

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Beaufort County  
Perry M. Buckner, Circuit Court Judge **S.C. Supreme Court**  
2011-CP-07-01538

Appellate Case No. 2014-002155

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DeAngelo C. Mickell, #340668,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

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**SUPPLEMENTAL APPENDIX**

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ATTORNEYS FOR RESPONDENT

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10. The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void.

1/25/10  
DATE

DeAngelo Mickell  
DeAngelo Christopher Mickell  
Defendant

1-25-110  
DATE

Anthony O. Dore  
Anthony O. Dore  
Attorney for Defendant

Henry McMaster  
Attorney General of South Carolina

1/21/10  
DATE

By: Susan O. Porter  
Susan O. Porter  
Chief of Prosecution

202 26

STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT  
COURT OF COMMON PLEAS  
CASE NO. 2011-CP-07-01538

DEANGELO MICKELL

APPLICANT

VERSUS

**APRIL 1, 2013**

**TRANSCRIPT OF MOTION HEARING**

**BEAUFORT, SOUTH CAROLINA**

STATE OF SOUTH CAROLINA

DEFENDANT

---

B E F O R E:

HON. PERRY M. BUCKNER, JUDGE.

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

**ORIGINAL**

ON BEHALF OF APPLICANT:

HON. JAMES BROWN, JR.

ON BEHALF OF THE STATE:

HON. ASHLEY A. MCMAHAN  
HON. S. CREIGHTON WATERS

WANDA H. ROWE, CVR-M  
OFFICIAL COURT REPORTER

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BEGINNING 11:30 A.M.

BY THE COURT:

THE COURT: Next matter for hearing is 2011 at 1538. It's a Beaufort County case. Deangelo -- and I don't know -- is it Mickell?

MR. BROWN: It is Mickell, yes, sir.

THE COURT: Mickell versus State of South Carolina. Scheduled only for a motion. I've reviewed the file during the break. I've read Mr. Brown's motion of March 28. And I understand that the State has a motion, as well as -- I've lost my -- there we go. Mr. Brown, present before me is James Brown, Jr., representing Ms. Mickell. Also present is Ashley McMahan, representing the State of South Carolina. Who else is present?

MR. WATERS: Your Honor, I'm Assistant Deputy Attorney General Craig Waters. Ms. McMahan will be handling the motion today, your Honor.

THE COURT: Wonderful. Well, Ms. McMahan, I understand you have a motion, as well. Is that right?

MS. MCMAHAN: Yes, your Honor.

THE COURT: All right. Mr. Brown, I understand basically what you're moving for is to provide your client with access to certain discovery.

MR. BROWN: Yes, sir.

THE COURT: Is that right?

1 MR. BROWN: That is correct, your Honor.

2 THE COURT: And you cite as authority 17-27-150. Is  
3 that correct?

4 MR. BROWN: That is correct, your Honor.

5 THE COURT: And I understand, Ms. McMahan, that you  
6 oppose that motion on the basis of 14-7-1720(A). Is  
7 that correct, Ms. McMahan?

8 MS. MCMAHAN: If you are referencing the State Grand  
9 Jury.

10 THE COURT: No, I'm representing what you wrote, Ms.  
11 McMahan.

12 MS. MCMAHAN: Oh, yes, sir, your Honor.

13 THE COURT: Are you not familiar with the statute  
14 number? You referred to it in your pleadings.

15 MS. MCMAHAN: I've referenced a lot of statute  
16 numbers in my head.

17 THE COURT: You see, Ms. McMahan, this is another  
18 example that lawyers don't believe that judges read the  
19 pleadings. But I can assure you that this judge does.  
20 Is that correct?

21 MS. MCMAHAN: Yes, your Honor.

22 THE COURT: Very well. All right. I'll hear you  
23 first, Mr. Brown. We're running behind schedule. Oral  
24 argument is limited to ten minutes. Proceed.

25 MR. BROWN: And this will be even shorter than that,

1 your Honor.

2 THE COURT: Mr. Brown, you've never been shorter  
3 than that.

4 MR. BROWN: And I will try to prove this the  
5 exception. It was a search warrant, and the basis of  
6 the search warrant related to a transaction that led to  
7 the discovery of some drugs. And they got a search --

8 THE COURT: What was the offense?

9 MR. BROWN: My client was charged with, basically,  
10 two -- he pled to two counts. Conspiracy, and then  
11 trafficking in cocaine. Essentially, the evidence  
12 against him was 350 some odd grams of cocaine found in  
13 the trunk of the car at his mother's house. And the  
14 search warrant issue comes without -- the body of the  
15 warrant references the purchase of some drugs. And we  
16 wanted the opportunity to depose the officers about the  
17 information they gathered to put in the search warrant  
18 and about the signing of the search warrant with the  
19 magistrate, because there seems to be different copies  
20 of the signature page that have handwritten notes about  
21 allowing search of the car. The typed part says they  
22 searched the house.

23 THE COURT: Show me what you're referring to, to  
24 make sure Ms. McMahan has a copy.

25 MR. BROWN: I certainly will. Yes. Yes, sir.

1 Certainly.

2 MS. MCMAHAN: I have it, your Honor.

3 THE COURT: Very well.

4 MR. BROWN: And the best copies I can give you --

5 THE COURT: If you'll hand that to my clerk, please,  
6 she'll hand it up.

7 MR. BROWN: Yes. Yes, sir. And if I'd get them  
8 marked as Applicant's 1 and 2.

9 THE COURT: Any objection, Ms. McMahan?

10 MS. MCMAHAN: Your Honor, the only objection I've  
11 got is if we could have them put in under seal, since  
12 they are grand jury material.

13 THE COURT: Any objection to putting it under seal  
14 because of the grand jury?

15 MR. BROWN: It's been filed with the magistrate's  
16 court next door without being, but I have no objection.

17 THE COURT: All right.

18 MR. BROWN: They've already been published.

19 THE COURT: Wanda, Applicant's -- let's make them  
20 one exhibit, and then I'll identify what these both are  
21 for the record. Take a seat, Mr. Brown, while the court  
22 reporter does her work.

23 MR. BROWN: Yes, sir.

24 COURT REPORTER: One page?

25 THE COURT: No, he handed you two.

1 MR. BROWN: They're different signatures. They're  
2 different signatures, your Honor. That's why I'd ask  
3 that they be marked separately, but as your Honor sees  
4 fit.

5 THE COURT: Mr. Brown, when did you become a  
6 handwriting expert?

7 MR. BROWN: I think it's so obvious, in fact, for  
8 what it's worth, I did talk to the magistrate.

9 THE COURT: Well, I'd better hand these back to you.  
10 She's marked Applicant's -- this will be under seal,  
11 too, without objection. Both of these documents are  
12 entitled Exhibit C, even though that's not the exhibit  
13 number for this hearing, and it is described as  
14 *Description of Premises, Person, Place, or Thing to be*  
15 *Searched.*

16 Now, Mr. Brown, you tell me what it is you believe  
17 are -- I'm assuming I'm holding the right two documents.  
18 Do you want to look at those again and make sure?

19 THE COURT: Madam Clerk, hand those to him, and  
20 then --

21 MR. BROWN: Yes, sir.

22 THE COURT: And Ms. McMahan, you look at this, also,  
23 and make sure the court reporter's handed me the two  
24 documents that we're referring to, so everybody knows  
25 what I'm being shown for the record.

1 MS. MCMAHAN: Yes.

2 THE COURT: All right. Now, these are being  
3 admitted, Wanda, without objection, Applicant's Number  
4 1, under seal, both of which are entitled *Exhibit C,*  
5 *Description of Premises, Person, Place, or Thing to be*  
6 *Searched.*

7 COPIES OF TWO DOCUMENTS TITLED  
8 EXHIBIT C, DESCRIPTION OF PREMISES,  
9 PERSON, PLACE, OR THING TO BE SEARCHED,  
10 MARKED APPLICANT'S EXHIBIT NUMBER 1,  
11 TO BE UNDER SEAL, ENTERED AS EXHIBIT.

12 THE COURT: Now, Mr. Brown, tell me what you think  
13 raises your qualifications as a handwriting expert in  
14 the State of South Carolina. I wasn't aware you'd ever  
15 been qualified on that basis, but I have no doubt that  
16 you feel you are.

17 MR. BROWN: Your Honor, it doesn't, but in  
18 relationship to what the search warrant that was  
19 provided in discovery from the Attorney General's  
20 Office, your Honor, which I have some other things,  
21 including a copy that I plan to hand up. It only has  
22 one of those things. The initial line and signature are  
23 not the same on those two. Even if they're from the  
24 same person, it has not been signed at the same time.  
25 But in the one that they provided, there's only one of

1 those signature pages. And if I may have this marked as  
2 Applicant's 2 at the appropriate time.

3 THE COURT: Show it to the attorney.

4 MR. BROWN: I've given them a copy.

5 THE COURT: Any objection? Ms. McMahan?

6 MS. MCMAHAN: No objection, your Honor.

7 THE COURT: You also want it under seal?

8 MS. MCMAHAN: Yes, your Honor.

9 THE COURT: Applicant's Number 2 under seal, without  
10 objection. Hand it to the court reporter.

11 COPY OF SEARCH WARRANT DATED 9-17-08

12 MARKED APPLICANT'S EXHIBIT NUMBER 2,

13 ENTERED AS EVIDENCE.

14 THE COURT: Thank you.

15 COURT REPORTER: Yes, your Honor.

16 THE COURT: Applicant's Number 2 is numerous pages,  
17 beginning with the cover page that says *Search Warrant*.  
18 All right, Mr. Brown, since you're past ten minutes now,  
19 exactly what is it you want to tell me?

20 MR. BROWN: I'd like to depose the two officers.  
21 The one that gives some discovery information about  
22 vehicles, which I'm assuming is how that was added, his  
23 name's Officer Menendez. He's now at SLED. He was  
24 formerly with the Beaufort Sheriff's Department. And  
25 Officer Cris Sankowski, who's the affiant listed on both

1 of the different signature pages that are in Applicant's  
2 1, and one of which is actually in Applicant's 2.

3 THE COURT: All right. So you seek to take the  
4 depositions of the affiants pursuant to the search  
5 warrant. Is that correct?

6 MR. BROWN: Yes, sir.

7 THE COURT: Thank you. Be seated.

8 MR. BROWN: Yes, sir.

9 THE COURT: Ms. McMahan, I'm happy to hear from you  
10 now. I understand that this is an application for post-  
11 conviction relief that resulted in a plea. Is that  
12 correct, Ms. McMahan?

13 MS. MCMAHAN: That is correct, your Honor.

14 THE COURT: But it also resulted as a result of a  
15 statewide grand jury investigation. Is that also  
16 correct?

17 MS. MCMAHAN: That's also correct.

18 THE COURT: Which is the reason that you cited to me  
19 14-7-1720, concerning the fact that state grand jury  
20 proceedings are secret. Is that correct?

21 MS. MCMAHAN: That's correct, your Honor.

22 THE COURT: All right. Now, I'm happy to hear from  
23 you because Mr. Brown has determined, in his infinite  
24 ability to be a handwriting analysis, that he believes  
25 there's an inconsistency on the two documents, State's

1 Exhibit Number -- or Applicant's Exhibit Number -- or  
2 Applicant's Exhibit Under Seal Number 1. He also tells  
3 me that he has ascertained from you Applicant's Number  
4 2, which is the search warrant, and he seeks to take a  
5 deposition for purposes of this post-conviction relief  
6 proceeding, of the affiants on the search warrant. What  
7 is the State's position?

8 MS. MCMAHAN: Your Honor, I believe, in lieu of  
9 deposition, the best way to handle this would be his  
10 direct, live testimony in courtroom. Both of the  
11 applicants are planning on being here on Wednesday, if  
12 we do get to that point.

13 THE COURT: You got to speak up a little, bit, Ms.  
14 McMahan. Come on up here to my microphone. I can  
15 handle that, because I can't hear you. Let me tell you  
16 about judges and age, Ms. McMahan, something that you  
17 have not experienced mac? yet, I might add. I'm 63  
18 years old, which my sons say means that I'm way past the  
19 speed limit. And as a result of which, I've hunted all  
20 my life. There's no one that knows me that doesn't know  
21 about my hunting love. And I've shot a shotgun all my  
22 life, which is the reason I have a hearing aid in this  
23 ear right here, because I wasn't smart enough to wear  
24 ear protection.

25 However, my lawyers do this.

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REPORTER'S NOTE: Judge mumbling.

THE COURT: And unfortunately, Wanda has to take it down because you all love to spread out 600 documents on the table, and then talk while you're reading them. And it makes it impossible to be able to hear, even if you aren't as deaf as Judge Buckner. So accommodate me, if you would, please, ma'am.

MS. MCMAHAN: I'll be happy to, your Honor. Can you hear me?

THE COURT: I can hear you just fine. Can you hear her, Wanda?

COURT REPORTER: I can hear her, sir.

THE COURT: Isn't that great. All right.

MS. MCMAHAN: In this particular instance, I believe the best case scenario would be to have the affiant and Sergeant -- well, now Special Agent Menendez come into court and testify live. That would save the Court money in depo -- I mean, the State money in deposition costs that we don't necessarily have.

Secondly, since this particular matter was bifurcated into the motions today and a full hearing, if so needed, on Wednesday. They are on call to be here on Wednesday. That allows both me and Mr. Brown the ability to afford the *Rules of Evidence* and the Court to rule on the credibility of the witnesses that are here

1 to testify.

2 THE COURT: I see. So you believe that Mr. Brown's  
3 going to have the ability to discover their testimony  
4 during the hearing, rather than take a deposition prior  
5 to the hearing.

6 MS. MCMAHAN: Yes, your Honor.

7 THE COURT: Very well. Thank you very much. Mr.  
8 Brown, anything in reply to their position, since you're  
9 now past 15 minutes, after you told me you wouldn't take  
10 ten.

11 MR. BROWN: Your Honor, the only other thing is that  
12 their -- we served subpoena that included, that asked  
13 for, the entire copy of the prosecutor's file.  
14 Coincidentally, the prosecutor's agency and the  
15 respondent's agency is the same, which --

16 THE COURT: Which ought to make it easier for them  
17 to respond. Mr. Brown, what's your point?

18 MR. BROWN: They didn't give me everything.

19 THE COURT: How do you know that, Mr. Brown? Are  
20 you also a prosecutor now, as well as a handwriting  
21 expert?

22 MR. BROWN: Well, coincidentally, your Honor, in the  
23 search warrant, it lists some purchase of drugs  
24 conducted within 72 hours. And when I finally got the  
25 file roughly 19 months after subpoena was served, and

1 after repeated letters asking for it, it was received in  
2 October, your Honor, this was a 2011 filing, the file  
3 was received, a disk of it, in October 2012, and it  
4 doesn't include any material related to a sale within 72  
5 hours. About, oh, I guess, maybe 45 to 50 minutes ago,  
6 we received information for the first time related to  
7 it, which Mr. Dore has been presented, because he was  
8 trial counsel. And your Honor, so we know this was  
9 missing. And we've just had a chance to look at it.

10 THE COURT: All right. I understand. I can handle  
11 that. Ms. -- thank you, Mr. Brown.

12 MR. BROWN: Yes.

13 THE COURT: Ms. McMahan, I understand that this has  
14 been an ongoing process and that materials were just  
15 provided to Mr. Brown, with a hearing scheduled for  
16 Wednesday. It would appear to me that the remedy for  
17 that is to now insure he has everything before there's a  
18 hearing, which might mean I have to postpone his hearing  
19 on Wednesday. So let me hear from you, because Mr.  
20 Brown believes, having talked to Mr. Dore, who is seated  
21 in my courtroom now, that he just got some additional  
22 material that was in the prosecutor's file just today.

23 MS. MCMAHAN: Your Honor, if I may begin. First  
24 off, Mr. Brown sent some subpoenas duces tecum to our  
25 office back in November. Those were then forwarded to

1 the PCR section. I actually got this file in September  
2 2002 from the PCR Division. At that --

3 THE COURT: 2002?

4 MS. MCMAHAN: I mean, I'm sorry, 2012. I'm off a  
5 whole decade. September 2012. At that time, I obtained  
6 a disclosure order for Mr. Brown so that I could send  
7 him the materials related to this underlying case. Also  
8 in October, I asked if he was going to file a discovery  
9 motion, which he did not file until March 1st. Finally,  
10 I was told what he wanted through discovery on March  
11 21st.

12 THE COURT: I see.

13 MS. MCMAHAN: Some of that said *certain documents*.  
14 I was not told specifically what those certain documents  
15 were that he was looking for until this very morning,  
16 which I obtained from the police officer within ten  
17 minutes.

18 THE COURT: I understand, Ms. McMahan. Now, you  
19 going -- you haven't answered my question yet.

20 MS. MCMAHAN: Sorry.

21 THE COURT: You've given me a history. Have you  
22 provided Mr. Brown with everything in the prosecutor's  
23 file for purposes of this hearing as of this morning?

24 MS. MCMAHAN: Absolutely. I even brought the whole  
25 file with me.

1 THE COURT: All right. Mr. Brown, here's what I'll  
2 offer you.

3 MR. BROWN: Yes, sir.

4 THE COURT: I'll deny your request to take  
5 depositions.

6 MR. BROWN: Yes, sir.

7 THE COURT: But I will certainly extend to you the  
8 opportunity to continue your hearing for Wednesday, in  
9 order that you can go through her file today, --

10 MR. BROWN: Yes, sir.

11 THE COURT: -- and review it. And I'll reschedule  
12 for the next PCR term, so that you can be prepared to go  
13 forward, since you were just given documents today. You  
14 understand that?

15 MR. BROWN: Yes, sir.

16 THE COURT: Ms. McMahan, I'm going to give him time  
17 to look at it. I realize you didn't know exactly what  
18 he wanted, but when you send a subpoena -- and I  
19 understand there's a little bit of delicacy here, in  
20 that we are dealing with a statewide grand jury  
21 proceeding. On the other side of that fence, he  
22 certainly is entitled to have the information necessary  
23 to adequately represent his client for purposes of post-  
24 conviction. Therefore, the hearing for Wednesday is  
25 continued. Mr. Brown will be given the opportunity to

1 look through your file today, and I'll reschedule that  
2 hearing for the next PCR term. Mr. Brown's motion to  
3 take a deposition is respectfully denied, because he's  
4 going to have adequate time to look at the file, and  
5 he'll have the opportunity to cross-examine these  
6 officers at the post-conviction relief hearing.

7 Now, are there any other matters from the State  
8 concerning this hearing that you need to take up that I  
9 have not -- Mister, you don't stand up in my courtroom  
10 and walk up there. One lawyer speaks at a time, one  
11 lawyer stands at a time. Have a seat.

12 MR. WATERS: Yes, sir.

13 THE COURT: Yes, ma'am.

14 MS. MCMAHAN: Your Honor, just in regards to my  
15 amended return, --

16 THE COURT: Yes, ma'am.

17 MS. MCMAHAN: -- regarding the plea agreement  
18 between Mr. Mickell and the State, in that plea  
19 agreement, which is analogous to *Spoone* case, -- I  
20 stopped so that you could hear me.

21 THE COURT: Thank you, Ms. McMahan. That was very  
22 thoughtful of you. And that's another thing lawyers  
23 like to do. Mr. Dore's very guilty of that. He'll turn  
24 around and walk with his back to the court reporter and  
25 look at his file and talk. And it makes it real

1           difficult to hear.  Go ahead.

2           MS. MCMAHAN:  Your Honor, which is analogous to the  
3           *Spoone* case I'm handing up to you.

4           THE COURT:  Hand it to Mr. Brown.  What is analogous  
5           to the *Spoone* case, since I hadn't had a chance to read  
6           it.  Let the record reflect she's handed me 379 South  
7           Carolina 138, *Spoone* versus State of South Carolina.

8           MS. MCMAHAN:  Your Honor, in that particular case,  
9           Mr. *Spoone* waived his right to file an appeal or a PCR  
10          in his written plea agreement at his plea.  The judge  
11          asked him about it on the record, you're waiving that  
12          right?

13          THE COURT:  I remember this case very well as to  
14          whether or not you could do that during the plea.

15          MS. MCMAHAN:  Waiving that right, which he did, the  
16          Supreme Court ruled that, pursuant to the plea  
17          agreement, his PCR -- excuse me -- his PCR was to be  
18          denied and dismissed.  And that is exactly what's  
19          happening here.  Mr. Mickell did file a written plea  
20          agreement where he waived his right to file a PCR appeal  
21          in it.  And it was also questioned by Judge Mullen on  
22          the record that he was, in fact, waiving his right to a  
23          PCR and to a belated appeal.

24          THE COURT:  Have you filed a written motion to  
25          dismiss on this grounds?

1 MS. MCMAHAN: Yes, your Honor. It's the Amended  
2 Return and Motion to Dismiss. Therefore, the State is  
3 requesting that the plea agreement be enforced, and that  
4 this PCR be dismissed.

5 THE COURT: All right. And I understand that  
6 completely. Thank you, Ms. McMahan. Now, your co-  
7 counsel, who thinks he can jump and run up here and talk  
8 to you behind your back, wants to speak with you before  
9 you're finished. You can talk to her now that she's  
10 sitting beside you, Counsel.

11 MR. WATERS: Thank you, Judge.

12 THE COURT: Courtesy. Anything else, Ms. McMahan?

13 MS. MCMAHAN: Nothing further from the State, your  
14 Honor.

15 THE COURT: I know you received a pearl of wisdom.  
16 All right. Ms. McMahan, I don't think it's actually  
17 fair to rule on a motion to dismiss before Mr. Brown has  
18 had the opportunity to see his discovery. However, I  
19 completely understand your motion, based on *Spoone*, and  
20 I will look forward to scheduling this hearing at the  
21 next PCR term and hearing your motion before we take  
22 testimony on the record, after he's reviewed the file in  
23 its entirety, although, Mr. Brown, that does not mean  
24 you're going to argue the merits on this motion, because  
25 it's going to be a matter of law.

1 MR. BROWN: Yes.

2 THE COURT: You understand that?

3 MR. BROWN: Yes sir.

4 THE COURT: All right. Ms. McMahan, I understand  
5 completely your motion. I'm very familiar with the  
6 *Spoone*, which I believe can prevent sometimes, under  
7 appropriate circumstances, additional and unnecessary  
8 litigation expense in the Court of Common Pleas  
9 involving post conviction. I'm certain Mr. Brown is  
10 familiar with the *Spoone* case, as well, although you  
11 were kind enough to hand it to him. I will look forward  
12 to hearing your motion in the future.

13 Now, Mr. Brown's request for discovery is  
14 respectfully denied. The Court, of it's own motion, has  
15 continuing the case. Mr. Brown, you don't leave. You  
16 go to my window room.

17 MR. BROWN: Yes, sir.

18 THE COURT: And Ms. McMahan's going to join you  
19 there, because she doesn't have any other hearing.  
20 She's going to open her file. You're not going to take  
21 anything out of the file. If you want to copy  
22 something, and if there's a question about whether it's  
23 under seal, I'm going to be in Beaufort all week, and  
24 Ms. McMahan, I invite you to let me know if there are  
25 any problems, because I expect my lawyers to be

1 courteous to one another and to work together.

2 MR. BROWN: Yes, sir.

3 THE COURT: I will hear your motion, Ms. McMahan,  
4 when we schedule this on the merits. You understand?

5 MS. MCMAHAN: Yes, your Honor.

6 THE COURT: Thank you so much. I look forward to  
7 seeing both of you again real soon. This concludes the  
8 motion hearing. Wanda, I'm handing you Applicant's  
9 Exhibit Number 1, Applicant's Exhibit Number 2, and I'm  
10 handing my law clerk the packet which Ms. McMahan gave  
11 me with the *Spoone* case and other documents attached  
12 thereto. And I'm assuming, Ms. McMahan, you're going to  
13 handle the post-conviction hearing, and not Ms. Wilson?

14 MS. MCMAHAN: Yes, your Honor.

15 THE COURT: All right, now, I think I've got the  
16 next post-conviction term, in August.

17 MS. MCMAHAN: You do, your Honor.

18 THE COURT: All right. In that case, do you want me  
19 to take the packet, or do you want me to give the packet  
20 back to you so you can hand it up in case circumstances  
21 change, because, as we all know, court administration  
22 changes schedules. You understand that? But I think  
23 I'm scheduled to be the judge. What would you prefer?

24 MS. MCMAHAN: You're welcome to hang onto it. I can  
25 always make another one if I need to.

1 THE COURT: Perfect. In that case, I'll give it to  
2 my law clerk so we'll be prepared. Thank you all very  
3 much. This concludes the hearing in connection with  
4 this matter.

5 MR. BROWN: Thank you, your Honor.

ENDING 11:53 A.M.

CERTIFICATE OF REPORTER

APRIL 1, 2013 TRANSCRIPT OF MOTION HEARING

STATE OF SOUTH CAROLINA

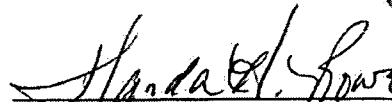
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 1, 2013 Transcript of Motion Hearing is a true, accurate, and complete record of the proceedings had and evidence introduced and/or admitted at said proceeding in the case of Deangelo Mickell versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Numbers 2011-CP-07-01538.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

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

Witness my signature May 2, 2013.

  
Wanda H. Rowe, CVR-M  
Official Court

ORIGINAL

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
Deangelo Mickell )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
State of South Carolina )  
 ) Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT  
 CASE NO.: 2011-CP-07-1538

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
--	--

**MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**  
 **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**  
 **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

**SECTION I: Hearing Information**

Nature of Motion: Motion to Quash Subpoena  
 Estimated Time Needed: 30 Minutes Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

\_\_\_\_\_  
 Signature of Attorney for  Plaintiff /  Defendant Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_
- Other: \_\_\_\_\_

<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

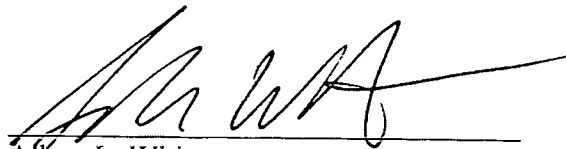


belief, the Honorable Perry M. Buckner denied the above-listed applicant's Motion for Discovery in this matter. A copy of this Order is attached hereto, incorporated by reference herein, and identified as **Exhibit B**. As such, this subpoena's request for documents blatantly violates this direct court order. As discovery is prohibited, a subpoena purporting to compel the production of documents is prohibited. As such, any compliance with a subpoena that violates a direct court order constitutes an undue burden on SLED. Accordingly, this subpoena, to the extent it seeks to compel the production of documents in direct contravention of a court order, should be quashed pursuant to Rule 45, SCRPC.

3. SLED further reserves any and all immunities and privileges that may apply to the subpoenaed materials or to the testimony sought in this matter.

Therefore, based on the foregoing and any additional memoranda that may be submitted in connection with the determination of this motion, and any argument that may be proffered at a hearing in this matter; the South Carolina Law Enforcement Division hereby requests that the attached subpoena be quashed in its entirety.

Respectfully submitted,



Adam L. Whitsett  
General Counsel  
South Carolina Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221  
Phone: (803) 896-0647  
Fax: (803) 896-7588  
Email: AWhitsett@sled.sc.gov  
South Carolina Bar Number 74888

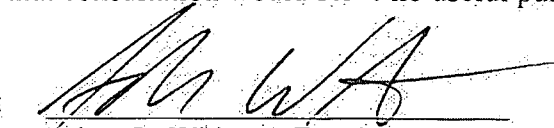
ATTORNEY FOR SLED

Columbia, South Carolina  
May 5, 2014

RULE 11, SCRCP CERTIFICATION:

Undersigned counsel certifies that he did not contact opposing counsel to discuss this Motion because the undersigned believes that consultation would serve no useful purpose.

BY:



Adam L. Whitsett, Esquire

May 5, 2014

# EXHIBIT A

Subp # 2014-092

STATE OF SOUTH CAROLINA FILED FOIA Office

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF COLLETON

Date Received 4/30/14

DEANGELO MICKELL

, Applicant

Due Date 5/7/14

SUBPOENA IN A CIVIL CASE

STATE OF SOUTH CAROLINA

Case Number: 2011-CP-07-1538

, Respondent

Pending in BEAUFORT County

TO: Custodian of Records, SLED

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 DATE AND TIME 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

Any and all documents regarding the chain of custody of drugs collected and submitted into evidence regarding indictment number 2009-GS-47-05.

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 FURNISH 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, Jr., 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 4/30/14



# EXHIBIT B

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BEAUFORT ) FOR THE 14<sup>th</sup> JUDICIAL CIRCUIT  
 ) Case No.: 2011-CP-07-01538  
DeAngelo Christopher Mickell, #340668, )  
 )  
Applicant, )  
 )  
vs. ) ORDER  
 )  
State of South Carolina, )  
 )  
Respondent. )  
 )

---

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

*17*  
*PMB*  
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.

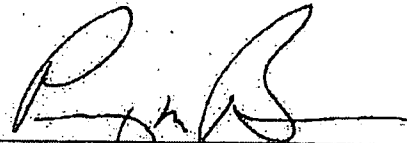
Also at the hearing, Applicant requested documents from the Beaufort County Sheriff's Office. These documents were provided to the Applicant prior to the start of the hearing. Further, the Applicant was given access to the entire investigative file and allowed to read the transcripts of the testimony 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 14<sup>th</sup> Circuit Court Judge

April 16, 2013

Walkers, South Carolina.



STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

2014 MAY 20 PM 1:37

DEANGELO MICKELL, )

Applicant )

vs. )

STATE OF SOUTH CAROLINA, )

Respondent )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT


CASE NO. 2011-CP-07-01538

ORDER GRANTING MOTION TO  
QUASH SUBPOENA

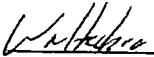
This matter comes before the Court by the way of a Motion to Quash Subpoena filed on May 2, 2014 by the undersigned attorney, appearing on behalf of the Honorable Mark F. Fitzgibbons, Beaufort County Magistrate Judge. The Applicant filed a Response to the Motion to Quash on May 5, 2014. A hearing was conducted May 6, 2014 via telephone conference. James A. Brown, Jr. Esquire, represented the Applicant. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the respondent. Allison C. Coppage, Esquire, represented Judge Fitzgibbons, Beaufort County Magistrate. Adam L. Whitsett, Esquire, represented the South Carolina Law Enforcement Division.

The County's motion to quash the subpoena of Judge Fitzgibbons is granted. The controlling case in this matter is In re Whetstone, 580 S.E.2d 447, 354 S.C. 213(2003). 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, the Applicant failed to show that the information sought to be obtained from Judge Fitzgibbons cannot be obtained from any other source. The search warrant at issue is signed by an attesting officer, Officer Sankowski. Officer Sankowski is currently employed with Beaufort County and can be available upon reasonable notice.

IT IS THEREFORE ORDERED that the Motion Quash Subpoena is granted as to Judge  
Fitzgibbons, Beaufort County Magistrate

  
\_\_\_\_\_  
Perry M. Buckner  
Presiding 14<sup>th</sup> Circuit Court Judge

May 14, 2014

                    , South Carolina

CMT1330D SCDC OFFENDER MANAGEMENT SYSTEM 04/12/11  
 OMCOMITA RELEASE DATE SCREEN C040481  
 SCDC# > 340668 LOC: LEE  
 MICKELL, DEANGELO CHRISTOPHE SCDC CLASSIFICATION...: VIOLENT  
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N  
 SEXUAL PREDATOR...: NOT APP  
 DNA STATUS.....: COMPLETED  
 GPS REQUIREMENT...: N  
 PREA DECISION....:  
 CURRENT SENTENCE: 018-00-000 CONSECUTIVE SENTENCE ...: N  
 018-00-000 CURRENT SENT START DATE: 04/29/2010  
 PROJECTED COMPLETION DATES  
 MAXOUT DATE .....: 09/14/2026 CURRENT EWC .: NOT CURRENTLY EARNING EWC  
 YOA SIX YEAR DATE: / / CURRENT EEC .: NOT CURRENTLY EARNING EEC  
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000  
  
 TOTAL GT DAYS EARNED .....: 000033 LABOR CREW/WORK PROG DATE: 99/99/9999  
 TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:  
 TOTAL EDUCATION CREDITS ....: 000000 CATEGORY 4 OR 5 OFFENSE:  
 TOTAL EXTRA EARNED CREDITS ..: 000  
 TOTAL SERVICE TIME EARNED ..: 000343  
  
 PFKEYS: 5: HISTORY OF DATE CHANGES  
 4-© 1 Sess-1 167.7.50.33 SCDC1424 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REPORT SUMMARY REPORT DATED 04/12/11

00404

WICKEL, DEANREID CHRISTOPHER FBI # 982414884 BDM SC01207085 SCDC # 340448  
DEFENDER TYPE: ADULT-STRAIGHT SENTENCE  
INSTITUTION : 1ST CORR INST DONH..... BAR21078  
SECURITY/CRIT.: 3 MINIMUM TM RACE...: B SEX...: M  
CURR INCARC SENT.: 18 YRS 0 MOS 0 DYS PROJ MAXDUE DATE: 09/14/2024  
CENTRA: MONITORING: NO PROJ PAROLE DATE: 00/00/0000  
SOCIAL SECURITY #: [REDACTED] FWD LDR.: NO CURRENT LDR  
FWD PRG.: NO CURR FWD PROGRAM  
FWD : FWD : 0 FFC : FFC :  
ASSIGNMENT.: GENERAL DETAIL UNCH

CURRENT PROGRAM.: NO CURRENT PROGRAM

AGE...: 33 DATE OF BIRTH...: [REDACTED]

IDENTIFICATION NUMBERS:

ALL NO PREVIOUS NUMBERS !!

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	U/MU	CATEGORY
TRAFFICKING IN COCAINE	18	0	0	BEAUFORT	4/29/2010	U	4
TRAFFICKING IN COCAINE	18	0	0	BEAUFORT	4/29/2010	U	4

ENTER COMMITMENTS OVER 90 DAYS:

MISSING PRIOR DATA\*  
DETAINERS (HOW B, WANTED, NOTIFY):  
AND DETAINERS\*  
AND DETAINERS\*

ESCAPES:

ALL ESCAPE HISTORY\*

CRIMINAL CHARGES:

AND CRIMINAL CHARGES UNTIL IN CUSTODY\*  
AND CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES:

AND ASSAULTIVE DISCIPLINARY HISTORY\*

NON-ASSAULTIVE DISCIPLINARIES:

AND NON-ASSAULTIVE DISCIPLINARY HISTORY\*

HISTORY OF MOVEMENTS:

7/ 0/10	LEF	INCARCERATED	ADMINISTRATIVE
5/ 4/10	KIRKLAND	INCARCERATED	RAF PROCESSING
5/ 4/10	LEF	INCARCERATED	NEW ADMISSION

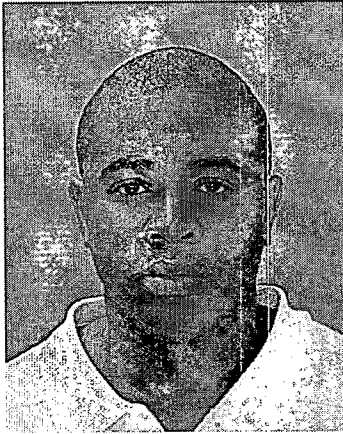
HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	HR
AND WORK ASSIGNMENTS *				00

HISTORY OF EARNED EDUCATION CREDITS:

EDC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
AND SCHOOL ASSIGNMENTS*			

\*\*\*\*\* END OF REPORT \*\*\*\*\*



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC D:	00340668
RACE:	BLACK	SID:	SC01207035
HEIGHT:	6' 01"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	191 lbs.	ADMISSION DATE:	05/06/2010
AGE:	37	LOCATION:	LEE
CITIZENSH P:	CITIZEN - NATIVE BORN	SECURITY / CUSTODY:	3 / MINIMUM IN
BUILD:	LARGE	EWC LEVEL:	3F5
COMPLEXION:	MEDIUM BROWN	EEC LEVEL:	
HAIR COLOR:	BLACK	PROJECTED RELEASE DATE:	08/12/2025
EYE COLOR:	BROWN	PROJECTED PAROLE ELIG BILITY:	NOT ELIGIBLE
PICTURE DATE:	05/06/2010	SUP. FURLOUGH ELIG BILITY:	NOT ELIGIBLE

**CURRENT OFFENSES**

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
TRAFFICKING N COCA NE	ADULT-STRAIGHT SENTENCE	18	0	0	BEAUFORT	04/29/2010	V	4	09GS4705	ACTIVE
TRAFFICKING N COCA NE	ADULT-STRAIGHT SENTENCE	18	0	0	BEAUFORT	04/29/2010	V	4	09GS4705	ACTIVE

**ESCAPES**

NO ESCAPES DURING CURRENT INCARCERATION

**DISCIPLINARIES**

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

NO DISCIPLINARIES DURING CURRENT INCARCERATION

**MOVEMENT**

MOVEMENT DATE	TO LOCATION	STATUS	REASON
05/07/2014	LEE	INCARCERATED	RETURN FROM COURT
05/07/2014	COLLETON CO	AUTH ABSENCE (AWL)	TO COURT
02/20/2014	LEE	INCARCERATED	ADMINISTRATIVE
02/19/2014	KIRKLAND	INCARCERATED	RETURN FROM COURT
02/18/2014	BEAUFORT CO	AUTH ABSENCE (AWL)	TO COURT
04/03/2013	LEE	INCARCERATED	ADMINISTRATIVE
04/02/2013	KIRKLAND	INCARCERATED	RETURN FROM COURT
03/29/2013	BEAUFORT CO	AUTH ABSENCE (AWL)	TO COURT
03/28/2013	KIRKLAND	INCARCERATED	ADMINISTRATIVE
07/08/2010	LEE	INCARCERATED	ADMINISTRATIVE
05/06/2010	KIRKLAND	INCARCERATED	R&E PROCESSING
05/06/2010	LIEBER	INCARCERATED	NEW ADMISSION

**EARNED WORK CREDITS**

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
LAUNDRY ROOM ATTENDANT	04/01/2014			3F5
LAUNDRY ROOM ATTENDANT	04/04/2013	02/20/2014	INSTIT TRANSFER	3F5
LAUNDRY ROOM ATTENDANT	02/28/2013	03/28/2013	INSTIT TRANSFER	3F5
MACH NE OPERATOR	04/21/2011	02/27/2013	LATERAL TRANSFER	3F5

**EARNED EDUCATION CREDITS**

NO EARNED EDUCATION CREDITS DURING CURRENT INCARCERATION