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APR 7 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

J. Ernest Kinard, Jr., Circuit Court Judge

JOHN T. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002250

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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

ATTORNEYS FOR RESPONDENT

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I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
NO	EXHIBITS		

1 MRS. SHELTON - John Robinson. Your Honor, just
2 for -- it's going to be negotiated instead of
3 recommendation. I've checked the recommended box, but the
4 -- Mr. McKinnon asked me to do it as negotiated.

5 THE COURT - Is that what you want?

6 MR. ROBINSON - Yes, sir, that'd be fine.

7 THE COURT - Mr. Robinson, that means I can't vary
8 the terms as to what y'all agreed to. What you agreed to
9 is what you get. That's what it means.

10 MR. ROBINSON - Okay.

11 THE COURT - You got any questions?

12 MR. ROBINSON - No, sir, I don't have any
13 questions. That's sounds -- I'm satisfied.

14 THE COURT - All right, you're 64, from Rock Hill?

15 MR. ROBINSON - That's correct.

16 THE COURT - And your education?

17 MR. ROBINSON - I have a two year college degree,
18 yes, sir.

19 THE COURT - Now, you're old enough and smart
20 enough to know not to be fooling with this kind of stuff.

21 MR. ROBINSON - Well, yes, but still -- this
22 happened -- open up a hole and step in it, so I apologize
23 to the Court for that.

1 THE COURT - August 24th, 2012 you possessed with
2 intent to distribute crack cocaine second offense. You
3 could receive up to thirty years on that.

4 MR. MCKINNON - Yes, sir.

5 THE COURT - How do you plead?

6 MR. ROBINSON - Feel it's going to be -- Your
7 Honor, to my ---

8 MR. MCKINNON - Your Honor, he wishes to plead no
9 contest.

10 THE COURT - No contest.

11 MR. ROBINSON - Yes, sir.

12 THE COURT - All right, now you've talked to your
13 attorney about all this.

14 MR. ROBINSON - Certainly have.

15 THE COURT - You're satisfied with his advice.

16 MR. ROBINSON - Absolutely.

17 THE COURT - Do you understand his advice?

18 MR. ROBINSON - Thoroughly.

19 THE COURT - And you understand by entering this
20 plea that you're waiving your jury trial rights.

21 MR. ROBINSON - Absolutely, thoroughly, yes, sir.

22 THE COURT - If you had a trial the State would
23 have to prove your guilt beyond a reasonable doubt and
24 convince 12 jurors unanimously of your guilt.

25 MR. ROBINSON - Certainly.

1 THE COURT - You'll be able to cross examine the
2 State's witnesses and put up your own defense and
3 witnesses.

4 MR. ROBINSON - Absolutely, yes.

5 THE COURT - You are to be presumed innocent until
6 proven guilty, and that presumption will stay with you
7 throughout any trial, and if the jury did convict you,
8 you've have a right to appeal just as you could appeal a
9 guilty plea sentence, as long as you file Notice of Appeal
10 within ten days of sentence. Also at a trial you could
11 testify at your own defense, but you'd also have a right to
12 remain silent. If you elected not testify it couldn't be
13 held against you, and I would tell the jury that.

14 MR. ROBINSON - Yes, sir.

15 THE COURT - That's your basic rights. Any
16 questions?

17 MR. ROBINSON - None whatsoever. I understand you
18 absolutely perfectly.

19 THE COURT - And you don't want a trial.

20 MR. ROBINSON - No trials.

21 THE COURT - Has anybody promised you anything or
22 threatened you in any way in order to get you to plead?

23 MR. ROBINSON - No.

24 THE COURT - You're not under the influence of any
25 drugs or alcohol.

1 MR. ROBINSON - No, sir.

2 THE COURT - You're entering this plea of your own
3 free will and accord?

4 MR. ROBINSON - Absolutely.

5 THE COURT - Fully understand what you're doing.

6 MR. ROBINSON - I do.

7 THE COURT - I find this plea is freely,
8 voluntarily and intelligently entered into. Before I
9 accept it though, we better find out what the agreement is.

10 MRS. SHELTON - Your Honor, it's for a ten year
11 sentence suspended upon eighteen months probation.

12 THE COURT - And he's had a competent attorney
13 with whom he says he's satisfied, so the plea is accepted.

14 (Whereupon, discussion is held between Mr.
15 Robinson and Mr. McKinnon which was not reported.)

16 MRS. SHELTON - Your Honor, he is asking his
17 attorney about Marilyn Robinson who is the co-defendant.
18 She -- her charges are still pending, and I have not
19 promised her anything or made any plea offer to her in
20 anticipation that she would have testified should this case
21 go to trial. The case was noticed for trial this week. I
22 -- what I've communicated to his attorney is should Mr.
23 Robinson accept responsibility and plead guilty to the
24 charge, I would anticipate that I would deal with Ms.
25 Robinson's charges whatever Mr. Robinson would request me

1 to do with those charges, but I had not guaranteed what --
2 that I would do anything with them at this point.

3 THE COURT - Make sure we understand. Ten years
4 suspended on eighteen months ---

5 MRS. SHELTON - Eighteen months probation.

6 MR. MCKINNON - Yes, sir.

7 THE COURT - Counsel?

8 MR. MCKINNEY - Your Honor, we'd ask that you take
9 this plea as negotiated. I just want to point out a few
10 things for the record. This was set to go to trial this
11 week as the solicitor just addressed. We have certainly
12 discussed various issues of this case with my client
13 regarding the admissibility of a statement against him,
14 legality of the traffic stop and the fact that we could
15 not, in fact, challenge the search of the -- the person the
16 co-defendant where the contraband was located. Your Honor,
17 we also have discussed that currently the Department of
18 Corrections is treating this as an eighty-five percent
19 sentence, so if his probation is revoked, he as things
20 currently stand would have to do that, but that various
21 people are working to see if that can be straightened out,
22 because I believe this should eventually be a fifty-one
23 percent sentence, but certainly he does not anticipate
24 violating probation, but he is aware of the consequences.
25 Your Honor, just one final thing. I believe the State is

1 dismissing the conspiracy and proximity charge along with
2 this, and Mr. Robinson has served fifty-two days in jail.

3 THE COURT - Yes, sir, anything you'd like to add?

4 MRS. SHELTON - Your Honor, I hadn't read the
5 facts yet.

6 THE COURT - All right, listen to these facts, and
7 see if we agree.

8 MR. ROBINSON - All right.

9 MRS. SHELTON - Your Honor, Mr. Robinson has two
10 prior drug convictions making this his actual third
11 offense. He's being allowed to plead to a second. The
12 facts of this case are that on August the 24th of 2012
13 officers with the York County Multijurisdictional Drug
14 Enforcement Unit received information from a anonymous tip
15 that Mr. Robinson was selling crack cocaine out of his car,
16 that he was staying at the Hillside Inn which is located in
17 Rock Hill in York County. Officers set up surveillance in
18 that area. They did observe Mr. Robinson doing what they
19 believed to be a drug transaction. That was never -- they
20 didn't actually see anything, but they saw him meet with an
21 individual; they thought it was a drug transaction,
22 followed Mr. Robinson as he left the hotel, conducted a
23 traffic stop for an illegal U-turn, received consent to
24 search the car that Mr. Robinson was driving. Ms. Marilyn
25 Robinson was the passenger. When searching the car, they

1 searched her purse and they found a bottle of -- a pill
2 bottle that contained three point five milligrams of crack
3 cocaine. Ms. Robinson denied that the crack belonged to
4 her. During the investigation officers went back to the
5 hotel and spoke with Mr. Patel who was the clerk there. He
6 confirmed to officers that he had purchased crack cocaine
7 from Mr. Robinson that day and that had been doing it for
8 quite some time. Mr. Patel has died since giving that
9 statement. I met with Ms. Robinson in anticipation of
10 calling this case for trial. Ms. Robinson told me that she
11 was the anonymous tipster, that she was angry with Mr.
12 Robinson for other things and called in the tip. She did
13 deny that the crack was hers, but based on her being the
14 anonymous tipster and Mr. Patel's death, the State thought
15 that we could have some particular problems with trying the
16 case, which is why we've offered probation.

17 THE COURT - Counsel?

18 MR. MCKINNON - Your Honor, I won't have anything
19 further than what I said prior to the agreement.

20 MR. ROBINSON - Thank you, Your Honor, for
21 allowing me to address the Court personally. Would
22 appreciate very much the Courts accepting the negotiated
23 terms here and I'd be extremely appreciative of that.

24 THE COURT - You got it. Ten years suspended to
25 eighteen months probation. Provisions of probation will be

1 random drug and alcohol testing. Attorney's fees have got
2 to be assessed.

3 MR. MCKINNON - Yes, sir.

4 THE COURT - Five hundred dollars. That'll be
5 scheduled by probation and parole.

6 MRS. SHELTON - Thank you, Your Honor.

7 MR. MCKINNON - Thank you, Your Honor.

8 (END OF TRANSCRIPT)

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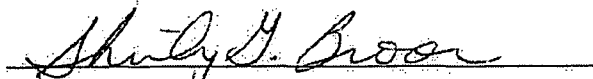
STATE OF SOUTH CAROLINA)

) C E R T I F I C A T E

COUNTY OF YORK)

I, Shirley G. Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 11 pages is a true, accurate and complete transcript of record of the proceedings had and the evidence introduced in the plea hearing of State of South Carolina vs. John Thomas Robinson, as taken by me relative to appeal, in the Court of General Sessions for the Sixteenth Judicial Circuit, York County, South Carolina, on 8th day of May, 2013, and delivered by me on this the 2nd day of February, 2014.

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



Shirley G. Broom

16th Judicial Circuit Court Reporter

2013-CP-46-3507¹³₅

FORM 5

STATE OF SOUTH CAROLINA)

County of York)

John Thomas Robinson 32390A)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)
Respondent)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED - RECEIVED
2013 NOV 15 AM 10:33
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

CERTIFIED TRUE COPY
2013 NOV 15 AM 10:53
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention York County Detention Center (YCDC)
1675-3A York Hwy, York, SC 29745
2. Name and location of Court which imposed sentence Sixteenth
Judicial Circuit Court, York, SC 29745
3. Name(s) of co-defendant(s) (if any) Arnold Robinson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012GS4604065

- (b) PLUTO Crack 2nd offense.
- (c) _____

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

- (a) 5, 8, 2013
- (b) Ten (10) years suspended with Probation for
- (c) eighteen (18) months.

6. Check whether a finding of guilty was made:

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

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

No appeal of either!

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

(a) the name of each Court to which you appealed:

- i. _____
- ii. N/A
- iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
- ii. N/A
- iii. _____

(c) the date of each such result:

- i. _____
- ii. N/A
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
- ii. N/A
- iii. _____

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

- (a) Ineffective assistance of Counsel (Illegal search & seizure violation)

- (b) SIXTH AMENDMENT PROTECTION OF THE PERSON
- (c) ILLEGAL SEARCH - INEFFECTIVE PROSECUTION

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL; UNITED STATES OF AMERICA CONSTITUTIONAL VIOLATION;
- (b) STATES OF AMERICA CONSTITUTIONAL VIOLATION;
- (c) PRETEXTUAL SEARCH - CONSTITUTIONAL VIOLATION.

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

- (a) ILLEGAL SEARCH & SEIZURE - USA CONSTITUTION VIOLATION.
- (b) ATTORNEY FAILED TO SHOW THAT CLAIMED STAFF IS NOT (ILLEGAL U-TURN) WAS NOT AN ILLEGAL ACT, AND THAT SEARCH PRIOR TO THE STOP WAS PRETEXTUAL.
- (c) SEARCH PRIOR TO THE STOP WAS PRETEXTUAL.

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

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

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

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

iv. N/A N/A

(c) the disposition thereof:

i. _____

ii. N/A N/A

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. N/A N/A

iii. _____

iv. _____

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

i. _____

ii. N/A N/A

iii. _____

iv. _____

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

N/A N/A

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

(a) which grounds have been presented:

i. _____

ii. N/A N/A

iii. _____

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

i. _____

ii. N/A N/A

iii. _____

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

- (a) Constitutional violation - This post-conviction
- (b) Relief application is first cell-level appeal.
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Mark McKeever, Attorney
York County Public Defender's Office
 - ii. P.O. Box 691
York, South Carolina 29745
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. The herein mentioned proceedings.
 - ii. _____
 - iii. _____

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

The sentence being "vacated," and any other redress
this Court deems just and necessary available to
the Prisoners of War.

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

N/A N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, John Thomas Robinson, 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.

J. T. Robinson

SWORN to and subscribed before me this 1st day of November 2013.

Sam Oakley (L.S.)
Notary Public

My Commission Expires: May 15, 2013

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

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

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

John T. Robinson
Applicant

SWORN or affirmed to and subscribed before me this

1st day of November 2013

John Daily
Notary Public

My Commission Expires: May 15, 2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

John Thomas Robinson,

2013-CP-46-3507

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 15, 2013, would respectfully show this Court:

I.

The Applicant is presently not confined. The Applicant was indicted at the November 2012 term of the York County Grand Jury for Possession with Intent to Distribute (PWID) Crack Cocaine (2012-GS-46-4065)¹. The Applicant was represented by Mark McKinnon, Esquire. On May 8, 2013, the Applicant pled no contest before the Honorable Paul M. Burch and was sentenced, pursuant to a negotiated sentence, to ten (10) years suspended upon the service of eighteen (18) months' probation for PWID Crack Cocaine, 2nd offense as a lesser included offense. Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s) and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ He was also indicted for Criminal Conspiracy and PWID within proximity which were dismissed by the State.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Illegal search & seizure- USA constitutional violation; Attorney failed to show that claimed traffic stop (illegal u-turn) was not an illegal act and that search pursuant to the stop was pre-textual."
2. "United States of America Constitution"
3. "Pre-textual search-constitutional violation"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRC(a).

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 21, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2013-CP-46-3507

JOHN T. ROBINSON,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

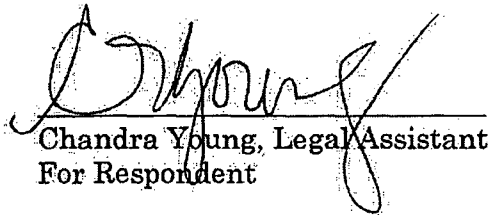
STATE OF SOUTH CAROLINA,

Respondent.

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

Leah B. Moody, Esquire
235 East Main Street, Suite 115
Rock Hill SC 29730

DATED this 21ST day of May, 2014.



Chandra Young, Legal Assistant
For Respondent

1 State of South Carolina Court of Common Pleas
2 County of York Sixteenth Judicial Circuit

3
4 John Thomas Robinson,) Transcript of Record
5 Applicant,) 2013-CP-46-3507
6 vs.)
7 The State of South Carolina,)
8 Respondent.)

9
10 August 5, 2014
York, South Carolina

11 B E F O R E:

12 The Honorable J. Ernest Kinard, Judge

13
14 A P P E A R A N C E S:

15 Leah B. Moody, Esquire
Attorney for the Applicant

16 J. Rutledge Johnson, Esquire
17 Attorney for the State of South Carolina

18
19 STACY S. JOHNSON
20 CIRCUIT COURT REPORTER

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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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NO EXHIBITS WERE INTRODUCED

P R O C E E D I N G S

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THE COURT: All right.

MR. JOHNSON: May it please the Court, Your Honor.

THE COURT: Okay.

MR. JOHNSON: John Thomas Robinson versus the State of South Carolina, Case Number 2013-CP-46-3507. Mr. Robinson was indicted at the November 2012 term of the York County Grand Jury for possession with intent to distribute crack cocaine third offense. On May 8, 2013, he pled no contest before the Honorable Paul M. Burch to PWID crack cocaine second offense as a lesser included. The State also agreed to dismiss two other charges. There was a negotiated sentence of 10 years suspended upon 18 months probation. There was no appeal filed; however, there was a timely PCR application filed November 15, 2013. The State filed its return May 21, 2014 and he is represented here today by Ms. Leah Moody.

MS. MOODY: Thank you, Your Honor. May it please the Court? At this time, we would like to present evidence. Mr. Robinson wishes to go forward with his PCR.

THE COURT: Sure.

MR. MOODY: At this time, Your Honor, I call Mr. Robinson to the stand.

1 **THE COURT:** All right, Mr. Robinson, come around.

2 JOHN THOMAS ROBINSON,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MOODY:

6 Q. Mr. Robinson, could you, please, state your full
7 name for the record?

8 A. Yes, I certainly will. My name is John Thomas
9 Robinson.

10 Q. Mr. Robinson, where do you currently reside?

11 A. I beg your pardon?

12 Q. Where do you currently live?

13 A. I currently live in Rock Hill, South Carolina.

14 Q. And you were charged at some point in time with
15 criminal charges, correct?

16 A. Correct. Absolutely.

17 Q. And what were those charges?

18 A. Those charges -- I had three charges. Possession
19 with intent to distribute crack cocaine, possession with
20 intent to distribute crack cocaine within the proximity
21 and conspiracy to possess with intent to distribute.
22 This all occurred in the 2012 charges.

23 Q. Okay. And the date of those charges, would you
24 agree with me if I said August 24, 2012?

25 A. Absolutely.

John Thomas Robinson - Direct by Ms. Moody

1 Q. And did you have any co-defendants in this case?

2 A. Well, yes, my wife was co-defendant; a passenger in
3 my vehicle.

4 Q. Okay. And who were you represented by?

5 A. I was represented by Mr. Mark McKinnon through the
6 Public Defender's Office.

7 Q. Okay. And you brought this Post Conviction Relief
8 against Mr. McKinnon?

9 A. Yes.

10 Q. Okay. And what are your grounds for your Post
11 Conviction Relief?

12 A. My grounds for my Post Conviction Relief is
13 ineffective assistance of counsel. I don't think I
14 should have had to be -- plead to any of these charges.

15 Q. So explain to the Court what you mean by you don't
16 think you should have been made to plead?

17 A. The charges that I was indicted for, the possession
18 with intent to distribute, the possession with intent
19 to distribute within the proximity and the possession
20 with intent conspiracy, were all the derived from the
21 same set of circumstances. It's not like three
22 different days and all that, three different incidents,
23 it all derived from the same set of circumstances, and
24 I believe that all of these charges were unlawful
25 arrests. According to the law, I believe that they

1 were unlawful arrests and I should not have been
2 arrested for those charges, I should not have had to
3 plead to those charges. I believe that those terms
4 were ineffective assistance of counsel and that was
5 the results.

6 Q. Let me stop you there for a second. You say that
7 you had ineffective assistance of counsel. Are you
8 referring to your advice from your attorney?

9 A. Certainly. I believe all these charges should
10 have been disposed of in the preliminary hearing had he
11 raised and argued pretextual.

12 Q. Okay. In the preliminary hearing, he didn't
13 raise pretextual. Can you explain to the Court the
14 circumstances as to why you say that?

15 A. I certainly can.

16 Q. I'm sorry?

17 A. I certainly can. On August 24th at approximately
18 5:00, I was stopped by the York County Multidrug
19 Enforcement Unit for a claimed traffic violation, an
20 illegal U-turn.

21 Q. Okay. So the reason why were you stopped was for
22 an illegal U-turn?

23 A. An illegal U-turn.

24 Q. And then what happened?

25 A. I don't believe that the U-turn was illegal because

1 there's no signs out there posted not to make a U-turn.
2 The weather was clear. I did not interrupt any oncoming
3 traffic or following traffic. The officer stopped me
4 and they asked for a driver's license and registration.
5 I had those valid documents.

6 Q. Now let me stop you right there. Did you give him
7 your driver's license?

8 A. I certainly did.

9 Q. Okay. And then from that point, what happened?

10 A. From that point, lawfully I believe that they
11 should have issued a citation or a warning and let me
12 go, but neither one of those was issued; not a citation,
13 nor a warrant.

14 **MR. JOHNSON:** Your Honor, just for the record, I
15 object to this. This would be direct appeal issues.
16 Whatever the police did has no bearing on ineffective
17 assistance of counsel.

18 **THE COURT:** All right.

19 **THE WITNESS:** Fine, right, but she asked me to tell
20 her what happened and what did lead to ineffective
21 assistance of counsel.

22 BY MS. MOODY:

23 Q. Now, Mr. Robinson, I need you to respond to my
24 questions, okay?

25 A. Okay.

1 Q. Okay. So now you indicated that your attorney went
2 to a preliminary hearing and your attorney did not raise
3 the issue of a pretextual stop, correct?

4 A. He surely did not.

5 Q. Okay. And as a result of that preliminary hearing
6 those charges were not dismissed?

7 A. Exactly.

8 Q. Okay. And you're telling the Court here today that
9 you think those charges should have been dismissed at
10 that point?

11 A. Absolutely.

12 Q. And then later on during the representation, you
13 still were represented by Mr. McKinnon, correct?

14 A. Absolutely.

15 Q. And when Mr. McKinnon and you had an opportunity to
16 talk about your case, did you all discuss these issues?

17 A. Yes, we did.

18 Q. Okay. And what, if anything, did you all discuss?

19 A. We discussed the three charges and Mr. McKinnon
20 believed that the best result in this particular case
21 would be for us to plead to the terms that were
22 resulting.

23 Q. And when you say the terms, are you saying -- are
24 you speaking of what the Solicitor's Office offered you
25 for a plea -- in exchange for a plea?

1 A. I believe that's exactly right.

2 Q. Okay. And what was your offer from the Solicitor's
3 Office?

4 A. The final offer was 10 years suspended to 18 months
5 probation.

6 Q. Okay. And ultimately you decided to take that
7 offer, correct?

8 A. Well, yes.

9 Q. Okay.

10 A. We did.

11 Q. So when you discussed with Mr. McKinnon your case,
12 did you all go through your defenses?

13 A. We did, but we -- he determined that this would
14 probably be the best result.

15 Q. Okay. Well, now you -- you indicated that he was
16 ineffective assistance of counsel?

17 A. Yes.

18 Q. What did he not discuss with you that makes him
19 ineffective assistance of counsel?

20 A. I believe that had he argued pretextual that the
21 results -- the outcome of this case would have been
22 absolutely different. These charges would have been
23 dismissed, especially the PWID within the proximity.
24 That was an illegal arrest.

25 Q. Okay. Well, I'm gonna come back to that in one

1 minute, okay?

2 A. Okay.

3 Q. To your knowledge, what, if anything, did
4 Mr. McKinnon discuss with the Solicitor regarding the
5 pretextual stop or the illegal stop?

6 A. I don't know just what he discussed with the
7 Solicitor. I'm going by what I do know and that is that
8 whatever they discussed they reached a term of that
9 negotiated plea.

10 Q. Okay. Well, what I'm trying to get at here is
11 did he confirm with you that he had an opportunity to
12 discuss those issues in your matter with the Solicitor?

13 A. He confirmed with me that he had a plea from the
14 Solicitor's Office and that plea was a negotiated plea.

15 Q. Okay. So the answer to my question is no, he
16 didn't confirm --

17 A. Anything other than that -- anything other than
18 that, no.

19 Q. Okay. So then you decided based off of your
20 discussion with Mr. McKinnon to plead to the charges?

21 A. Absolutely.

22 Q. Okay. What else, if anything, if there's anything
23 else, do you feel your attorney did not do on your
24 behalf?

25 A. My attorney, he did not -- he did not show that

1 these charges should not have been against me. There
2 should not have been -- there never should have been
3 an indictment, there never should have been an arrest
4 warrant for these charges, and had he shown that I'm
5 certain that the outcome of this case would have been
6 different. He was ineffective for not showing that.

7 Q. Now going back to your proximity charge --

8 A. Yes.

9 Q. -- you were about to tell the Court what the issue
10 was with that charge. Can you, please, tell us?

11 A. Yes. Having been stopped for the claimed U-turn,
12 okay, then a substance was discovered in the passenger's
13 pocketbook, but the Legislature has said there shall
14 not be an arrest if the party is stopped within that
15 proximity when there's no execution of the violation.

16 Q. Well, where were you coming from?

17 A. I was leaving a motel that I had rented and I was
18 going to handle some businesses and I was stopped by a
19 traffic light.

20 Q. What's the name of the hotel?

21 A. The Hillside Inn.

22 Q. The Hillside Inn?

23 A. Yes. It's located on Anderson Road in Rock Hill.
24 I'm travelling south on Anderson Road leaving the motel
25 now and the traffic light caught me and during the stop

1 for the traffic light, I realized that I had left a
2 document in the motel that I wanted to post -- mail in
3 the post office. So when the light changed, I went
4 through the traffic light and made a U-turn to go back
5 and pick up my document. It was then that I was
6 stopped.

7 Q. And so when you got stopped, you're saying that
8 that stop according to the statute, the Legislature,
9 you should not have been charged with a proximity
10 charge?

11 A. Absolutely not. The Legislature's intent must be
12 construed as strictly -- that was strictly a violation.

13 Q. Okay. And did you discuss this with your attorney?

14 A. Absolutely.

15 Q. And what was the outcome from that discussion?

16 A. The plea from that was to dismiss that charge
17 pursuant to the plea for the PWID, but I had to post
18 bond for that charge to get out of jail. On all these
19 charges I had to post bond.

20 Q. Okay. And did you all discuss your conspiracy
21 charge?

22 A. Yes, we discussed that as well. That was also
23 dismissed pursuant that I plead to the PWID. Those --
24 that charge was dismissed as well.

25 Q. Did your wife plead to any charges?

1 A. She was acquitted on all of them.

2 Q. All right. Now you also allege in your application
3 violation -- well, you initially said ineffective
4 assistance of counsel based on the illegal search and
5 seizure, correct?

6 A. Correct.

7 Q. Now we just addressed that?

8 A. Yes.

9 Q. Okay. And then you also allege the United States
10 of America Constitution. What specifically are you
11 alleging in the United States --

12 A. Illegal search and seizure. That's a Fourth
13 Amendment violation, I think.

14 Q. Okay. So that's all within the ineffective
15 assistance of counsel?

16 A. Yes. Having had my valid driver's license -- a
17 valid driver's license when I was stopped for that
18 illegal U-turn -- having had in my possession a valid
19 driver's license and a valid regulation --

20 Q. All valid?

21 A. Yes, valid. Yes. Having had those two valid
22 documents to give the officer, then as a result the
23 only thing that should have happened was he issue me
24 a citation for the violation, claimed violation, or a
25 warning. No citation, no warning, was issued. Now we

1 know that the Supreme Court has held that pretextual
2 stops are okay if the officer make a legitimate traffic
3 stop, but where there's absence of a citation or a
4 warning, that's not a legitimate traffic stop.

5 Q. Now did you have an opportunity -- or what, if any,
6 discovery did you review with your attorney?

7 A. My -- my attorney and I reviewed the whole case
8 thoroughly. I really think that my attorney wanted to
9 ensure that I did not be imprisoned by way of a guilty
10 plea to a large imprisonment term and as -- and because
11 of that I think he set sold on the plea rather than
12 let's go to trial just in case something went wrong he
13 kept telling me, something just might not go wrong, but
14 nothing can go wrong, it's the law. The law is not
15 gonna go wrong.

16 Q. Now -- okay. You realize, and we discussed this,
17 you realize you have to prove how you were prejudiced.
18 Can you, please, tell the Court how you were prejudiced
19 by your counsel's ineffective assistance of counsel?

20 A. Yes. I was prejudiced by my attorney not showing
21 at the preliminary hearing that there was not enough
22 evidence to convict his client, me, of any of those
23 charges and I believe that had he done that he would
24 have got a no bill rather than a true bill on all of
25 these charges.

1 Q. Now what relief are you seeking from the Court?

2 A. I want him to vacate the conviction. I want my
3 record clear of these charges.

4 **MR. JOHNSON:** Your Honor, that's not a proper
5 remedy during a PCR.

6 **THE COURT:** I understand.

7 **THE WITNESS:** That's not all.

8 BY MS. MOODY:

9 Q. Mr. Robinson -- Mr. Robinson, you're asking the
10 Court to vacate your sentence for these charges?

11 A. Yes.

12 Q. And you realize that they cannot -- you start over
13 in the process? If they vacate your plea --

14 A. Yes.

15 Q. -- you start over in the process of being charged
16 with the PWID crack cocaine, the PWID prox and the
17 criminal conspiracy, you realize that?

18 A. Yes. Yes.

19 Q. And you still wish to receive the relief from the
20 Court?

21 A. Yeah, but that's not all.

22 Q. What else do you wish to seek from the Court?

23 A. I want a reimbursement for my bond monies that I had
24 to put up for these charges.

25 Q. Well, you do realize if you start over that means

1 you start over all the way at the beginning as if you
2 were never arrested?

3 A. Yes.

4 Q. Okay. So the whole game starts over?

5 A. Yes.

6 Q. So there's no refund that would be possibly coming
7 and this Court today cannot give you that?

8 A. Right. Yeah, I understand.

9 Q. Okay. So knowing all that, you're asking the Court
10 to vacate your sentence --

11 A. Yes.

12 Q. -- and find your attorney was ineffective assistance
13 of counsel?

14 A. Well, my attorney was ineffective. We know that
15 he was ineffective for failure to show during the
16 preliminary that I wasn't guilty of any of these
17 charges. So if I'm not guilty of any of these charges,
18 I'm not asking that -- for a new trial. We're asking
19 for merely a new preliminary hearing.

20 **THE COURT:** It doesn't work that way.

21 **THE WITNESS:** Well, okay, if it doesn't work that
22 way, then we have to take the -- the way that it works
23 to show.

24 BY MS. MOODY:

25 Q. Are you aware that this is -- I mean, let me just

1 make sure. You understand what you're asking the Court
2 today is to find your attorney is ineffective assistance
3 of counsel. That's one thing.

4 A. Right.

5 Q. Okay. And if he finds that your counsel was
6 ineffective assistance of counsel and you were
7 prejudiced, okay --

8 A. Right.

9 Q. -- the only thing he can do is vacate your plea.

10 A. Yes. Okay.

11 Q. And you understand that? That means you start all
12 the way over.

13 A. Yes, I understand.

14 Q. Okay. Is there -- go ahead.

15 A. Let me say if this Court finds that my attorney was
16 ineffective for that failure, for his deficiency, and
17 that I had to go to trial for charges that I did not
18 commit, the Court finds -- if the Court sees that, then,
19 okay.

20 Q. Okay. So the judge is not gonna determine whether
21 you have to go to trial or not. The only thing we're
22 here today for, you understand, is to determine whether
23 your lawyer was ineffective in assisting you in your
24 case. You understand that?

25 A. I understand that.

1 Q. Okay.

2 A. I know had he been effective the outcome of this
3 case would have been different.

4 Q. Okay. So with that being said, is there anything
5 else you'd like to convey to the Court about your
6 attorney being ineffective?

7 A. If the outcome of this case would have been
8 different, I wouldn't have been convicted.

9 Q. So there's nothing else? The answer to my question
10 is no?

11 A. No. Absolutely.

12 **MS. MOODY:** Thank you. Please answer any questions
13 Mr. Johnson may have.

14 **MR. JOHNSON:** Just briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. JOHNSON:

17 Q. Mr. Robinson, if you are successful here today and
18 you can go back and start all over from square one, the
19 State can bring these charges again. Do you understand
20 that?

21 A. Um --

22 Q. You start off --

23 A. I don't understand that. Let me -- let me
24 straighten it. I have an objection, of course. I don't
25 understand that, to my knowledge of that, I will accept

1 that coming from that you, then, fine, we'll start all
2 over again then.

3 Q. Okay. So if you are to start all over again, are
4 you aware that you face up to 50 years in prison for
5 these charges?

6 A. Yeah, let me see. Or maybe more.

7 Q. Because the PWID crack cocaine would be a third
8 offense, it would not be a second offense, and that
9 carries 10 to 30. Are you aware of that?

10 A. Well, that's not true. I understand that we were
11 indicted under 3039, that's a third offense, but
12 lawfully the CDR Code there should have been removed by
13 way of a demurrer, so the information that you're giving
14 me there is erroneous. It's not a third offense. It's
15 a third offense for the purpose of sentencing, but it's
16 not a third offense under 3039.

17 Q. Sir, are you aware that Section -- of our South
18 Carolina Code 44-53-375, Section (B) (3), states that a
19 person who possesses with intent to distribute cocaine
20 base, that being crack cocaine, and that is a third
21 offense, the defendant must be in prison for not less
22 than 10 years or no more than 30 years? That's what
23 that statute says.

24 A. I understand that -- I understand that perfectly
25 well, but do you not understand that I'm saying it's not

1 a third offense. It's a third offense for the purpose
2 of sentencing, but not under CDR Code 3039.

3 **THE COURT:** Just move on. He doesn't understand.

4 **THE WITNESS:** Yes, I do so understand.

5 **THE COURT:** You don't understand.

6 **THE WITNESS:** I do so.

7 **THE COURT:** Listen. When the judge says something,
8 it's best for you not to talk back.

9 **THE WITNESS:** Okay. All right. I can dig that.

10 **THE COURT:** Because whether I'm right or not, you're
11 stuck with what I do. It's just like a basketball game.

12 **THE WITNESS:** Okay.

13 **THE COURT:** If you call a foul, somebody shoots a
14 free-throw. The referee might have missed it, it might
15 not have been a foul. But when I tell you the law is a
16 third offense carries up to 30 years, one and two --

17 **THE WITNESS:** Oh, okay.

18 **THE COURT:** -- I wouldn't have accepted your plea
19 under any circumstances --

20 **THE WITNESS:** Okay, Your Honor.

21 **THE COURT:** -- negotiated or not. That's the
22 sweetest heart deal I've heard for somebody with your
23 prior record.

24 **THE WITNESS:** Yeah.

25 **THE COURT:** So the minimum I've given anybody in

1 a situation like that is about ten years active time,
2 but go ahead.

3 **THE WITNESS:** Okay, yeah.

4 **THE COURT:** You're gonna be through with this in
5 six months if I don't set it aside if you play it
6 straight; otherwise, you're looking at 60 years. And,
7 in addition, your attorney mentioned to the Court, I
8 read the transcript, that he could have raised at trial
9 the illegality of the stop and some statement that you
10 made, so he obviously knew about it and could have done
11 it. You don't normally do -- that things are thrown out
12 at preliminary hearings is street talk.

13 **THE WITNESS:** Thank you, sir.

14 **MR. JOHNSON:** I think the record speaks for itself.
15 I'll get my answers out of the attorney. Thank you,
16 Your Honor. No further questions.

17 **THE WITNESS:** Oh, okay.

18 **MS. MOODY:** No further questions.

19 **THE COURT:** You can step down.

20 (Witness excused.)

21 **MS. MOODY:** No other witnesses.

22 **THE COURT:** Okay.

23 **MR. JOHNSON:** The State calls Mr. Mark McKinnon to
24 the stand.

25 **THE COURT:** All right, Mr. McKinnon.

1 MARK McKINNON,
2 having been duly sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MR. JOHNSON:
5 Q. Good morning, Mr. McKinnon.
6 A. Good morning.
7 Q. Please tell the Court how you became involved in
8 this case.
9 A. I was appointed by the Court I would say, if I
10 could look back at my notes, back in October of 2012.
11 Q. And about how many times did you meet with
12 Mr. Robinson?
13 A. I can't tell you for sure, but it was a significant
14 amount. We probably met ten times I would -- just
15 guess. Somewhere around there.
16 Q. And did you file discovery in this case?
17 A. I did.
18 Q. And did you review that discovery with Mr. Robinson?
19 A. Yes, sir, I did.
20 Q. Based on that discovery, did you give him any
21 advice concerning this case?
22 A. I did. The advice changed over time. Would you
23 like me to get into that now?
24 Q. Please.
25 A. Originally there was a -- the State had a much

1 stronger case. There was a witness that told the
2 police they had just witnessed a purchase of cocaine
3 from Mr. Robinson. They watched the occurrence happen
4 and then talked to the gentleman, Mr. Patel, and he
5 said that he had -- I mean, he showed them the crack
6 and said I just bought this from Mr. Robinson, so at
7 that point the State had a much stronger case against
8 him and we were not sure where the heck the case was
9 headed, what we were gonna do. I believe his offer
10 was some sort of active prison sentence at the time.
11 Later Mr. Patel died for health reasons, I think he
12 maybe overdosed on crack cocaine, so without that
13 witness the case drastically changed, I'd say, in
14 Mr. Robinson's favor thereby getting him, as the judge
15 appropriately said, what was a sweetheart deal.

16 Q. And that deal was ten years suspended upon 18
17 months probation?

18 A. That's correct, yes.

19 Q. And that was the final offer from the State?

20 A. Yes, it was.

21 Q. And obviously you conveyed that to Mr. Robinson?

22 A. I did.

23 Q. And he agreed to take that plea deal?

24 A. Yes, he did.

25 Q. And whose decision was it to take that plea?

1 A. That was Mr. Robinson's.

2 Q. Did you ever force or threaten him to take it?

3 A. Absolutely not.

4 Q. Were you prepared for trial?

5 A. I was.

6 Q. And in preparing for trial, you reviewed the
7 discovery?

8 A. Yes, sir.

9 Q. And did you speak with Mr. Robinson?

10 A. I did.

11 Q. And did you research the legality or the illegality
12 of that U-turn that he speaks of?

13 A. I did, and I discussed that with Mr. Robinson.

14 Q. What was your conclusion on that?

15 A. My conclusion was that that was an issue for trial
16 and it could go either way, but then my recommendation
17 to him was that given the risk assessment of going to
18 trial and facing 30 to 50 years versus 18 months
19 probation, that while that was an issue and there were
20 other issues as well, that I recommended that he take
21 this deal, but ultimately it was his decision to do that
22 and he did accept my recommendation.

23 Q. He also speaks of a preliminary hearing. Did you
24 conduct a -- or ask for a preliminary hearing?

25 A. I did ask for one. At the time I did not have

1 discovery, so I always ask for a prelim when I have
2 not received discovery at the time of initially being
3 appointed to the case. At the time of the preliminary
4 hearing, by the time that came around, I had discovery
5 and then ended up waiving the prelim based on my belief
6 that the State had plenty of evidence at that time to
7 prevail at preliminary hearing.

8 Q. So that was your professional judgment?

9 A. Yes.

10 Q. Okay. And had you actually conducted the
11 preliminary invest -- or had a preliminary hearing and
12 the charges were dismissed, does the State then have the
13 option to come back with a direct indictment?

14 A. Yes, they do, and this particular Solicitor pretty
15 much does it 100 percent of the time for any case that
16 is dismissed.

17 Q. So the charges just wouldn't go away? They could
18 still -- the State could still bring them back?

19 A. Absolutely.

20 Q. Okay. And did you research his prior history?

21 A. I did.

22 Q. And did you find that there were two other prior
23 drug convictions that could be used to enhance his
24 sentence?

25 A. Yes, that's correct.

1 Q. Okay. And so then he was looking at the 10 to 30
2 range --

3 A. He was, yes.

4 Q. -- on that one charge?

5 A. Uh-huh.

6 Q. And the proximity up to 10 or 15?

7 A. Up to 10, yes.

8 Q. And then five years for the criminal conspiracy?

9 A. Yes.

10 **MR. JOHNSON:** That's all the questions I have at
11 this time, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. MOODY:

14 Q. Mr. McKinnon --

15 A. Yes, ma'am.

16 Q. -- you earlier testified that you met with your
17 client to discuss his case?

18 A. Yes.

19 Q. And at those discussions, did you feel like he
20 understood what he was facing?

21 A. Very much so, yes.

22 Q. And you said that he indicated that he wanted to
23 accept the plea offer?

24 A. Yes.

25 Q. And in discussing that plea offer, did you all go

1 through the full -- well, not -- not that you can
2 predict everything that was gonna happen in the case,
3 did you try to walk him through what could possibly be
4 the turnout of the case?

5 A. I did to the best I could at the time, yes.

6 Q. And did he offer any other witnesses that could
7 testify on his behalf?

8 A. I do not recall any witnesses that he mentioned now.

9 Q. What other assistance did he provide to you with
10 regard to helping defend on this case?

11 A. I'm not sure what you mean.

12 Q. Like, did he offer any other evidence -- since
13 Mr. Patel had passed away, did he offer anybody else
14 that could refute anything that Mr. Patel would have
15 initially before he died testify?

16 A. I do not recall that. I could look back at my
17 notes, but I don't recall anything like that now.

18 Q. And at the time of the plea, did you go over his
19 rights of giving up his right to go to trial?

20 A. I did.

21 Q. Did you all do a plea affidavit?

22 A. I do not recall if we did a plea affidavit or not,
23 but I certainly went over all his rights with him, as
24 did the sitting judge at the time. I believe it was
25 Judge Burch.

1 **MS. MOODY:** I beg the Court's indulgence.

2 **THE COURT:** All right.

3 BY MS. MOODY:

4 Q. As to his prior charges that he had, what were the
5 nature of those charges? Drug offenses obviously?

6 A. They were. I would have to look back at his record
7 to tell you for sure. I can't --

8 Q. Do you have it in your file there?

9 A. I should, yes. Okay. I see a 1999 conviction
10 for possession with intent to distribute crack cocaine,
11 I see a 1993 possession of crack cocaine, third offense.
12 I'm sorry, that was a non-conviction. Never mind. I
13 see a 1995 possession of crack that was a conviction,
14 and there is more, but that is too --

15 Q. So did you explain to him the enhancement on drug
16 offenses?

17 A. Yes, ma'am, I did. Yes.

18 Q. Did he appear to understand it?

19 A. He did, yes.

20 Q. And despite -- was he planning on testifying?

21 A. I'm trying to remember. I believe he was planning
22 on testifying. I mean, certainly he could change his
23 mind during the trial, it happens a lot, but my
24 recollection was, yes, he wanted to testify.

25 Q. And when you all discussed the case, did you all

1 discuss the pretextual -- I know you said it's in the
2 transcript, but do you feel like he understood your
3 arguments that could possibly go his way and the
4 possibility that it might not go that way?

5 A. Yes, that was -- a big part of our discussions
6 prior to trial was that that certainly -- we laid out
7 the issues and how, you know, a judge could rule one
8 way or the other and if the resulting -- or how that
9 would impact the trial, whether it would go forward or
10 not, based on the outcome of the -- that ruling, yes.

11 **MS. MOODY:** Thank you. No further questions.

12 **MR. JOHNSON:** Just -- just one follow-up.

13 **REDIRECT EXAMINATION**

14 **BY MR. JOHNSON:**

15 Q. In your experience, had you gone to trial and the
16 judge rules against you, is the Solicitor's Office gonna
17 offer him this sweetheart of a deal again?

18 A. In my in experience, absolutely not.

19 **MR. JOHNSON:** Thank you, Your Honor. No further
20 questions.

21 **THE COURT:** Step down.

22 **THE WITNESS:** Thank you, sir.

23 (Witness excused.)

24 **MR. JOHNSON:** The State has no further witnesses.

25 **THE COURT:** All right. Ms. Moody, do you want to

1 add anything?

2 **MS. MOODY:** No, sir.

3 **THE COURT:** You know me, I don't keep people waiting
4 for weeks. He just hadn't met his burden and it's in
5 his clear best interest for me to deny his application.
6 If I granted it, the Solicitor's Office here would
7 probably be happy they could go for a third offense for
8 him and get up to 30 years and so forth. And the lawyer
9 got the conspiracy charge dismissed, the lawyer got the
10 proximity charge dismissed. If he'd gone to trial, it
11 was in front of Judge Burch at the time, who's an
12 ex-police officer, not that that would have any bearing,
13 but he would be the one to rule on whether the police
14 stop was pretextual or not.

15 And he only has about six more months if he stays
16 straight, then he won't be facing all of these charges.
17 If I granted it and he wanted his money back for bond,
18 he'd have to post another bond. The charges wouldn't
19 go away. It's not like you get it dismissed and the
20 record is expunged. He'd just subject himself to being
21 prosecuted for conspiracy, PWID and the proximity
22 charge, which clearly it's not in his best interest.
23 It looks like he's been around long enough to stay
24 straight for about six more months and then he'll be
25 through with it all. But, anyway, he didn't meet his

1 burden and the lawyer obviously discussed the validity
2 of the traffic stop, so there you go.

3 **MS. MOODY:** Thank you, Your Honor.

4 **THE COURT:** He negotiated a really good deal, and
5 like I say, I wouldn't have taken it due to his prior
6 record.

7 **MS. MOODY:** Thank you, Your Honor.

8 **MR. JOHNSON:** Thank you, Your Honor.

9 (Discussion between the Plaintiff and his attorney.)

10 **THE COURT:** Oh, you'll get an order. You've got
11 ten days. You can appeal, but you need to think
12 seriously about it. They might love for you to win.

13 **THE APPLICANT:** Thank you, sir.

14 **THE COURT:** Good luck.

15 **THE APPLICANT:** See you in the near future.

16 (Proceedings were concluded at 12:16 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 5th day of August, 2014.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

December 10, 2014

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
)
 John Thomas Robinson,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3507

ORDER OF DISMISSAL

FILED-RECEIVED
 2014 SEP 28 AM 8:14
 DANIEL B. HILTON
 CLERK OF COURT
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 15, 2013. Respondent made its Return on May 21, 2014. An evidentiary hearing into the matter was convened on August 5, 2014, at the Moss Justice Center in York, SC. Leah B. Moody, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Mark McKinnon, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant was indicted at the November 2012 term of the York County Grand Jury for Possession with Intent to Distribute (PWID) Crack Cocaine (2012-GS-46-4065)¹. Applicant was

¹ He was also indicted for Criminal Conspiracy and PWID within proximity which were dismissed by the State.

represented by Mark McKinnon, Esquire. On May 8, 2013, Applicant pled no contest before the Honorable Paul M. Burch and was sentenced, pursuant to a negotiated sentence, to ten (10) years suspended upon the service of eighteen (18) months' probation for PWID Crack Cocaine, 2nd offense as a lesser included offense. Applicant did not appeal his convictions or sentences.

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

1. "Ineffective Assistance of Counsel"
 - a. "Illegal search & seizure- USA constitutional violation; Attorney failed to show that claimed traffic stop (illegal u-turn) was not an illegal act and that search pursuant to the stop was pre-textual."
2. "United States of America Constitution"
3. "Pre-textual search-constitutional violation"

At the hearing, Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he pled to PWID cocaine, PWID cocaine within proximity and Criminal Conspiracy and that his wife was his co-defendant. Applicant claimed he did not think he should have pled guilty to any charges as all of the charges stem from one incident; he also claimed he was unlawfully arrested. Applicant testified all of his charges should have been dismissed at a preliminary hearing as he believed the police stop was pre-textual. Applicant additionally claimed that the "illegal U-turn", which was the basis of the traffic stop, was not illegal because it was not marked as illegal. Applicant claimed Counsel failed to raise this issue.

Applicant testified he and Counsel discussed the charges and other issues and that Counsel always told him to plead guilty. The State offered Applicant a plea deal of ten years suspended to

eighteen months' probation. Applicant also testified he and Counsel discussed the offenses with which he was charged.

Applicant further claims had Counsel argued against the "pre-textual" stop, the charges would have been dismissed. Applicant testified that based on Counsel's advice, he pled to these charges. Applicant additionally stated that he should not have been charged with proximity because he had no intent of stopping in a school zone/park area. Applicant lastly stated that there was not enough evidence to survive a preliminary hearing.

On cross-examination, Applicant refused to believe that if he were successful in this action that the State could take him to trial and if found guilty, could face up to fifty years in prison until this Court advised him of such.

Counsel testified he was appointed to Applicant's case as a public defender. Counsel stated he met with Applicant around ten times and reviewed discovery with him. Counsel advised Applicant there was a witness who would have testified that he bought crack cocaine from Applicant. Counsel stated there was an initial offer for an active-time sentence, but when the aforementioned witness died, the State offer Applicant a sentence of ten years suspended upon eighteen months' probation. Counsel testified he did not threaten or force Applicant to accept the plea offer and was preparing for trial.

Counsel additionally testified that the disputed U-turn Applicant complains about could have been argued either way, but based on Counsel's risk assessment for Applicant, he advised Applicant to accept the plea offer. Counsel testified he did not request a preliminary hearing based on his professional judgment and that even if the charges had been dismissed at a preliminary hearing, the State could have directly indicted Applicant. Counsel testified if Applicant was convicted at trial, he

would face a minimum of ten years on the PWID crack cocaine, 3rd offense charge. (not to mention, the other charges).

On cross-examination, Counsel testified Applicant understood the charges he was facing, that Applicant wanted to accept the plea offer and that Applicant failed to mention any witnesses to Counsel which could be called at trial. Concerning Applicant's prior convictions, Counsel testified he received copies of two of Applicant's prior certified crack cocaine convictions from the 1990's. Counsel stated he explained the enhancement process to Applicant. Counsel lastly testified he advised Applicant concerning the "pre-textual" argument, how a judge could rule, and the ramifications of such a ruling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668,

104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has

failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION


Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the 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 Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



J. Ernest Kinard, Jr.
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9/3, 2014
Blanford, South Carolina

DOCKET NO. 2012-GS-46- 04065

The State of South Carolina

County of York

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

Defendant

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

November 15, Term 2012

COURT OF GENERAL SESSIONS

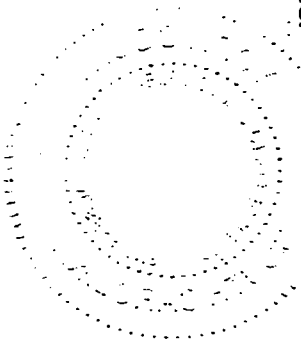
THE STATE

vs.

JOHN THOMAS ROBINSON

[Signature]
Defendant

Witness: *[Signature]*
C.C.C. P.S. AMD.G.S.



WITNESSES

DEU / Harrelson

adm

ARREST WARRANT NUMBER

N230393

ACTION OF GRAND JURY

TRIAL BILL

[Signature]

Foreperson of Grand Jury
Date: 11/15/12

VERDICT

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
CRACK COCAINE

SC Code: 44-53-375(B)(1)
CDR Code: 3039

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

2013 NOV 15 PM 11:16

At a Court of General Sessions, convened on November 15, 2012, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

On or about August 24, 2012, the Defendant, John Thomas Robinson, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver crack cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR