENERAL SESSIONS FOR
THE FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

CASE NOS. 2009-GS-47-5 Count I, XVII

-VERSUS-)

DEANGELO CHRISTOPHIS MICKELL,)

DEFENDANT.)
_____)

PLEA AGREEMENT

FILED

JAN 25 2010

JAMES R. PARKS
CLERK, STATE GRAND JURY

AGREEMENT made this 25 day of January, 2010, between and among the State of South Carolina, as represented by Attorney General Henry McMaster, Susan O. Porter, Chief of Prosecution, and the Defendant, and his attorney, Anthony O. Dore, Esquire.

1. The Defendant, DeAngelo Christopher Mickell, agrees to plead guilty to the offense of Trafficking Cocaine 28 - 100 grams by conspiracy, first offense, a violation of S.C. Code Ann. § 44-53-370(e)(2)(b), a lesser-included of that alleged in Indictment Number 2009-GS-47-05 Count I, which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand (\$50,000) dollars. The State will not make any further recommendations regarding sentencing at this time. This is considered a violent and serious offense.

2. The Defendant, DeAngelo Christopher Mickell, agrees to plead guilty to the offense of Trafficking Cocaine 28 - 100 grams, first offense, a violation of S.C. Code Ann. § 44-53-370(e)(2)(b), a lesser-included offense of that alleged in Indictment Number 2009-GS-47-05 Counts XVII, which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand (\$50,000) dollars. The State will not make any further recommendations

regarding sentencing at this time. This is considered a violent and serious offense.

3. The Defendant, DeAngelo Christopher Mickell, agrees to fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of the importation, possession, and distribution of controlled substances and related unlawful activities. This cooperation is to include, but is not limited to, truthful and complete debriefings of the Defendant's knowledge concerning unlawful drug activities and related unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be truthful or to cooperate at any stage can cause the obligations of the State of South Carolina under this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the State under this Agreement become null and void due to the lack of truthfulness or cooperation on the part of the Defendant, the Defendant understands that: (1) the Defendant will not be permitted to withdraw his plea of guilty to the offense described above; (2) any and all additional charges known to the State may be filed in the appropriate county; (3) the State may argue for a maximum sentence for the offenses to which the Defendant has pled guilty; (4) the State may use any and all information and testimony provided by the Defendant in the prosecution of the Defendant for all charges; and, (5) the State may advise the Department of Corrections of the Defendant's status as an uncooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial

level.

4. The Defendant, DeAngelo Christopher Mickell, understands and agrees that any and all assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign, which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are the proceeds of unlawful drug activities or are directly or indirectly related to the unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, in portions to be determined by the South Carolina Attorney General, all conveyances, including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or

concealment of controlled substances. By signing this Agreement, the Defendant consents to civil forfeiture of all assets currently in the possession of the government and further consents to civil forfeiture of all drug related assets seized by law enforcement agents in connection with this investigation.

5. The Defendant, DeAngelo Christopher Mickell, further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should he be requested to do so regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related or not. This Plea Agreement is expressly contingent upon successful completion, to the satisfaction of the State, of the polygraph examination(s).

6. The Attorneys for the State reserve the right to summarize all evidence, which would have been presented at trial to establish a factual basis for the plea.

7. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

8. The Defendant, DeAngelo Christopher Mickell, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, DeAngelo Christopher Mickell, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, DeAngelo Christopher Mickell, understands that he has a right to file a post conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post conviction relief action.

9. The Defendant, DeAngelo Christopher Mickell, understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws, and complying with the terms and conditions of this Agreement, both before and after sentencing, and any bond executed in this case. This Agreement in no way limits or affects the Defendant's potential exposure to further prosecution by any Solicitor's Office in the State of South Carolina or the United States Attorney for conduct which is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
)
)
DEANGELO MICKELL)
Applicant)

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT
Case Number: 2011-CP-07-01538

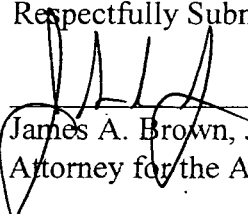
VS.)

STATE OF SOUTH CAROLINA)
Respondent)

**MOTION TO PROVIDE
APPLICANT ACCESS TO THE
DISCOVERY PROCESS**

THE APPLICANT REQUESTS THAT THIS COURT issue an order providing Appellant access to the discovery mechanisms referenced in the South Carolina Rules of Civil Procedure. This motion is based upon SC Code Section 17-27-150. Access to such discovery mechanisms are necessary to explore issues regarding compliance with Rule 5 and Brady concerns raised during undersigned counsel's investigation of this case.

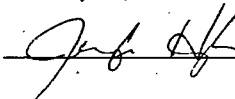
Respectfully Submitted,


James A. Brown, Jr.
Attorney for the Applicant

February 27, 2013
Beaufort, SC

CERTIFICATE OF SERVICE

I certify that a copy of this document was mailed to all counsel of record in this proceeding on February 27, 2013.



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOR THE 14th JUDICIAL CIRCUIT
) Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668,)

)
) Applicant,)

)
) v.)

) State of South Carolina,)

) Respondent.)
)

RETURN

Respondent, making its Return to the application for post conviction relief (PCR) filed March 31, 2011, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. Applicant was indicted at the May 2009, term of the State Grand Jury for: Count I – Conspiracy to Traffick Cocaine Greater than 400g and Count XVII – Trafficking Cocaine 200 - 400g (2009-GS-47-0005). Applicant was represented by Anthony O. Dore, Esquire. On January 25, 2010, the Applicant pled guilty to Conspiracy to Traffick Cocaine 28-100g and trafficking Cocaine 28-100g. Sentencing was deferred. On April 29, 2010, the Honorable Carmen T. Mullen concurrently sentenced him to confinement for a period of eighteen (18) years on both charges. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the State Grand Clerk of Court regarding the subject convictions, records from the South

Carolina Department of Corrections, and the plea transcripts.

II.

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

1. Ineffective assistance of counsel;
 - A. Failure to Investigate

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, *Id.* Applicant must overcome this presumption in order to receive relief. Cherry, *Id.*

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

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

IV.

Applicant also alleges that trial counsel failed to conduct a sufficient investigation into the case. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). However, this allegation probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VII.

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

VIII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Sept. 27th, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOR THE 14th JUDICIAL CIRCUIT
) Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668,)
)

Applicant,)
)

v.)
)

State of South Carolina,)
)

Respondent.)
)

AFFIDAVIT OF SERVICE BY MAIL

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 and in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

James A. Brown, Jr., Esquire
Law Offices of Jim Brown, PA
PO Box 592
Beaufort, SC 29901-0592

DATED this 27th day of September, 2012.


ASHLEY A. McMAHAN
Assistant Attorney General

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

C.A. Number 2011-CP-07-1538

DEANGELO MICKELL #340668)

Petitioner,)

v.)

STATE OF SOUTH CAROLINA)

Respondent.)

**APPLICATION FOR POST
CONVICTION RELIEF**

2011 MAR 31 PM 3:17
CLERK OF COURT
BEAUFORT COUNTY, S.C.

[Note: This application follows SCRCP Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCP.]

1. Petitioner is detained at the Lee Correctional Facility.
2. The sentence was imposed by the Beaufort County Court of General Sessions, the Carmen T. Mullen, presiding.
3. The co-defendants are Abigail Joughin Maillefert, # 00340675 and Ophelia Green Mickell, #00340676.
4. The indictment number upon which the offenses for which sentences was imposed is:
 - (a) 2009-GS-47-05, Count I - Conspiracy to Traffic Cocaine 28 - 100 grams, first offense
 - (b) 2009-GS-47-05, Count XVII - Trafficking Cocaine 28-100 grams, first offense
5. The date upon which sentences were imposed and the terms of the sentence are:
 - (a) Sentenced on April 29, 2010 eighteen years, concurrent.
 - (b) Sentenced on April 29, 2010 eighteen years, concurrent.
6. A plea of guilty was entered on April 29, 2010.
7. The applicant did not appeal from judgment of conviction and sentence.
8. (a) The Courts to which petitioner appealed:

- (i) N/A
- (b) The result in each Court to which petitioner appealed:
 - (i) N/A
- (c) The date on which each Court affirmed the sentence or denied certiorari:
 - (i) N/A
- (d) Citations of any written opinion or orders entered pursuant to such results:
 - (i) N/A

9. Not applicable.

10 & 11 Grounds for Relief and Concise Statement of Supporting Facts.¹

Ground A

Petitioner was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon trial counsel's deficient investigation of the facts supporting the charge against the defendant. Strickland v. Washington, 466 US 668 (1984) and Alexander v St., 402 SE2d 484 (SC 1991).

Supporting Facts for Ground A

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.
- (2) Law enforcement and prosecution documents obscured these violations.
- (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
- (4) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.

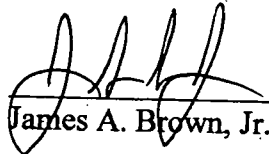
12 & 13. Petitioner has not filed any petitions related to his convictions. Petitioner has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court.

14. None of the grounds set forth in (10) have been presented to this or any other Court, state or federal.

¹ Petitioner reserves his right to further amend this application as allowed by law.

15. N/A
16. Generally claims of IAC are not cognizable on direct appeal.
17. (a) Petitioner was represented at the circuit court level by Anthony O Dore, of Dore Law Firm, P.O. Box 2478, Beaufort SC 29901.
18. Petitioner seeks the vacation of his convictions and sentences.
19. Petitioner is not under sentence from any other court.

Respectfully submitted,


James A. Brown, Jr.

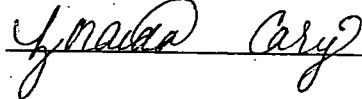
March 28th, 2011
Beaufort, SC

Law Offices of Jim Brown, P.A.
1600 Burnside Street, Suite 100
P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

Attorney for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading
was mailed to all parties of record in this
proceeding this 28 day of March, 2011.


J. Nadeau

State of South Carolina)
)
County of Beaufort)

VERIFICATION

I, DeAngelo Mickell, 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.

DeAngelo Mickell
DeAngelo Mickell, Petitioner

SWORN to and subscribed before me this 24th day of Mar 2011.
Jamie S. Melton (L.S.)
Notary Public
My Commission Expires: 4-26-2014

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

I, DeAngelo Mickell, 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 therefor.

DeAngelo Mickell
DeAngelo Mickell, Petitioner

SWORN or affirmed to and subscribed before me this 24th day of Mar, 2011.
Jamie S. Melton
Notary Public
My Commission Expires: 4-26-2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2009 GS 47 05

State of South Carolina,
Plaintiff

VS

Deangelo Mickell,
Defendant

TRANSCRIPT OF RECORD
GUILTY PLEA

April 29, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

 ORIGINAL

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

Susan Porter, Attorney at Law
Attorney General for State of South Carolina

Anthony Dore, Attorney at Law
Attorney for the Defendant

I N D E X

NO WITNESSES INTRODUCED

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EXHIBITS

NO EXHIBITS INTRODUCED

1 (Whereupon Hearing began at 2:18 P.M.)

2 MS. SUSAN PORTER: We are here Your Honor, lastly
3 on State versus Deangelo Christopher Mickell. He is
4 here before you on two counts of the indictment 2009 GS
5 47 05.

6 Again, it's Count one, the conspiracy count, Your
7 Honor. We have reduced that from conspiracy to traffic
8 cocaine more than 400 grams down to 28 to 100 grams.
9 It is a first offense but in rereading his prior record
10 Your Honor, it should have been a second offense. But
11 we did allow him to plead to a first offense.

12 And then also Count seventeen which is trafficking
13 cocaine 28 to 100 grams, that is reduced from more than
14 200 grams or between 2 to 400 grams for the 355 grams
15 that we found on the day we executed the search
16 warrant.

17 He was not charged for the crack co. --- his mother
18 was charged for the crack cocaine and the marijuana. I
19 don't know if you want -- you've heard a substantial
20 factual facts thus far with Ms. Mickell's plea but Your
21 Honor, our understanding was that Deangelo was the
22 source and he had the bigger source, Chico, whom we've
23 not been able to identify. Or at least gather enough
24 evidence to charge him.

25 From his interview -- and I think from what other

1 people said during Ms. Mickell's plea is he was working
2 and he had a barbershop -- which makes this worse --
3 cause he was lawfully and gainfully employed. And
4 chose to do this to make money and he admitted that
5 during his debriefing.

6 Again, this is a situation where we asked him to
7 cooperate on numerous occasions, didn't do it until the
8 week before trial. Then when he was debriefed he
9 minimized substantially. We had other leads that he
10 was selling to certain people that he wouldn't give up
11 -- wouldn't tell us about. Minimized his own
12 involvement. Did tell us that his mom would assist him
13 and that that's where they stored the drugs was in the
14 three -- three different cars at the trailer and that
15 the deals went down at the trailer.

16 Not only his source came to the trailer to supply
17 the cocaine, but that he dealt from the trailer and the
18 three cars were a 1993 Jeep Cherokee, a 1990 Chevy
19 Pick-up that she was picked up in, and a then a
20 Plymouth Hatchback, two-door, from the mid 80's.

21 So -- and he stated that the purpose for storing
22 the drugs in the cars were so that the trailer wouldn't
23 be robbed. So clearly he knew what he was doing,
24 clearly his intent was to make money. And he used his
25 mom to help. And when it came time to cooperate and

1 the opportunity to cooperate was given to him he failed
2 to do that.

3 I will let Lieutenant O'Neill address that if you
4 want but there were at least three occasions -- my
5 understanding -- at least three occasions that he was
6 called after the debriefing for which he failed to act
7 on.

8 So, he had opportunities and has not helped
9 himself. And had I known how this would play out, I
10 would have picked a jury on January the 25th. He is a
11 substantial dealer. He was caught with 355 grams which
12 is a heck of a lot of cocaine.

13 He admits in his interview to us that he was the
14 one that had cooked the crack cocaine in the trailer
15 just prior to us hitting the search warrant. And he
16 states -- Ya' know there was marijuana there as well,
17 and um, I think Abigail Maliford's testimony would have
18 been that really it began buying marijuana from him and
19 her marijuana habit, that he started and met Chico
20 through dealing marijuana. So that's what led to the
21 larger cocaine conspiracy, so... That's -- that's
22 where we are.

23 He does have a prior distribution of marijuana
24 from 1998 and then these charges.

25 THE COURT: Lieutenant O'Neil, what is the street

1 value of 355 grams?

2 MR. O'NEIL: You've got a street value -- depends
3 on where you are at -- from sixty to a hundred dollars
4 a gram.

5 THE COURT: Okay. All right, anything else ---

6 MR. O'NEILL: Other than just to further what the
7 prosecutor said. We did the initial interview. He
8 said he would get back with me. I -- he never called
9 me. I called him, I think, a week after we did this.
10 He didn't have anything. He was working on it. I
11 called him two more times. The last time I was
12 prompted to do that by Ms. Porter who said, Have you
13 heard anything from Deangelo? I said, The last time I
14 talked to him he said he was working on it. Said about
15 a month ago I called him again. He said, I'm working
16 on it. But, I never heard anything back from him.

17 MS. PORTER: Again, due to his involvement and the
18 trouble off that street, we would ask for upwards of
19 eighteen, nineteen, twenty years.

20 MR. ANTHONY DORE: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir.

23 MR. DORE: Deangelo is thirty-three years old.
24 Born and raised over on Hilton Head Island. Graduated
25 from Hilton Head High School. He attended Savannah

1 State College for two years. He's got two children.
2 Young children, ages five and six. One is in pre-K and
3 one is in the first grade.

4 Um, he admits that he has made some mistakes, Your
5 Honor. But he is not the monster that the State makes
6 him out to be. He has made a lot of mistakes and he
7 realizes that. I think that his mother being sentenced
8 to twelve years is something he will never forget.
9 It's terrible. He feels responsible for ---

10 THE COURT: He should.

11 MR. DORE: He does. And he feels bad about it.

12 THE COURT: Let me ask you, Mr. Dore. Where does
13 he live?

14 MR. DORE: He lives over in Ridgeland, Your Honor.

15 THE COURT: Okay. His grandmamma -- or his mother
16 lives in a trailer down a dirt road where all this is
17 going on and he lives in Ridgeland?

18 MR. DORE: Yes.

19 THE COURT: Where does he live in Ridgeland?

20 MR. DORE: Roseland Road.

21 THE COURT: Roseland Road. Do you live in a
22 trailer or ---

23 MR. DEANGELO MICKELL: Trailer.

24 THE COURT: I'm sorry, Mr. Dore. I was just
25 wondering.

1 MR. DORE: That's okay, Your Honor. I was just
2 going to mention -- um, that Deangelo owns his own
3 barbershop and hair salon. He was a business person in
4 the community. Unfortunately he was also involved in
5 selling narcotics. And he regrets that. He realizes
6 the impact that he's had, not only on his family, but
7 also his community.

8 I've come to know him now since I began
9 representing him. We've talked at length on several
10 occasions. He's a very likable person, Your Honor.
11 Very likable. We've had very direct conversations.
12 He's always been honest with me when we've discussed
13 the case.

14 The State's position has been that he's not
15 cooperated and I take exception to that. Um, the State
16 wanted him to cooperate from the first day that he was
17 arrested. And he came to me and we talked about this
18 thing and we wanted the discovery first, Your Honor.
19 We wanted to know what the State's evidence is and I
20 think that's reasonable. I think it's reasonable that
21 before you sit down and start giving statements that
22 you know what you are faced with.

23 And so we wanted to receive discovery. After we
24 received discovery we sat down and he was debriefed
25 over at the Solicitor's office in Bluffton. We went

1 over to Bluffton. We sat there for several hours. We
2 met with SLED agents and also JoJo Woodward of the
3 Beaufort County Sheriff's department.

4 He gave them information from about when he first
5 began selling drugs up until the present day. He's
6 given them all the information that he could give them.

7 THE COURT: Was he ever given an opportunity to
8 help his mother?

9 MR. DORE: That -- Your Honor, the reason that he
10 cooperated at all was so that he could help his mother.
11 That was his intention in cooperating with the State so
12 that they would be lenient with his mother. I mean, it
13 was very hard for him to come in and they wanted him to
14 not only implicate himself, but to give -- give
15 information about his mother.

16 THE COURT: No, they wanted to know who's above
17 him. That's what they want to know.

18 MR. DORE: They wanted everything, Judge. They
19 asked him for all sorts of information. We would -- he
20 was debriefed for many hours and the local law
21 enforcement was present and they were able to
22 corroborate some of the statements that he had given.
23 JoJo Woodward, who's the head of the narcotics over
24 here in Beaufort, asked him a lot of questions. He
25 answered all of the questions to the best of his

1 ability.

2 He has complied with his plea agreement, Your
3 Honor. This plea agreement is very specific. It's
4 several pages long. It sets out what his
5 responsibilities to the State are and we feel like
6 we've complied with them ---

7 THE COURT: And I think they've lessened his
8 charges as a result of it, certainly ---

9 MR. DORE: Well Your Honor, they ---

10 THE COURT: They've taken him out of the mandatory
11 minimum of twenty-five years.

12 MR. DORE: But they are asking for a substantial
13 sentence, Your Honor. And what he has done is -- this
14 plea agreement provides that he can be polygraphed.
15 The State says that he is not being truthful and honest
16 and has minimized his involvement. They had an
17 opportunity to polygraph him. They didn't. They could
18 come in here today, Your Honor, and say he failed the
19 polygraph. Here are the results -- here is the
20 polygraph examiner. We asked him these questions and
21 he failed the polygraph and they could revoke this
22 entire plea agreement if they wanted to. They're not
23 doing that. They just want to come in here and
24 ambiguously say that he didn't cooperate. Give him the
25 maximum. That's not fair. That is not fair. He has

1 done everything that they have asked him to do.

2 His cell phone was taken from him at the time of
3 his arrest. All of the phone numbers from anybody that
4 he knew that was involved in narcotics was in that cell
5 phone. He told them, You all have got my cell phone.
6 All of the numbers are in my cell phone.

7 When he was arrested it was on the front page of
8 the newspaper. Everyone in the community knew that he
9 had been arrested. There wasn't anybody that was gonna
10 deal with him. He couldn't sell drugs to anybody or
11 set anybody up in the community.

12 He gave them the name of his supplier as best he
13 could. He told what his name was. He told them where
14 they met.

15 THE COURT: How come they are telling me they only
16 know him by his nickname?

17 MR. DORE: Your Honor, he doesn't have an intimate
18 relationship with his suppliers so that he can give
19 them this guy's address and home phone number. He
20 doesn't know this guy's wife and kids and family.

21 THE COURT: Has he laid his eyes on him?

22 MR. DORE: He has not seen this person since he
23 was arrested. However, he told 'em -- he told 'em,
24 Judge, he said, We used to go to this club on Hilton
25 Head. This is where I met these folks. If you wanna

1 go to this club these is where -- it's the happening
2 seen where drugs are sold. This is where you can meet
3 these folks. He has done everything that he can, Your
4 Honor. And I think it's disingenuous for them to say
5 that he hasn't cooperated. I don't think that's fair
6 at all.

7 THE COURT: Where is the club on Hilton Head that
8 is apparently ---

9 MR. DORE: (To his client) What was it; Monkey?
10 (To the Court) Monkey Business.

11 MR. MICKELL: Use to be.

12 MR. DORE: Use to be Monkey Business, Your Honor.
13 I don't think that he has to be sentenced -- he doesn't
14 have any substantial prior record. He's got
15 convictions from 1998 ---

16 THE COURT: Distribution.

17 MR. DORE: Your Honor, he was a young -- twenty
18 years old at the time that thing happened. He was
19 twenty years ---

20 THE COURT: Did he do jail time?

21 MR. DORE: No, he had a suspended sentence, Judge.
22 He didn't do any jail time, but he was a young man. He
23 had suspended YOA is what the sentence was. Um, he has
24 made some mistakes. We admit that. I don't think that
25 in order for him to pay his debt to society it requires

1 a substantial eighteen year sentence. That is just not
2 a reasonable under the circumstances. It's not
3 reasonable, Judge. And I ask you to consider his age.
4 The fact that he can be rehabilitated. The fact that
5 he owned a business. The fact that he has family who
6 love him and support him. I'd ask that you take that
7 into consideration when you sentence him.

8 THE COURT: I appreciate that. I also know he's
9 got some children that could benefit from a father who
10 is not doing any time. So, um...

11 Did you give him an opportunity to help his mother
12 in any way 'cause I would be shocked if that wasn't
13 part of what ya'll've talked about.

14 MS. PORTER: And I can't find my bond sheet. If
15 you could find that for me I could tell you the first
16 date that -- let me tell you a little bit as to how
17 this went down and I take exception to what Mr. Dore
18 has put on the record as far as the State.

19 First and foremost, I give a deadline and I don't
20 ever -- I want say ever -- I rarely extend that
21 deadline. At the bond hearing I met with Mr. Dore and
22 Mr. Tootle. I pulled them out separately with
23 Lieutenant Frank O'Neil and I said to them -- and this
24 was on May 27th, 2009 -- all right, we are arraigning
25 them on these indictments. I said, I've got 'em, I

1 have 'em. Let me help you because I don't make deals
2 without cooperation. Here's what cooperation is.
3 Here's what it entails. Tell them they need to
4 cooperate. That was in May and I got the same spiel
5 from Mr. Dore, We can't do this without knowing what
6 he's got. I prepared -- a month later -- a protective
7 order. Went and got a disclosure order and protective
8 order signed so that they could come up and meet with
9 me and look at the discovery. They never chose to do
10 it. We had a meeting scheduled and due to some
11 uncontrollable events it was cancelled. It was always
12 open. I begged them to cooperate.

13 MR. DORE: If, if ---

14 MS. PORTER: And they didn't do it until the week
15 before trial. The week before trial. The Thursday
16 before trial is when I got a phone call, Please let us
17 cooperate. We'll meet you at the Sheriff's office,
18 where we were doing trial prep. So this
19 characterization that the State has been unreasonable,
20 is completely false ---

21 MR. DORE: Your Honor, if I might ---

22 MS. PORTER: We have been more than reasonable by
23 taking the twenty-five years off the table. I have
24 more than enough evidence to convict him and was very
25 comfortable starting the trial on Monday, June 25th.

1 MR. DORE: Your Honor, if I might respond. An
2 arraignment, you know from criminal procedure, an
3 arraignment is very early to sit down and start giving
4 up information. At the arraignment, I mean, that's his
5 initial court appearance. They wanted him to come out
6 of his initial court appearance and sit down and start
7 giving up information on people. The first day.
8 That's not reasonable. I don't think it is and ---

9 MS. PORTER: Well, that's how -- that's how the
10 State Grand Jury works, Mr. Dore.

11 MR. DORE: It's not fair. It's the first day.

12 MS. PORTER: Well, I'll take exception to that --
13 the arraignment -- the indictment was substantially
14 after the arrest.

15 MR. DORE: Your Honor, I have a responsibility as
16 an attorney. -- I have ---

17 THE COURT: I understand that ---

18 MR. DORE: I have responsibilities to my client
19 and to the Bar to adequately represent my client and at
20 an arraignment I am not prepared ---

21 THE COURT: Mr. Dore, there has been adequate time
22 since then though that your client has not -- and I
23 asked the simple question of was he afforded the
24 opportunity to help his mother. I see that he
25 certainly had tears after I sentenced her for twelve

1 years but again, that doesn't extend to if he could
2 have helped her ---

3 MR. DORE: Your Honor ---

4 THE COURT: And that's what I wanted to know.

5 MR. DORE: He cooperated in an effort to help his
6 mother. That was the reason for his cooperation, Your
7 Honor.

8 THE COURT: Okay. Sir, would you like to say
9 something to me?

10 MR. MICKELL: I know what I did was wrong. I just
11 kinda got in a situation where I needed to catch up on
12 bills and that was the way that I went -- I knew it
13 wasn't the right way to go but I did it. My mother
14 really didn't have anything to do with it.

15 In fact, I told them initially when they asked me
16 to help my mother, when they asked, Whose was it, I
17 told them it was all mine, it was all on me. That's
18 the only reason I came forward to them and when they
19 asked me for help -- he asked me to give him the guy's
20 number, I gave them the number so I don't know what
21 more help he wanted me to give them. I couldn't go
22 find him. I gave them what I had. I just don't know
23 what to say. I apologize. It's my first offense. I
24 just wish you could give me some leniency.

25 THE COURT: Anything further? Does anyone else

1 want to speak. I know and I did appreciate your words.
2 A few of them spoke, of course, on behalf of your
3 mother and yourself. Does anyone else want to speak on
4 Mr. Mickell's behalf?

5 MR. DORE: Your Honor, the mother of his children
6 has spoken, um, they are all pretty distraught over
7 this ---

8 THE COURT: I understand. All right.

9 UNKNOWN PERSON: I'll say something.

10 THE COURT: Yes, again, ma'am, if you'll just
11 again, for the record, state your name.

12 UNKNOWN PERSON: (did not state her name) For the
13 record, I do know financially -- it was something
14 financial for him. When I was pregnant with our second
15 child -- it was -- and he told me -- and he said, I
16 cannot afford it. You are going to have to get an
17 abortion. And I said, I can't. And money was um, he
18 was making money. Um, but it wasn't enough. And he
19 was doing what he was doing and -- I didn't have an
20 abortion. But it was a financial thing and he has a
21 lot on his plate. He takes care of his mother.

22 I be honest with you, a lot of people turn to
23 him. A lot of people. It's like a lot of people
24 leaned on him and he is not a person to say, No. He
25 will do whatever it takes to help them out. And

1 there's a few of the people, actually, whose in a
2 position now -- which I will not say their names -- a
3 lot of people are where they are now because of
4 Deangelo. They didn't take the same path that he took
5 but they leaned on him to get where they are. They
6 knew what he was doing but at the time it didn't matter
7 cause he was helping them and like I say, I won't say
8 their names.

9 But there is a few of them that's like that within
10 his family. Um, so I'm not saying what he did is
11 right. What he did is not right. Um, there's a lot of
12 decisions that was made that is not right. But he is a
13 good person. He takes care of his kids. He loves his
14 kids. Um, I just -- I'm upset. I'm more hurt because
15 of my kids, it's like -- DJ, he has a good relationship
16 with him. I'm daddy's little princess. He's a great
17 father, it's hard. He's a great provider.

18 UNKNOWN PERSON NUMBER TWO: Your Honor?

19 THE COURT: Yes ma'am?

20 UNKNOWN PERSON NUMBER TWO: Being his girlfriend,
21 he is an awesome provider. Of fourteen years being
22 with him also I mean my kids look up to him
23 tremendously. And my daughter texted me saying, Please
24 bring him home, please bring him home...(crying
25 uncontrollably and can't understand what is being

1 said). He help her with her homework...(more crying)
2 I'm just asking you to give some leniency and bring him
3 home as quickly as possible. (Crying and can't
4 understand).

5 THE COURT: Thank you, ma'am. Anything further?

6 MR. DORE: No ma'am.

7 THE COURT: On indictment number 2009 5 it is
8 Count 17 for trafficking cocaine more than 28 but less
9 than 100 grams the sentence of this Court is that you
10 be committed to the Department of Corrections for a
11 period of eighteen years.

12 On indictment number 2009 05, again Count 1, the
13 sentence of this Court is that you be committed to the
14 Department of Corrections, again, for a period of
15 eighteen years. Those are to run concurrent to each
16 other and I'm of course, going to give you credit for
17 time served. Good luck to you, sir.

18 MS. PORTER: Thank you, Your Honor.

19
20 (Whereupon the hearing concluded)

21
22 --- END OF TRANSCRIPT OF RECORD ---
23
24
25

I, the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 29th day of April, 2010.

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

April , 2012



Deborah E. Everett
Official Court Reporter

 ORIGINAL

COUNTY OF Beaufort
STATE

APR 29 2010

INDICTMENT/CASE#: 2009 -GS- 47 - 05

VS.
DeAngelo Christopher Mickell
AKA:
Race: Black Sex: Male
DOB: SS#:
Address:
City, State, Zip:JAMES R. PARKS
CLERK, STATE GRAND JURY

Age: 32

A/W#: Direct Presentment
Date of Offense: May 1, 2008 to September 17, 2008
S.C. Code §: 44-53-0370(e)(2)(e)
CDR Code #: 0281

SENTENCE SHEET

DL# SID#
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Conspiracy to Traffick Cocaine 28 - 100 grams, first offense (7 - 25 years and \$50,000 fine)(NS/NP)

In violation of § 44-53-0370(e)(2)(b)(1) of the S.C. Code of Laws, bearing CDR Code # 2359

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Susan O. Porter 68335

DeAngelo Mickell

Anthony O. Dore

13628

Asst. Atty General

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 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp.

Recipient:

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.

*Fine:

\$14-1-206 (Assessments 107.5%)		\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

Clerk of Court/Deputy Clerk

Court Reporter: Deborah Everett

SCCA/217 (11/2009)

Presiding Judge

Judge Code: 2142

Sentence Date

4/29/10 JRP
sentencing deferred

COUNTY OF Beaufort
STATE

APR 29 2010

INDICTMENT/CASE#: 2009 -GS- 47 - 05

VS.
DeAngelo Christopher Mickell
AKA:
Race: Black Sex: Male
DOB: SS#:
Address:
City, State, Zip:
DL#

JAMES R. PARKS
CLERK, STATE GRAND JURY

AW#: J-346967
Date of Offense: September 17, 2008
S.C. Code §: 44-53-0370(e)(2)(d)
CDR Code #: 0288

Count XVII

SENTENCE SHEET

SID#
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Trafficking Cocaine 28 - 100 grams, first offense (7 - 25 years and \$50,000 fine)(NS/NP)

In violation of § 44-53-0370(e)(2)(b)(1) of the S.C. Code of Laws, bearing CDR Code # 2359

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$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.

ATTEST:

Susan O. Porter 68335

DeAngelo Mickell

Anthony O. Dore

Ass't Atty General 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 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning
Substance Abuse Counseling ☐

*Fine:
\$14-1-206 (Assessments 107.5%)
\$14-1-211 (A)(1)(Conv. Surcharge) \$100
\$14-1-211 (A)(2)(DUI Surcharge) \$100
\$56-5-2995 (DUI Assessment) \$12
\$56-1-286 (DUI Breath Test) \$25
\$47.12 (Public Def/Prob) \$500
\$14-1-212 (Law Enforce. Funding) \$25
\$14-1-213 (Drug Court Surcharge) \$100
\$50-21-114 (BUI Breath Test Fee) \$50
\$56-5-2942(J) (Vehicle Assessment) \$40/ea
\$90.7 (SCCJA Surcharge) \$5
3% to County (if paid in installments)
TOTAL \$236.90

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning
\$ Paid to Public Defender Func

Other:

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

Presiding Judge

Judge Code: 2142

Sentence Date

4/25/10 to 4/29/10 2:00 PM
sentencing deferred

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2009-GS-47-00005

STATE OF SOUTH CAROLINA

-vs-

DEANGELO CHRISTOPHER MICKELL:

:
:
: TRANSCRIPT OF RECORD
:

MONDAY, JANUARY 25, 2010
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE CARMEN T. MULLEN, JUDGE.

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

SUSAN PORTER, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE

ANTHONY DORE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

I N D E X

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3 Certificate of Court Reporter 12

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E X H I B I T S

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9 (No exhibits were introduced during the guilty plea.)

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State vs. Deangelo Mickell

1 THE COURT: Solicitor.

2 MS. PORTER: Thank you, Your Honor. The state calls
3 Deangelo Christopher Mickell on indictment 2009-GS-47-05,
4 counts 1 and then count 17, I believe, Your Honor.

5 Your Honor, he's charged in count 1 with conspiracy to
6 traffic cocaine more than 400 grams. In late December of
7 2006 Abigail Maillefert began purchasing cocaine from
8 Ophelia Green Mickell at her residence, 12 Christopher
9 Drive, in the City of Hilton Head, Beaufort, South Carolina
10 -- County of Beaufort, South Carolina. And continued to
11 purchase until June 23, 2008. She would purchase anywhere
12 from 4 to 8 grams 2 to 3 times per week.

13 Deangelo Mickell upon our information and belief is
14 Ophelia Mickell's supplier. If Abigail arrived and Ophelia
15 did not have cocaine to sell, Deangelo would arrive and
16 shortly Ophelia would have cocaine to sell to Abigail.

17 The largest amount Abigail ever saw Ophelia with at
18 one time was 2 ounces. In total, she purchased
19 approximately 144 grams of cocaine over 1.5 years.

20 On September 17, 2008 an officer with the
21 Beaufort/Jasper Counties Drug Task Force observed Deangelo
22 Mickell carry a container of 355 grams from the trailer, 12
23 Christopher Drive, to the car that he was seen earlier that
24 day driving and placed that in the trunk of the car.

25 Together with the amount that was sold to Ms.

State vs. Deangelo Mickell

1 Maillefort, it was well over 400 grams.

2 We are allowing him to plead to the lesser included
3 charge of 28 to 100 grams of cocaine.

4 The remaining count, Your Honor, is that substantive
5 offense. Count 17 is the actually 355 grams. So we
6 charged him there, trafficking 2 to 400 grams, and are
7 allowing him to plead 28 to 100 grams.

8 THE COURT: Okay. All right. You are Deangelo
9 Christopher Mickell?

10 MR. MICKELL: Yes, ma'am.

11 THE COURT: Raise your right hand, sir.

12 (Complied.)

13 THE COURT: Do you swear or affirm the testimony you
14 give will be the truth, so help you God?

15 MR. MICKELL: Yes, ma'am.

16 THE COURT: You heard the facts as stated by the
17 attorney general?

18 MR. MICKELL: Yes, ma'am.

19 THE COURT: Are they correct, sir?

20 MR. MICKELL: Yes, ma'am.

21 THE COURT: Thank you. Sir, how old are you?

22 MR. MICKELL: 32.

23 THE COURT: How far did you go in school?

24 MR. MICKELL: Graduated high school, 2 years of
25 college.

State vs. Deangelo Mickell

1 THE COURT: What did you take in college?

2 MR. MICKELL: Business administration.

3 THE COURT: What type of work do you do?

4 MR. MICKELL: I was working at a warehouse and
5 barbershop.

6 THE COURT: Okay. Were you cutting hair or what were
7 you doing at the barbershop?

8 MR. MICKELL: Just cut.

9 THE COURT: Are you married, sir?

10 MR. MICKELL: No, ma'am.

11 THE COURT: Do you have any children?

12 MR. MICKELL: Yes, ma'am.

13 THE COURT: How many?

14 MR. MICKELL: 2.

15 THE COURT: How old are they?

16 MR. MICKELL: 6 and 4.

17 THE COURT: All right, sir. Sir, have you taken any
18 medication or drank any alcohol in the last 24 hours?

19 MR. MICKELL: No, ma'am.

20 THE COURT: Do you suffer from any mental or physical
21 problem that would prevent you from understanding what
22 we're doing here today?

23 MR. MICKELL: No, ma'am.

24 THE COURT: Sir, you understand that you are pleading
25 guilty to the offense of trafficking in cocaine between 28

State vs. Deangelo Mickell

1 and 100 grams by conspiracy in indictment 2009-GS-47-5,
2 count 1, which carries a sentence range between a minimum
3 of 7 years and up to 25 years in prison?

4 MR. MICKELL: Yes, ma'am.

5 THE COURT: And, sir, you understand that also
6 accompanies that is a possible fine of up to \$50,000 as
7 well. Do you understand that?

8 MR. MICKELL: Yes, ma'am.

9 THE COURT: Understanding that, sir, do you still wish
10 to plead guilty?

11 MR. MICKELL: Yes, ma'am.

12 THE COURT: Sir, you're also pleading guilty here
13 today to trafficking in cocaine 28 to 100 grams, first
14 offense. Again, it's the same indictment number. It is
15 count 17, sir, which again carries a sentencing range of at
16 least 7 years and up to 25 years and a fine of up to
17 \$50,000. Do you understand that, sir?

18 MR. MICKELL: Yes, ma'am.

19 THE COURT: Do you understand that when you are
20 sentenced eventually after some time has passed that, sir,
21 in fact you could be looking at 50 years in prison and a
22 fine of up to \$100,000?

23 MR. MICKELL: Yes, ma'am.

24 THE COURT: Understanding that, sir, do you still wish
25 to plead guilty?

State vs. Deangelo Mickell

1 MR. MICKELL: Yes, ma'am.

2 THE COURT: You also understand that the state is
3 making no recommendations regarding sentencing at this
4 time?

5 MR. MICKELL: Yes, ma'am.

6 THE COURT: Sir, do you also understand that this is
7 considered a violent and serious offense, which means, sir,
8 that you are going to have to do 85 percent of whatever
9 time you receive. Do you understand that?

10 MR. MICKELL: Yes, ma'am.

11 THE COURT: Also, additionally, sir, if you are
12 convicted of 2 more either serious or most serious
13 offenses, that you are going to possibly be looking at life
14 without parole if either the attorney general's office or
15 the solicitor's office chooses to seek it. Do you
16 understand that?

17 MR. MICKELL: Yes, ma'am.

18 THE COURT: Understanding all that, sir, do you still
19 wish to plead guilty?

20 MR. MICKELL: Yes, ma'am.

21 THE COURT: Sir, are you completely satisfied with how
22 Mr. Dore has represented you?

23 MR. MICKELL: Yes, ma'am.

24 THE COURT: Has he done everything you've asked him to
25 do?

State vs. Deangelo Mickell

1 MR. MICKELL: Yes, ma'am.

2 THE COURT: Have you understood all your conversations
3 with him?

4 MR. MICKELL: Yes, ma'am.

5 THE COURT: Do you have any complaints against Mr.
6 Dore whatsoever?

7 MR. MICKELL: No, ma'am.

8 THE COURT: Sir, do you understand when you plead
9 guilty, you are waiving your right to a jury trial?

10 MR. MICKELL: Yes, ma'am.

11 THE COURT: Mr. Mickell, you understand that you are
12 scheduled for a jury trial today. Do you understand that?

13 MR. MICKELL: Yes, ma'am.

14 THE COURT: Sir, do you understand that if you were to
15 go to a jury trial, you have the right to testify or not
16 testify in your own behalf. If you chose not to testify,
17 I'd tell the jury that they couldn't hold it against you.
18 And, again, that's because you're never required to prove
19 your innocence. The burden is on the state to prove your
20 guilt as to these charges beyond a reasonable doubt. Do
21 you understand that?

22 MR. MICKELL: Yes, ma'am.

23 THE COURT: Also, do you understand that Mr. Dore at a
24 jury trial would have the opportunity to cross examine the
25 state's witnesses and present witnesses in your behalf. He

1 could also attempt to suppress various evidence in the
2 case. I want to make sure you understand and appreciate
3 that by pleading guilty here today, you are waiving your
4 right to a jury trial and all the other constitutional
5 rights that go along with a jury trial. Do you understand
6 that, sir?

7 MR. MICKELL: Yes, ma'am.

8 THE COURT: Understanding all that, sir, do you still
9 wish to plead guilty here today?

10 MR. MICKELL: Yes, ma'am.

11 THE COURT: Additionally, sir, you understand that
12 when you plead guilty to a drug charge, you are going to
13 lose your driver's license for a period of time. Is that
14 correct?

15 MR. MICKELL: Yes, ma'am.

16 THE COURT: All right, sir. Sir, has anyone promised
17 you anything or held out any hope of reward to get you to
18 plead guilty here today?

19 MR. MICKELL: No, ma'am.

20 THE COURT: Has anyone pressured you or threatened you
21 or told you you had to plead guilty?

22 MR. MICKELL: No, ma'am.

23 THE COURT: Has anyone from law enforcement, the
24 attorney general's office, the state, SLED, the drug task
25 force with Beaufort and Jasper County mistreated you in any

1 way regarding any detention or investigation or anything
2 along those lines, sir?

3 MR. MICKELL: No, ma'am.

4 THE COURT: Sir, have you understood all my questions?

5 MR. MICKELL: Yes, ma'am.

6 THE COURT: Have you been truthful with all your
7 responses to The Court?

8 MR. MICKELL: Yes, ma'am.

9 THE COURT: Sir, you understand that pursuant to your
10 plea agreement, you have waived any right to an appeal or a
11 post-conviction relief filing. Do you understand that?

12 MR. MICKELL: Yes, ma'am.

13 THE COURT: You understand that we allow by contract
14 for you to waive those constitutional rights. You
15 understand that and you're willingly and freely doing that;
16 is that correct, sir?

17 MR. MICKELL: Yes, ma'am.

18 THE COURT: All right, sir. Thank you. Anything
19 further we need to put on the record other than I need to
20 accept his plea?

21 MS. PORTER: No, Your Honor.

22 THE COURT: Okay. I do find a substantial factual
23 basis for this plea, that your decision to plead guilty has
24 been made freely, voluntarily, knowingly, intelligently,
25 with the consent of competent counsel with whom you tell me

State vs. Deangelo Mickell

1 you're satisfied, and I'm going to accept your plea, sir.
2 Again, we're going to defer sentencing for 90 days or
3 whenever the attorney general brings it back up in front of
4 me. Okay. All right. Thank you.

5 MR. DORE: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 --- End of transcript of record ---

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1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the hearing
6 of the captioned case, relative to appeal, in the Circuit
7 Court for Beaufort County and Jasper County, South Carolina
8 on the 25th day of January 2010.

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

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August 16, 2012

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Court Reporter

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State vs. Deangelo Mickell

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF
GENERAL SESSIONS FOR
THE FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
-VERSUS-)
)
DEANGELO CHRISTOPHIS MICKELL,)
)
DEFENDANT.)
_____)

CASE NOS. 2009-GS-47-5 Count I, XVII

PLEA AGREEMENT

FILED

JAN 25 2010

JAMES R. PARKS
CLERK, STATE GRAND JU

AGREEMENT made this 25 day of January, 2010, between and among the State of South Carolina, as represented by Attorney General Henry McMaster, Susan O. Porter, Chief of Prosecution, and the Defendant, and his attorney, Anthony O. Dore, Esquire.

1. The Defendant, DeAngelo Christopher Mickell, agrees to plead guilty to the offense of Trafficking Cocaine 28 - 100 grams by conspiracy, first offense, a violation of S.C. Code Ann. § 44-53-370(e)(2)(b), a lesser-included of that alleged in Indictment Number 2009-GS-47-05 Count I, which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand (\$50,000) dollars. The State will not make any further recommendations regarding sentencing at this time. This is considered a violent and serious offense.

2. The Defendant, DeAngelo Christopher Mickell, agrees to plead guilty to the offense of Trafficking Cocaine 28 - 100 grams, first offense, a violation of S.C. Code Ann. § 44-53-370(e)(2)(b), a lesser-included offense of that alleged in Indictment Number 2009-GS-47-05 Counts XVII, which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand (\$50,000) dollars. The State will not make any further recommendations

regarding sentencing at this time. This is considered a violent and serious offense.

3. The Defendant, DeAngelo Christopher Mickell, agrees to fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of the importation, possession, and distribution of controlled substances and related unlawful activities. This cooperation is to include, but is not limited to, truthful and complete debriefings of the Defendant's knowledge concerning unlawful drug activities and related unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be truthful or to cooperate at any stage can cause the obligations of the State of South Carolina under this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the State under this Agreement become null and void due to the lack of truthfulness or cooperation on the part of the Defendant, the Defendant understands that: (1) the Defendant will not be permitted to withdraw his plea of guilty to the offense described above; (2) any and all additional charges known to the State may be filed in the appropriate county; (3) the State may argue for a maximum sentence for the offenses to which the Defendant has pled guilty; (4) the State may use any and all information and testimony provided by the Defendant in the prosecution of the Defendant for all charges; and, (5) the State may advise the Department of Corrections of the Defendant's status as an uncooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial

level.

4. The Defendant, DeAngelo Christopher Mickell, understands and agrees that any and all assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign, which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are the proceeds of unlawful drug activities or are directly or indirectly related to the unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, in portions to be determined by the South Carolina Attorney General, all conveyances, including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or

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concealment of controlled substances. By signing this Agreement, the Defendant consents to civil forfeiture of all assets currently in the possession of the government and further consents to civil forfeiture of all drug related assets seized by law enforcement agents in connection with this investigation.

5. The Defendant, DeAngelo Christopher Mickell, further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should he be requested to do so regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related or not. This Plea Agreement is expressly contingent upon successful completion, to the satisfaction of the State, of the polygraph examination(s).

6. The Attorneys for the State reserve the right to summarize all evidence, which would have been presented at trial to establish a factual basis for the plea.

7. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

8. The Defendant, DeAngelo Christopher Mickell, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, DeAngelo Christopher Mickell, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, DeAngelo Christopher Mickell, understands that he has a right to file a post conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post conviction relief action.

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9. The Defendant, DeAngelo Christopher Mickell, understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws, and complying with the terms and conditions of this Agreement, both before and after sentencing, and any bond executed in this case. This Agreement in no way limits or affects the Defendant's potential exposure to further prosecution by any Solicitor's Office in the State of South Carolina or the United States Attorney for conduct which is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

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STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

WARRANT FOR ARREST

FILED

vs.

MAY 27 2009

DEANGELO CHRISTOPHER MICKELL

CASE NUMBER: 2009 JAMES R. PARKS
CLERK, STATE GRAND JURY

TO: Any Law Enforcement Officer of this State, or
Any County or Municipal Officer Within his Jurisdiction

YOU ARE HEREBY COMMANDED to arrest ~~JESUS ERNESTO RODRIGUEZ NETRO~~ ^{DEANGELO CHRISTOPHER MICKELL} and
bring him or her forthwith before me to answer a Indictment of the State Grand Jury of South
Carolina charging him or her with:

(brief description of offense)

TRAFFICKING COCAINE > 400 GRAMS (CONSPIRACY)

TRAFFICKING COCAINE 200 - 400 GRAMS

(A copy of the Indictment is attached for service on the Defendant.
For a description of the charges see the Indictment.)

in violation of 1976 Code of Laws of South Carolina, as amended, Section(s) 44-53-370 (e)(2)(e), 44-53-370 (e)(2)(d). A copy of this Warrant for Arrest shall be delivered to the defendant at the time of its
execution, or as soon thereafter as practicable.

May 13, 2009

Date

J. Michelle Childs

Name of Presiding Judge

Columbia, SC

Location

Signature of Presiding Judge

RETURN

This warrant was received and executed with the arrest of the above-named defendant at
MAY 27TH, 2009. A copy of this warrant was delivered to the defendant on

Date Received: 5/27/09

Name and Title of Arresting Officer

Signature of Arresting Officer

Date of Arrest: 5/27/09

S/A Aaron Rawl

[Signature]

A TRUE COPY

Attest: James R. Parks, Clerk

By: Margaret J. Sals

Deputy Clerk

MAY 13 2009

2009GS 47 05

JAMES R. PARKS
CLERK, STATE GRAND JURY STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VS.

ABIGAIL JOUGHIN MAILLEFERT,
OPHELIA GREEN MICKELL,
DEANGELO CHRISTOPHER MICKELL,

DEFENDANTS.

CASE NO. ~~SGJ2009-192~~

**INDICTMENT FOR
UNLAWFUL DRUGS**

Trafficking Cocaine (Conspiracy)
> 400 grams

S.C. Code Ann. § 44-53-370 (e)(2)(c)

Trafficking Cocaine 200 – 400 grams
S.C. Code Ann. § 44-53-370 (c)(2)(d)
Two Counts

Trafficking Cocaine 28 - 100 grams
S.C. Code Ann. § 44-53-370 (e)(2)(b)
~~Two Counts~~
~~THREE SG~~

Trafficking Cocaine 10 - 28 grams
S.C. Code Ann. § 44-53-370 (e)(2)(a)

Trafficking Crack Cocaine 10 – 28 grams
S.C. Code Ann. § 44-53-375 (C)(1)

Distribution of Cocaine
S.C. Code Ann. § 44-53-370 (a)(1);
(b)(1)

~~Five Counts~~
~~Four SG~~

Possession with Intent to Distribute
Cocaine
S.C. Code Ann. § 44-53-370 (a)(1);
(b)(1)

Possession with Intent to Distribute
Crack Cocaine
S.C. Code Ann. § 44-53-375 (B)(1)

Possession with Intent to Distribute
Marijuana
S.C. Code Ann. § 44-53-370 (a)(1);
(b)(1)
Two Counts

At a session of the State Grand Jury of South Carolina, convened in Columbia,
South Carolina, on May 13, 2009, the State Grand Jurors present upon their oath:

COUNT I
TRAFFICKING COCAINE > 400 GRAMS
(CONSPIRACY)
S.C. Code Ann. § 44-53-370 (e)(2)(e)

That ABIGAIL JOUGHIN MAILLEFERT, OPHELIA GREEN MICKELL,
DEANGELO CHRISTOPHER MICKELL, and other persons whose names are both
known and unknown to the State Grand Jury, did in Beaufort County and Jasper County
of South Carolina, during the period of time extending from on or about May 1, 2008 to
September 17, 2008, conspire to sell, manufacture, deliver, purchase, or who provides
financial assistance or otherwise aids, abets, or bring into this State, more than four
hundred (400) grams of cocaine, a controlled substance under provisions of § 44-53-110,
et. seq., Code of Laws South Carolina (1976), as amended, such conduct not having been
authorized by law and such activity occurring and/or having significance in more than
one county of this State.

COUNT II
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That ABIGAIL JOUGHIN MAILLEFERT did in Beaufort County, on or about
May 1, 2008, knowingly distribute, dispense, or deliver cocaine, a controlled substance
under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as
amended, such conduct not having been authorized by law and such activity occurring

and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT III
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That ABIGAIL JOUGHIN MAILLEFERT did in Beaufort County, on or about May 15, 2008, knowingly distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IV
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370 (b)(1)

That ABIGAIL JOUGHIN MAILLEFERT did in Beaufort County, on or about June 12, 2008, knowingly distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT V
TRAFFICKING COCAINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(a)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June 16, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell,

manufacture, deliver, purchase, or bring into this State more than ten (10) grams but less than twenty-eight (28) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VI
TRAFFICKING COCAINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(b)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June ~~16~~²⁰ 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State more than twenty-eight (28) grams but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VII
TRAFFICKING CRACK COCAINE 10-28 GRAMS
S.C. Code Ann. § 44-53-375 (C)(1)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June 23, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State more than ~~twenty eight (28)~~^{ten (10)} grams but less than ~~one hundred (100)~~^{twenty eight (28)} grams of crack cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended,

such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VIII
POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
S.C. Code Ann. § 44-53-370 (a)(1); (b)(2)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June 23, 2008, possess with intent to distribute, dispense, or deliver marijuana, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT IX
POSSESSION WITH INTENT TO DISTRIBUTE COCAINE
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June 23, 2008, possess with intent to distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT X
TRAFFICKING COCAINE 28-100 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(b)

That OPHELIA GREEN MICKELL did in Beaufort County, on or about June 27, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State more than twenty-eight (28) grams but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-

110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XI
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That OPHELIA GREEN MICKELL did in Beaufort County, on or about July 2, 2008, knowingly distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XII
TRAFFICKING COCAINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(b)

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about July 9, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State more than twenty-eight (28) grams but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XIII
TRAFFICKING COCAINE 200 - 400 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(d)

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about September 17, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of more than two hundred (200) grams but less than four hundred (400) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XIV
POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE
S.C. Code Ann. § 44-53-375 (B)(1)

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about September 17, 2008, possess with intent to distribute, dispense, or deliver crack cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XV
POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
S.C. Code Ann. § 44-53-370 (a)(1); (b)(2)

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about September 17, 2008, possess with intent to distribute, dispense, or deliver marijuana, a

controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XVI
UNLAWFUL CARRYING OF A HANDGUN
S.C. Code Ann. § 16-23-20

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about September 17, 2008, unlawfully possess a Taurus Millennium Pro Model PT111, serial number TWA31138, caliber 9 millimeter handgun, to wit: the Defendant was driving a white Chevy Silverado truck with the handgun lying behind the driver's seat, in violation of § 16-23-20, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

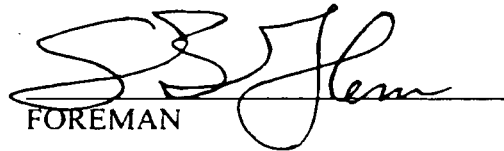
COUNT XVII
TRAFFICKING COCAINE 200 - 400 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(d)

That DEANGELO CHRISTPHER MICKELL, did in Beaufort County, on or about September 17, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of more than two hundred (200) grams but less than four hundred (400) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by

law and such activity occurring and/or having significance in more than one county of
this State.

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

A TRUE Bill


FOREMAN


HENRY McMASTER (sop)
ATTORNEY GENERAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Perry M. Buckner, III

Appellate Case Number 2014-002155

DeAngelo Mickell,.....Petitioner.

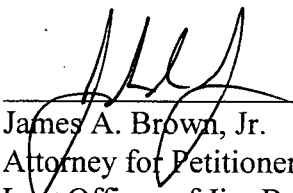
v.

State of South Carolina,.....Respondent

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Appendix complies with SCACR Rule 243 F.

February 22nd, 2015



James A. Brown, Jr.
Attorney for Petitioner
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