

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Robin B. Stilwell, Circuit Court Judge

RECEIVED
MAY 15 2015
S.C. Supreme Court

TRAVIS MONTGOMERY BROWN, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001874

APPENDIX

JOHN H. STROM
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

KAREN RATIGAN
Senior Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)	
)	
The State,)	
)	TRANSCRIPT OF RECORD
-vs-)	2011-GS-23-4776, -4777
)	
Travis Montgomery)	
Brown, Jr.,)	
)	December 3, 2012
Defendant.)	Greenville, South Carolina

B E F O R E :

HONORABLE WILLIAM H. SEALS, JR., JUDGE

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

ELIZABETH COBLE MAJOR, ESQUIRE
Attorney for the State

CAROLINE M.W. HORLBECK, ESQUIRE
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

1 THE COURT: Alright, those of you that are in the
2 courtroom and you plan to plead guilty or you're thinkin'
3 about pleading guilty I wanna go over certain rights that you
4 have and I want you to understand those rights. First of all,
5 you need to understand that you don't have to plead guilty;
6 you'd rather have a jury trial instead, all you have to do is
7 ask and I'll make sure you get one. I want you to understand
8 that if you have a trial, you have nothing to prove, the
9 burden of proof instead is on the State of South Carolina to
10 prove you guilty beyond a reasonable doubt; furthermore, if
11 you had a trial you'd have a jury made up of twelve people, it
12 would have to take all twelve members to unanimously agree to
13 convict you before the Court could sentence you; furthermore,
14 your lawyer would have the right to cross-examine and confront
15 all of the State's witnesses and you have a trial you could
16 come over here (indicating) and take the witness stand, you
17 could be sworn in, you could testify and tell your side of the
18 story; however, it's important to understand that you do not
19 have to testify because you have the constitutional right to
20 remain silent and if you exercise that right I want you to
21 understand that I will tell the jury they could not use that
22 against you in any way, I would even tell the jury that the
23 fact that you did not testify is somethin' they can't even
24 talk about in the jury room, it is to have absolutely no
25 prejudice against you; furthermore, if you have a trial or if

1 you plead guilty in fronta me, you're not happy with somethin'
 2 that takes place, you can appeal it but you gotta do so within
 3 ten days. If you come before me, you have any questions about
 4 these rights, do not hesitate to ask me and I'll clear 'em up
 5 for you. Alright, thank you very much. Solicitor, I'm
 6 ready.

7 THE CLERK: Your Honor, this is Indictment
 8 2011-GS-23-4777 Travis Brown, Jr. indicted for manufacturing
 9 cocaine base, pleading to manufacturing cocaine base second
 10 offense and it is a true bill; 2011-GS-23-4776 indicted for
 11 possession of cocaine base with the intent to distribute,
 12 pleading to possession with the intent to distribute cocaine
 13 base second offense and it is a true bill. You raise your
 14 right hand.

15 (Whereupon, the defendant complied.)

16 TRAVIS MONTGOMERY BROWN, JR.,
 17 having been first duly sworn, testified as follows:

18 THE COURT: What's the recommendation in this is?

19 MS. MAJOR: Your Honor, there's no recommendation, just a
 20 reduction in the charges.

21 THE COURT: Alright.

22 EXAMINATION BY THE COURT:

23 Q. Mr. Brown, you are pleading guilty to manufacturing
 24 cocaine base second offense which has a minimum of 5 days, is
 25 that right? Five years. Years?

1 MS. HORLBECK: Years.

2 MS. MAJOR: Five years.

3 Q. Five years and a maximum of 30 years, is that correct?

4 A. Yes, sir.

5 Q. And you're also pleading guilty to possession with intent
6 to distribute cocaine base second offense which has a minimum
7 of 5 years and a maximum of 30 years, is that correct?

8 A. Yes.

9 Q. Speak up now.

10 A. Yes, sir.

11 Q. Also, were you in the courtroom when I went over your
12 rights to a jury trial?

13 A. Yes.

14 Q. Did you understand those rights?

15 A. Yes, sir.

16 Q. Do you wanna give up your right to a trial and plead
17 guilty today?

18 A. Yes, sir.

19 Q. You satisfied with your lawyer?

20 A. Yes.

21 Q. Has she answered all of your questions and done
22 everything you've asked her to do?

23 A. Yes.

24 Q. Has anybody promised you any type of reward or gift to
25 get you to plead guilty?

1 A. No, sir.

2 Q. Has anybody coerced you into pleading guilty?

3 A. No, sir.

4 Q. Are you under the influence of any drugs or alcohol at
5 this time?

6 A. No, sir.

7 Q. Have you understood all of my questions?

8 A. Yes.

9 Q. Are you guilty?

10 A. Yes, sir.

11 THE COURT: Alright, Solicitor.

12 MS. MAJOR: Your Honor, on April 27th 2011, the
13 Greenville Sheriff's Office executed a search warrant at 113
14 Sterling Road in Greenville County. Officers found 5.06 grams
15 of cocaine base as well as items used to manufacture cocaine
16 base including glass cookware that tested positive for
17 cocaine, forks and file with residue. The defendant's
18 fingerprints were found on the glass cookware. Officers found
19 four digital -- found digital scales, paperwork with the
20 defendant's name on it. Three small children were living in
21 the residence which was in extreme disarray and DSS was
22 called. The defendant was present in the location. Um, his
23 prior record is from North Carolina a 1993 breaking and
24 entering and larceny; 1995 possession with intent to
25 distribute cocaine; '98 possession with intent to distribute

1 cocaine, maintaining a drug house and possession with intent
2 to distribute, uh, cocaine, um, failure to appear, um no
3 driver's license, resisting arrest, trespass second degree;
4 1999 failure to appear on a felony charge, possession with
5 intent to distribute cocaine, habitual felon conviction; 2007
6 possession of a firearm, um, by felon and resisting arrest.

7 THE COURT: Alright, I'll accept the plea and find that
8 he's making that decision freely and intelligently with the
9 advice of competent counsel.

10 MS. HORLBECK: Your Honor, Mr. Brown is 37-years-old, he
11 was born and raised in the Asheville area, that's where
12 clearly all of his family is actually North Carolina. Uh,
13 he -- his parents split up when he was real young so he was
14 primarily raised by his mother, um, although he did have a lot
15 of, uh, assistance and and, um, interaction with his
16 grandparents so he's very thankful for that, um, but I think
17 just the fact that he didn't have a real, um, s -- had a
18 little bit of some upheaval in his home life he did start
19 smokin' marijuana when he was, um, age 12, now he'll candidly
20 admit to the Court that no one forced him to do that and that
21 he he understands that that that was the wrong thing to do,
22 Judge. Uh, he completed the eleventh grade at school, um, he
23 got into a little bitta trouble and after that his school
24 wouldn't let him return so that's why he didn't complete that
25 that last year.

1 Judge, um, he's single, he's had a, um, stable girlfriend
2 for the past eighteen months and has a 1-month old child. Um,
3 he has a good work history in Asheville, um, he did
4 janitorial, uh, through a temp agency and they would sent him
5 out to all these other companies and before that he worked at
6 O'Charleys as a dishwasher for seven months so he certainly,
7 um, is no stranger to work and and can certainly contribute
8 and and make a, make a decent wage, Judge. He's been in the
9 Law Enforcement Center since April the 30th and I believe
10 under the Omnibus Crime Con -- Control Act that these charges
11 are suspendible. He would ask Your Honor to consider a
12 suspended sentence rather than the mandatory minimum of 5,
13 Judge. In the alternative he just asks for for as much
14 leniency as as the Court can give him. Uh, he would -- he --
15 his dream is really to attend the Turning Point and or or stay
16 at some sort of in-patient drug treatment, um, he would ask
17 the Court consider that as part of a probationary sentence.

18 THE COURT: Sentence of the Court on each is 12 years,
19 I'm gonna run 'em concurrent, he'll receive credit from April
20 30th 2012.

21
22
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on August 11, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 7, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

August 11, 2013



Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Greenville)
)
Trevin M Brown #353358)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2013-CP-23- 08438

v.)

APPLICATION FOR

State of South Carolina)
)
)
)
)
)

POST-CONVICTION RELIEF

FILED
2013 NOV 16 AM 9:00
CLERK OF COURT

INSTRUCTIONS - 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 Turbeville Correctional Institution
PO Box 252 Room 156 SB Turbeville, SC 29162-0252
2. Name and location of Court which imposed sentence Greenville, South
Carolina
3. Name(s) of co-defendant(s) (if any) Christopher Charles Tadd
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) # 2011GS2304777
 - (b) # 2011GS2304776

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence: 4/28/2011
 - (a) 12/3/12
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty 12-year's non-violent
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) My attorney fail to file an appeal, in my case
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Counsel
- (b) Due Process
- (c) Illegal Search / Indictment Information
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) 6th amendment
- (b) 14th amendment
- (c) 4th amendment, 5th amendment
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

- (a) Ineffective Counsel, who fail to file a appeal
 (b) _____
 (c) _____

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

- (a) your arraignment and plea? YES
 (b) your trial, if any? NO
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

- (a) the name and address of each attorney who represented you:
- i. Caroline Horlbeck
13th Judicial Circuit, Greenville County Courthouse 305 East
 - ii. North street (Rm 123) Greenville South Carolina 29601
N/A
 - iii. N/A
N/A
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment and plea
Sentencing
 - ii. Applications with respect to this conviction,

 - iii. _____

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

I am seeking relief base upon the illegal, and conviction
of my case

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

No

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Travis Montgomery Brown Jr, 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.

Travis M. Brown

SWORN to and subscribed before me this 5th
day of June, 2013.

Ernie Hodge (L.S.)
Notary Public

My Commission Expires: 4-27-2016

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

I, Travis Montgomery Brown Jr., 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.

Travis M. Brown
Applicant

SWORN or affirmed to and subscribed before me this
5th day of June, 2013.

Emily Horby
Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2013-CP-23-3438
COUNTY OF GREENVILLE)	
)	
Travis Montgomery Brown, Jr.,)	
S.C.D.C. No. 353358,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed June 21, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2012 term of the Greenville County Grand Jury for possession with intent to distribute (PWID) cocaine base (2011-GS-23-4776), and manufacturing cocaine base (crack cocaine) (2011-GS-23-4777). Caroline Horlbeck, Esquire represented the Applicant.

On December 3, 2012, the Applicant pled guilty. The Honorable William H. Seals, Jr. sentenced the Applicant to concurrent terms of twelve years for PWID cocaine base, second offense and twelve years for manufacturing cocaine base, second offense. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:¹

1. Ineffective assistance of counsel.
2. Due process.
3. Illegal search/indictment information.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

¹ The Applicant also filed an "Amendment Application for P.C.R. Hearing" on September 5, 2013 in which he expands upon these issues.

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

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


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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

By: 
Attorneys for Respondent

Oct. 18, 2013

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) 2013-CP-23-3438
)
)
)
 TRAVIS M. BROWN)
) APPLICANT)
) TRANSCRIPT OF RECORD
))
 STATE OF SOUTH CAROLINA)
) RESPONDENT)

June 19, 2014
 Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

ROBERT M. ARIAIL, ESQ.
 Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
 Attorney for the Respondent

APRIL HERRON
 Official Court Reporter

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CAROLINE HORLBECK

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Cross By Ms. Ratigan 19

» > ○ < «

There were no exhibits.

Certificate of Reporter 24

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 MS. RATIGAN: Thank you, Your Honor, may it
2 please the Court. This is the case of Travis Brown
3 vs. The State of South Carolina. Docket is number
4 2013-CP-23-3438. Mr. Brown was indicted for
5 possession with intent to distribute cocaine base and
6 manufacturing cocaine base. He was represented on
7 these charges by Ms. Horlbeck. On December 3rd of
8 2012 he pled guilty before Judge Seals. He received
9 concurrent sentences of 12 years for PWID cocaine
10 base, second offense, 12 years on manufacturing
11 cocaine base, second offense. He did not file an
12 appeal and The State is ready to proceed.

13 THE COURT: Okay, Mr. Ariail.

14 MR. ARIAIL: Yes, Your Honor, we're ready to
15 proceed. We'd call Mr. Brown to the stand.

16 THE COURT: All right. Just for y'all's
17 information, I stand up then I'm not trying to rush
18 you. My knees are killing me and it feels better to
19 stand up. Middle age is visiting upon me heavily I'm
20 afraid.

21 THE CLERK: Mr. Brown, please place your left
22 hand on the Bible, raise your right hand.

23 TRAVIS BROWN, after being duly sworn,
24 testified as follows:

25 THE CLERK: Please state your name for the

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 record.

2 THE WITNESS: Travis Montgomery Brown, Jr.

3 THE COURT: Thank you, you may be seated.

4 DIRECT EXAMINATION

5 BY MR. ARIAIL:

6 Q All right, Mr. Brown, we're here on PCR today.
7 And we've discussed and gone over this and I want to get
8 you to testify as to what the issues are. First and
9 foremost, you were appointed Ms. Horlbeck to represent
10 you, is that correct?

11 A Yes.

12 Q Okay. When was the first time, I guess, you
13 were arrested -- when was the first time after you were
14 arrested that you met with her? How long after?

15 A It wasn't until after I was told that I had a
16 court date on the 8th of March.

17 Q March, okay.

18 A I missed the date due -- because I did not have
19 a residence here in South Carolina. And I had to go back
20 to North Carolina. But when I was told that I missed the
21 court date, I had to turn myself in.

22 Q And when you say March--

23 A That I didn't--

24 Q -- that was March 2011?

25 A Eleven.

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 Q Now, you missed the court date, is that correct?

2 A Yes.

3 Q That was the first court date?

4 A Yes. That was the first, I guess, I'm not sure.

5 Q Bond card?

6 A I guess, scheduled court.

7 Q Okay. When was the first time you talked with
8 her after that?

9 A It wasn't out until I got in South Carolina
10 custody.

11 Q Okay. So, when you got into custody, were you
12 here at the Greenville Law Enforcement Center?

13 A Yes.

14 Q Did you talk with her there?

15 A Yes.

16 Q Okay. Did you have a preliminary hearing or any
17 of that?

18 A No.

19 Q Okay. Did you discuss with her at that time,
20 your first meeting, what your charges were?

21 A Yes.

22 Q What did she explain to you you were charged
23 with?

24 A Well, she -- I was told that being that I was in
25 the residence they could charge me with possession, which

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 is what Christopher Charles Todd was charged with. And
2 those -- somehow by me being there, which is my sister's
3 place of residence, so it was kind of hard for me to
4 believe in that. But being that I'm not from here, I
5 don't know South Carolina's law. But I do understand the
6 attachment of each state's law under the residential
7 amendments that the State can amend their own laws. But
8 by me saying that I can be charged with this, it was kind
9 of -- I didn't know anything. I had no choice but to
10 plead and go for what she said because she's--

11 Q That's what I'm trying to figure out. I
12 understand all that. I'm trying to find out when you had
13 your first discussion with her, what did she tell you
14 about the charges? What facts, what information?

15 A Well, she really didn't point out no facts other
16 than I can be charged with what was found on Christopher
17 Charles Todd.

18 Q Okay. Let's go back through the facts just a
19 little bit to help Judge Stilwell out. You were charged
20 with manufacturing?

21 A And possession.

22 Q And possession.

23 A Possession with intent to distribute.

24 Q Possession with intent to distribute. And that
25 was basically it. It was a search warrant that was issued

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 on a residence of your sister, correct?

2 A Yes.

3 Q Okay --

4 A And Christopher Charles Todd--

5 Q -- and --

6 A -- the residence, yes.

7 Q So, they came in and found, I think, it was
8 paraphernalia too, correct?

9 A Paraphernalia, yes.

10 Q So, there was some cookware, other things found
11 and you were charged with that along with some other drugs
12 that were found in the residence, correct?

13 A Yes.

14 Q Okay. Did you discuss with her the elements of
15 what they had to prove to get possession with intent to
16 distribute?

17 A Well, I let it be known that I never -- I been
18 in the situation but I never been in the situation that I
19 have to pay for somebody else's charge. But I let her
20 know that I didn't think that was constitutional that I
21 was pleading to somebody else's charge. Being that the
22 officer did -- who encountered me, stated in his
23 statement, supplemental report, that I was negative for
24 anything.

25 Q Okay. Let me try to summarize this because

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 we've discussed it in-depth. You're saying that drugs
2 were not found on your possession, correct?

3 A No.

4 Q They were found in the residence, correct?

5 A Yes.

6 Q Okay. Did you discuss with Ms. Horlbeck
7 constructive possession, actual possession, any of those
8 type of issues?

9 A No, not really. I mean, she said something
10 about constructive but I wasn't sure.

11 Q She mentioned something about constructive?

12 A Constructive being they can charge me off of
13 something. I think constructive is the hands of one is
14 the hands of all.

15 Q Okay. So, it was some type of discussion about
16 that?

17 A Yes.

18 Q Okay. Now, I think the other issue we've
19 discussed as part of this is Christopher Todd, who was
20 involved, who lived in the residence, correct?

21 A Yes, my understanding he had just moved in with
22 my sister. And he, I guess, was on a monitor, parole
23 monitor device.

24 Q Okay.

25 A When the warrant came about. And when they, I

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 guess, executed the warrant.

2 Q Okay.

3 A All the things was found in the far right hand
4 of the room -- of the house.

5 Q All right. Now, Mr. Todd, from what you've told
6 me, acknowledged that all the drugs were his?

7 A Yes.

8 Q Okay. Did you have a discussion with
9 Ms. Horlbeck about how that would help you at trial or how
10 it would help you with those charges?

11 A Well, I didn't receive all the paper -- well not
12 everything and I never went over it with her. But when --
13 the things that I did see -- I mean, really didn't have
14 too much of that type of discussion. It was more like her
15 telling me I can be charged with everything that was found
16 in the house.

17 Q Okay. But that's a pretty big point if somebody
18 acknowledges that the drugs are his, not yours. Do you
19 remember having a discussion with her about that?

20 A No.

21 Q Okay. Now, the search warrant -- and did you
22 have a discussion with her about a motion to suppress or
23 any issues with the warrant as to how they got in the
24 residence?

25 A Not exactly. Like I say, I was kind of

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 blindfolded due to the facts of law. I mean, I really
2 didn't know too much about the Fourth Amendment, Sixth
3 Amendment, all these things. But after being able to go
4 over it on my own research, yes, I mean, I never had
5 discussion with her about it but.

6 Q My, I guess, the big question is if you didn't
7 know any of this stuff and don't feel comfortable with all
8 this, why did you go ahead and plead guilty?

9 A I mean, in periculuous, not from the State, I
10 mean, I was in no position to go to no trial. I mean, not
11 saying that I was guilty but it's just when you're put in
12 a situation -- see, I never pled to a crime that I wasn't
13 guilty of. But to this point I just felt like -- I
14 just -- I just wasn't feeling that I should put myself in
15 a serious situation and be forced into guilty or just
16 plead to guilty. I mean, after what I was told. I mean,
17 I really -- it was a hard place. Between a rock and hard
18 place to be put in.

19 Q Okay. So, I'm trying to understand that. So,
20 you went forward because you felt like you were in a
21 difficult situation or I'm trying to. . .

22 A Yeah, I was in a difficult situation.

23 Q All right.

24 A I mean, when you constantly being told this can
25 happen, I mean, somewhere down the line you're going to go

TRAVIS BROWN-DIRECT BY MR. ARIAIL

1 with it, I mean.

2 Q I guess what -- and I know they're probable
3 going to ask you this question too, but the question is
4 why would you have pled guilty if you didn't feel like you
5 totally understood what was going on, knew the elements of
6 the facts about the case, or it had question -- I mean,
7 still had questions in your mind?

8 A I had doubt but at the same time she's -- she
9 serve the purpose of six years and being a counselor
10 [verbatim]. I mean, she's a counselor. I mean.

11 Q Okay. So you relied -- what you're saying is
12 you relied on her and felt that--

13 A Basically.

14 Q -- information you got, you relied on that to go
15 forward with this plea?

16 A Basically.

17 Q What you've seen now, if you had that
18 information you wouldn't have pled guilty?

19 A Yes, sir.

20 MR. ARIAIL: Your Honor, I have no further
21 questions.

22 CROSS-EXAMINATION

23 BY MS. RATIGAN:

24 Q So, were you staying at your sister's house?

25 A I had moved out for a couple of days.

TRAVIS BROWN-CROSS BY MS. RATIGAN

1 Q So, you had been staying there, you moved out
2 for a couple of days and that's when the officers came?

3 A Well, when I first got there it was like two
4 days I'd been there, then they came. I was headed back
5 out.

6 Q So, you were back in the residence when they
7 came and searched?

8 A Yes. Yes.

9 Q And weren't your fingerprints found on some of
10 the glassware used to manufacture the crack cocaine?

11 A That's what they said.

12 Q That's what the State alleged?

13 A Yes.

14 Q Okay. And did Ms. Horlbeck tell you that this
15 was going to be damaging to your case, these fingerprints?

16 A No.

17 Q Okay. So, explain to me what it is that you
18 wanted Ms. Horlbeck to do for you that she did not do?

19 A I mean, as far as possession.

20 Q Just in general, in her representation of you,
21 why are you unhappy with her today?

22 A Well, first and foremost, I mean, Mark Clifford,
23 who was one of the investigator officers statement, he
24 stated that during the encounter, encounter, when they
25 encountered me, that he found -- I was negative of

TRAVIS BROWN-CROSS BY MS. RATIGAN

1 possession of anything. Of any of the things that was
2 found in this house. And under the Fourth Amendment, if
3 my name wasn't on the scope of that warrant, then that
4 makes me. . .

5 Q So, you wanted her to look into the warrant?

6 A I mean, the situation totally. I mean,
7 everything.

8 Q So, you wanted her to look into how the search
9 was done, the warrant, all of that?

10 A Yes.

11 Q Okay. And you wanted her to argue that since it
12 wasn't your residence you couldn't be charged with these
13 crimes?

14 A Yes.

15 Q Okay. And you testified and pled guilty because
16 you felt you had no choice, is that basically correct?

17 A Yes.

18 Q Okay. Were you unhappy at that point with the
19 way that Ms. Horlbeck represented you or is this something
20 you just have come to find out later on?

21 A I was still unhappy. I mean, I had -- like I
22 said I had my doubts.

23 Q Okay. Well, why didn't you tell the Judge that
24 you were unsatisfied with how she was representing you?

25 A Well, basically I was thinking about home. I

TRAVIS BROWN-CROSS BY MS. RATIGAN

1 was -- I was father -- I had told my kids -- basically, my
2 mind was more set on getting back home to them.

3 Q So, you just wanted to get the plea over with?

4 A Yeah, get this behind me, yes.

5 Q And you admit that you told Judge Seals that you
6 were guilty?

7 A Yes.

8 Q And you're saying today that that was untrue,
9 you just felt you had no choice but to plead?

10 A Yes.

11 Q Okay.

12 MS. RATIGAN: That's all I have, Your Honor.

13 THE COURT: Any redirect, sir?

14 MR. ARIAIL: No, Your Honor.

15 THE COURT: All right, thank you, I appreciate
16 it, appreciate your being here. You can step down.

17 Anything further from the Applicant?

18 MR. ARIAIL: Yes, Your Honor. We call

19 Ms. Horlbeck to the stand.

20 THE CLERK: Ms. Horlbeck, please place your left
21 hand on the Bible, raise your right hand.

22 CAROLINE HORLBECK, after being duly
23 sworn, testified as follows:

24 THE CLERK: Thank you, please be seated. State
25 your name for the record.

TRAVIS BROWN-CROSS BY MS. RATIGAN

1 THE WITNESS: Caroline Horlbeck.

2 DIRECT EXAMINATION

3 BY MR. ARIAIL:

4 Q Ms. Horlbeck, just a few questions in regards to
5 this. I think there's really only about three issues.
6 First and foremost, the search warrant, did you ever have
7 a discussion with Mr. Brown in regards to the search
8 warrant?

9 A I did. I believe I did. I don't think I have
10 any independent notes about it. But it's part of
11 discovery and I handed him a copy of discovery. Let's
12 see, we reviewed it on August the 29th of 2012. A copy of
13 discovery was sent to him at the law enforcement center on
14 September the 6th, 2012.

15 Q Okay. And I know you've done this long enough,
16 what was your view on a motion to suppress in regards to
17 that search warrant?

18 A I think it would have been difficult to win
19 that. But certainly, I would have told Mr. Brown that if
20 he wanted to go to trial I would certainly have made a
21 motion to try to suppress that.

22 Q Okay. And as part of discovery you get the
23 packet and you're saying you discussed it with him?

24 A I did.

25 Q And went over the elements of the crime?

CAROLINE HORLBECK-DIRECT BY MR. ARIAIL

1 A I did, yes.

2 Q Do you think he understood that and knew what he
3 was being charged with?

4 A He understood that and knew what he was being
5 charged with, yes.

6 Q Okay. Now, he's charged with, and it appears to
7 be drugs that are in a residence, not on his possession.
8 Did you go through with him about what they had to prove
9 to be able to say they were his drugs?

10 A I did, yes. I went over that again -- my notes
11 show that I went over that again with him on the day that
12 he pled.

13 Q Okay. Now, there was an issue, and let me see
14 if you recall this, about a Mr. Christopher Todd
15 acknowledging or saying that the drugs were his. Do you
16 remember that?

17 A I don't but if that's the case I don't dispute
18 it.

19 Q Okay. How would that have effected your view of
20 going forward at trial?

21 A Well, you're saying -- I don't know what point
22 Mr. Todd said they were his. I just don't recall if he
23 told police that or if he pled to it and at what point he
24 pled to it and acknowledged ownership.

25 Q All right.

CAROLINE HORLBECK-DIRECT BY MR. ARIAIL

1 A I would have explained to Mr. Brown that that's
2 certainly something that we would have presented at trial.
3 And certainly of the two charges that would have been the
4 weaker of the two. And I would have discussed with
5 Ms. Monts trying to dismiss that charge. But with
6 Ms. Monts, she -- just never saw a charge that she didn't
7 want to prosecute. So, you know, just trying to get her
8 to dismiss it, she just wouldn't do it.

9 Q Okay.

10 A So, at that point we were left with me
11 explaining to Mr. Brown his options. And I certainly
12 would have presented everything I could if he'd gone to
13 trial.

14 Q Okay.

15 A I just don't think he wanted to go to trial.

16 Q And based on your recollection, do you think he
17 fully understood what was going on, the elements, the
18 defenses you had, all those type items?

19 A He did, yes. In my opinion.

20 Q And you think he pled freely and voluntarily in
21 regards to this?

22 A Yes, he did.

23 Q Okay.

24 MR. ARIAIL: Your Honor, I have no further
25 questions.

CAROLINE HORLBECK-DIRECT BY MR. ARIAIL

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MS. RATIGAN:

4 Q Were you appointed to represent Mr. Brown?

5 A I was. He was arrested, I believe, the
6 incident happened sometime in April 2011. I was not
7 appointed at that time. What Mr. Brown -- my
8 understanding is that Mr. Brown did not appear for court.
9 He was charged with three counts of failure to appear.
10 And at that point, after his arrest on April the 30th,
11 2012 for the failure to appear warrant, then I was
12 appointed on May the 1st, 2012.

13 Q And at that point did you file the usual
14 discovery motions?

15 A Yes, I did.

16 Q And you received that from the State?

17 A I did, yes.

18 Q And I believe you testified you reviewed them
19 with Mr. Brown, also gave him a copy?

20 A Yes, I reviewed the discovery with Mr. Brown --
21 the State's response to my discovery request with
22 Mr. Brown on August 29th, 2012. And my -- looks like
23 my -- my secretary would have sent him a copy. Got a note
24 in her from her saying that a copy was sent to him on
25 September the 6th of 2012.

CAROLINE HORLBECK-CROSS BY MS. RATIGAN

1 Q Did Mr. Brown tell you during these discussions,
2 that he did not live at his sister's house?

3 A I think he was staying at the house, I don't
4 recall exactly whether it was his bona fide residence or
5 not but he was staying there. I believe that the --
6 unfortunately, the room where his bag containing what the
7 police believed were items used to manufacture drugs,
8 those -- that bag full to those items were in the room
9 that he was staying in. So, I would say that this was a
10 residence where he was staying.

11 Q Did you ever try to contact his sister and try
12 to get some of the facts flushed out?

13 A I did. My notes show that Mr. Brown
14 requested -- I went to see Mr. Brown on September 18th,
15 2012. This would have been, at least, my third jail visit
16 to see him. And we would have discussed the case some
17 more. At that point he had asked us to contact his
18 sister, Lendy. And I believe she was also the
19 co-defendant. And his nephew, Darius Brown. So, I had my
20 investigator, Tracy, contact Lendy. I've got Tracy's
21 notes in here, they're dated September 27th, 2012. And
22 Lendy said that she didn't know anything about what
23 happened. She didn't want to know what they were doing.
24 But she did know her brother, meaning Travis, hung around
25 Chris Todd. And her opinion -- or her feeling was that

CAROLINE HORLBECK-CROSS BY MS. RATIGAN

1 her brother had to know what Chris Todd was doing, was
2 involved with it. She was angry with her brother for --
3 she believed that her brother, Travis, was trying to get
4 her involved and her son involved in it. And she was
5 angry about that. She was not what I would consider a
6 helpful witness. She would not give us the contact
7 information for her son. Her son was Darius. Darius is
8 Travis' nephew. And we were not able to find and contact
9 the nephew, Darius.

10 Q And did you explain to Mr. Brown the results of
11 your investigator's discussion with his sister?

12 A I did. Yes.

13 Q Okay. And backing up a little bit, did you
14 review with him the elements of these charges and the
15 sentencing ranges?

16 A I did, yes.

17 Q And did you review with him the ideas of actual
18 versus constructive possession?

19 A What I have -- it seems like something I would
20 have gone over with him. I know that he had -- I know
21 Mr. Brown had a -- that was -- I understand what he is
22 saying about that possession charge. I certainly
23 understood that argument. And I agree with that. I
24 certainly -- I hated that charge for him. So -- and I
25 know he had a hard time -- he struggled with that charge.

CAROLINE HORLBECK-CROSS BY MS. RATIGAN

1 Probable more so than the manufacturing charge. And I
2 understand that. And we did have discussions. He and I
3 did have discussions about the pros and cons and what I
4 thought could happen. But I certainly told him at every
5 turn that I would do which ever he wanted. Which was, if
6 he wanted to plead, I'd be happy to represent him there.
7 And certainly if he wanted a trial, I would do everything
8 I could to win at trial. I just could not get that charge
9 dismissed for him.

10 Q And he pled on December 3rd of 2012. When do
11 you recall he -- did he tell you he wanted to plead
12 guilty? Was it a the morning of type of thing or in
13 advance of that?

14 A My notes show that I visited him at the jail
15 November 19th, 2012. And at that point he -- my notes
16 show he signed up to plead guilty to both charges. I
17 physically handed the sentencing sheets to Ms. Monts
18 paralegal. Put copies in the file. And at that point,
19 what I normally do when I get clients signed up is I go
20 through the entire plea with them. I will explain what
21 the Judge is going to ask. I will explain again what the
22 potential sentence is going to be. He -- my client and I
23 will sit down and go through what I'm going to say in
24 mitigation. I try to get that done before we get to the
25 courthouse because by the time they get to the courthouse

CAROLINE HORLBECK-CROSS BY MS. RATIGAN

1 everybody's so nervous that it's just horrible. So, if
2 you can do it beforehand, to me it's a lot smoother
3 process and everyone's prepared and mentally ready to go
4 forward on the day of the plea. So, and that's what we
5 did on the 19th, we got ready for the plea.

6 Q If at any point Mr. Brown had told you he didn't
7 want to plead, he wanted to go to trial, is that something
8 you would have done? Would you have taken the case to
9 trial?

10 A Oh, certainly. I can't force anybody to plead
11 and I don't force people to go to trial either. It's
12 just -- I point out what their potential defenses could
13 be. If they want advice on what I think would happen,
14 I'll give them that. Aside from how much time they'll
15 serve, I won't advise them on that because I don't know.
16 But they make the ultimate decision.

17 MS. RATIGAN: That's all I have, Your Honor.

18 THE COURT: Any redirect, sir?

19 MR. ARIAIL: None, Your Honor.

20 THE COURT: Thank you, Ms. Horlbeck, I
21 appreciate you being here.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: Yes, ma'am.

24 All right, anything further from the Applicant?

25 MR. ARIAIL: No, Your Honor, that's our case,

1 Your Honor.

2 THE COURT: Anything from the State?

3 MS. RATIGAN: We would rest on the record, Your
4 Honor.

5 THE COURT: Okay. Good enough. All right, I'll
6 take it under advisement. I'll read the transcript
7 of record and I'll enter a judgment in very short
8 order. Thank you, I appreciate it.

9 Good luck to you, Mr. Brown.

10 (WHEREUPON, the proceedings were concluded.)

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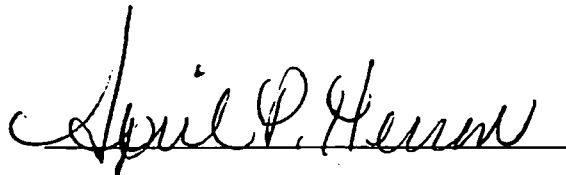
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 19th day of June, 2014.

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

December 8, 2014



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Travis Montgomery Brown, Jr.,)
 S.C.D.C. No. 353358,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-3438

ORDER OF DISMISSAL

2014 JUN 11 PM 4 21
 CLERK OF COURT
 GREENVILLE COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 21, 2013. The Respondent made its return on October 18, 2013. An evidentiary hearing into the matter was convened on June 19, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Caroline Horlbeck, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2012 term of the Greenville County Grand Jury for possession with intent to distribute (PWID) cocaine base (2011-GS-23-4776), and manufacturing cocaine base (crack

ASG

cocaine) (2011-GS-23-4777). He was represented by Caroline Horlbeck, Esquire.

On December 3, 2012, the Applicant pled guilty. The Honorable William H. Seals, Jr. sentenced the Applicant to concurrent terms of twelve years for PWID cocaine base, second offense and twelve years for manufacturing cocaine base, second offense. The Applicant did not appeal.

ALLEGATIONS

In his application and an "Amendment Application for P.C.R. Hearing" filed on September 5, 2013, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Due process.
3. Illegal search/indictment information.

At the PCR hearing, the Applicant proceeded upon allegations of ineffective assistance of plea counsel and involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he first met plea counsel in March 2011 and that they discussed his charges. The Applicant stated he had been staying at his sister’s residence (where the drugs were found after police were there to execute a warrant) but that he had moved. The Applicant stated he was charged with these offenses but that the focus of the warrant was his sister’s boyfriend (Christopher Todd), who said the drugs were his. The Applicant stated plea counsel mentioned

the idea of constructive possession, but he did not understand. The Applicant stated plea counsel did not investigate the search warrant and the search. The Applicant stated he was not in the position to go to trial, so he pled guilty even though he was innocent. The Applicant stated he lied when he told the plea judge he was guilty and that he was satisfied with counsel, but that he went forward to get the plea over with.

Plea counsel testified she was appointed on May 1, 2012 after a bench warrant was issued. Plea counsel testified she filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they also reviewed the charges, the elements of the charges, and the sentencing ranges. Plea counsel testified the Applicant had been staying with his sister and a bag of glassware (with his fingerprints) was found in his room. Plea counsel testified her investigator contacted the Applicant's sister, who denied any knowledge of the drugs and angry with the Applicant and unhelpful. Plea counsel testified they discussed the search warrant and that she stated a motion to suppress would be difficult. Plea counsel testified she did not recall Christopher Todd. Plea counsel testified she and the Applicant would have reviewed the concept of constructive possession and acknowledged the Applicant "struggled" with the PWID charge. Plea counsel testified the Applicant did not want to go to trial and decided to plead guilty on November 19, 2012.

This Court notes the Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.5). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.2-5). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407

(Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have challenged the search warrant and search in this case. Cocaine base was found at the residence and the Applicant's fingerprints were found on glassware that contained cocaine residue. (Plea transcript, p.5). Plea counsel testified that, while this was the Applicant's sister's residence, the glassware was located in the Applicant's room. Plea counsel testified it would have been difficult to prevail upon a suppression motion. This Court agrees and finds plea counsel was not deficient. The Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to

investigate his sister's boyfriend, Christopher Todd. Plea counsel testified she did not recall this name but that she sent her investigator to speak with the Applicant's sister. Plea counsel testified the sister was angry with the Applicant and not helpful. Regardless, as the Applicant failed to present testimony at the PCR hearing from either his sister or Todd, this Court cannot speculate as to whether these witnesses would have had an impact upon the defense case. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original); see also Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11 day of Aug, 2014.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Gville, South Carolina.

DOCKET NO. 2011-GS-23-
KHM 004776
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
February 2012
TERM 2011

WITNESSES

J. R. Parrish

Greenville County Sheriffs Office

4/28/2011

ARREST WARRANT NUMBER
1433118

ACTION OF GRAND JURY

TRUE BILL

Sonah P. Spear
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

3015
~~3014~~

POSSESSION OF COCAINE BASE WITH INTENT
TO DISTRIBUTE

VIOLATION § 44-53-0375

Foreperson of Petit Jury

Date:

RECEIVED

JUN 24 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF COCAINE BASE WITH INTENT TO
DISTRIBUTE

FEB 21 2012

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That TRAVIS MONTGOMERY BROWN, JR. did in Greenville County, on or about the 27th day of April 2011, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

DOCKET NO. 2011-GS-23-
KHM 004777
The State of South Carolina

April County of Greenville

COURT OF GENERAL SESSIONS
February TERM 2011

THE STATE

vs.

TRAVIS MONTGOMERY BROWN, JR.

9

Husted

Indictment for

6015
3014

MANUFACTURING COCAINE BASE
(CRACK COCAINE)

VIOLATION § 44-53-0375

RECEIVED

JUN 24 2011

Clerk of Court
Greenville County

WITNESSES

J. R. Parrish

Greenville County Sheriffs Office

4/28/2011

ARREST WARRANT NUMBER

1433121

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 MANUFACTURING COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on FEB 21 2012 the Grand Jurors of Greenville County present upon their oath:

That TRAVIS MONTGOMERY BROWN, JR. did in Greenville County, on or about the 27th day of April 2011, knowingly sell manufacture, deliver or bring into the State of Carolina, or did knowingly provide financial assistance or otherwise aid, abet or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of the common ingredients and supplies used in the manufacturing of Cocaine Base (Crack Cocaine). This is in violation of § 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR