

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
R. Knox McMahon, Circuit Court Judge

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S.C. Supreme Court

ANTHONY SAPP,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002298

APPENDIX

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Appellate Defender

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2012-GS-02-01078-01084

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 ANTHONY SALIK SAPP,
7 Defendant.

8
9 Heard on Tuesday, August 7, 2012

10 Aiken, South Carolina

11 BEFORE:

12 THE HONORABLE DOYET A. EARLY, III
13

14 APPEARANCES:

15 Counsel on Behalf of the State:
16 Elizabeth Burkhalter Young, Esq.

17 Counsel on Behalf of the Defendant:
18 H. Wayne Floyd, Esq.
19

20
21 Cheri L. Young, RPR
22 Circuit Court Reporter
23 P O Box 5232
24 Aiken, SC 29804-5232
25

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON TUESDAY, AUGUST 7, 2012 AT 10:36 A.M.:

2 (Defendant placed under oath.)

3 THE COURT: Mr. Floyd, you represent Anthony S. Sapp.
4 There are a number of indictments. 12-GS-02-1078, an
5 indictment for distribution of cocaine second offense. It
6 has been presented to the grand jury.

7 Indictment 1079, trafficking in crack cocaine second
8 offense.

9 Indictment 1080, trafficking in drugs.

10 1081, also trafficking in drugs.

11 1082, that's a distribution or PWID near a school.

12 Possession with intent to distribute near a school.

13 And 1084, another PWID.

14 And 1083, another possession with intent to distribute
15 near a school. You represent him on all those charges?

16 MR. FLOYD: Yes, I do, Your Honor.

17 THE COURT: As I understand, this case was set for
18 trial first thing this morning. And I've been informed by
19 the solicitor's office that a negotiation has been
20 completed by you and Ms. Beth Ann Young for a plea of
21 guilty; is that correct?

22 MR. FLOYD: That's correct, Your Honor.

23 THE COURT: And it's my understanding that the
24 negotiations are a 15-year sentence; is that correct?

25 MR. FLOYD: That's correct, Your Honor.

1 THE COURT: With all sentences being run concurrent.
2 Please turn phones off.

3 Is that correct?

4 MR. FLOYD: That's correct, Your Honor.

5 THE COURT: All right. And in that regards,
6 Mr. Floyd, have you explained to your client that all of
7 these offenses are classified as serious and the effect
8 that that has as far as enhancement in the future and the
9 possibility of life in prison without the possibility of
10 parole?

11 MR. FLOYD: Yes, sir. He understands that he cannot
12 get in any more trouble. That's correct.

13 THE COURT: Well, does he already have a strike?

14 MR. FLOYD: No, Your Honor.

15 MS. YOUNG: He doesn't.

16 THE COURT: This is his first strike?

17 MR. FLOYD: Yes, sir.

18 THE COURT: So you've explained to him the three-
19 strike law and the seriousness. Several of these
20 indictments are also classified as violent, the
21 trafficking.

22 And have you explained to him that that may have some
23 effect or probably will have some effect on how he's
24 housed and his classification while he's incarcerated in
25 the Department of Corrections?

1 MR. FLOYD: Yes, he understands that, Your Honor.

2 THE COURT: And have you further advised him that on
3 the -- let's see, on the distribution of cocaine base
4 second, that's a five to 30-year sentence potential;
5 likewise on the trafficking, five to 30; likewise on the
6 other trafficking the same, five to 30; likewise again on
7 the trafficking, five to 30; and on the distribution PWID,
8 those were up to 10 years, have you explained to him those
9 are the potential sentences in all the cases?

10 MR. FLOYD: Yes, he understands, Your Honor.

11 THE COURT: As far as the trafficking case, those that
12 are a minimum of five up to 30 years, have you explained
13 to him those are what we call no parole or 85 percent
14 sentences?

15 MR. FLOYD: Yes, Your Honor, he understands 85
16 percent.

17 THE COURT: Have you explained to him the negotiation,
18 that if I accept the plea that he will receive a 15-year
19 sentence and he'll have to do 85 percent of that, whatever
20 the math is, and that once he's released from
21 incarceration it will be to a community supervision
22 program?

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: Have you further advised him of his rights
25 to trial by jury?

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: And how does he indicate to you he wishes
3 to plead, guilty or not guilty?

4 MR. FLOYD: Guilty, Your Honor.

5 THE COURT: Mr. Floyd, being a seasoned lawyer, having
6 reviewed all the information given to you by the solicitor
7 under the rules and talking to your client and
8 investigating the case, are you in agreement with his
9 decision and think it's in his best interests?

10 MR. FLOYD: Yes, Your Honor.

11 THE COURT: Thank you.

12 Mr. Sapp, good morning. How are you?

13 THE DEFENDANT: Doing all right.

14 THE COURT: All right. You've heard me speaking with
15 your lawyer?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You stand before me on a number of
18 charges. Distribution of crack cocaine a second offense,
19 that carries a minimum of five up to 30 years and a fine
20 of up to 25,000.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Several trafficking in cocaine, crack
23 cocaine, second offenses. They all carry five to 30 with
24 a \$50,000 fine.

25 You also have what we call possession with intent to

1 distribute near a school. We have one, two --

2 MS. YOUNG: They're actually distributions, Your
3 Honor.

4 THE COURT: Ma'am?

5 MS. YOUNG: They're distributions.

6 THE COURT: Distributions?

7 MS. YOUNG: Yes, sir.

8 THE COURT: They all carry up to ten years.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You're fully aware of all the charges
11 you're facing?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you also aware that I've discussed
14 with your lawyer that several of these are classified as
15 violent and that they will have some effect on where and
16 how you're housed in the Department of Corrections?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: A lot of these are also classified as
19 serious, or perhaps all of them. That means you now have
20 one strike under our three-strike law which means once you
21 are released from incarceration if you become involved in
22 criminal activity of a like kind two more times, or
23 most-serious classified crimes you're subjecting yourself
24 to the possibility of life in prison without parole.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that a number of these
2 offenses are what we call no parole -- are you having
3 problems back there? Are we okay?

4 THE BAILIFF: Everything's all right.

5 THE COURT: No-parole sentences which means you'll do
6 85 percent of whatever sentence I give you, and once
7 released you'll be released into a community supervision
8 program.

9 Do you understand all of that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you further understand that through
12 your lawyer and the solicitor's office and the police
13 officers and everybody involved that they've negotiated a
14 15-year sentence, that if I accept it that's what you will
15 get?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you understand that you'll do 85, of
18 15, percent?

19 THE DEFENDANT: Yes, sir

20 THE COURT: Do you have any questions you want to ask
21 me?

22 THE DEFENDANT: No, sir.

23 THE COURT: Understanding all of what we've discussed,
24 how do you wish to plead to these charges; not guilty or
25 guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: When you enter a plea of guilty you will
3 give up your right to remain silent. You'll have to admit
4 to me your involvement in these; do you understand?

5 THE DEFENDANT: (Nods head.)

6 THE COURT: Please respond.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You will also give up your right to a jury
9 trial. The jury is here ready, willing and able to serve.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you want a jury trial, we will draw the
12 jury in just a few minutes at which time you would have
13 the right through Mr. Floyd to confront and cross-examine
14 everyone who testified against. You'd have the right to
15 present your own defense, your own case. You can call
16 witnesses, you could introduce relevant exhibits. You can
17 testify in your own defense.

18 On the other hand, if you exercised your
19 constitutional right to remain silent I will tell the jury
20 they could not hold the fact that you didn't testify
21 against you in any manner whatsoever. And I would
22 instruct them they couldn't even talk about or consider
23 the fact that you didn't testify when they deliberated
24 your guilt or innocence.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You would be presumed under the
2 constitution to be innocent until proven guilty by the
3 State of South Carolina. And in order for that jury to
4 convict you, all 12 jurors would have to unanimously agree
5 that you were in fact guilty. And even if convicted you
6 would still have the right to an appeal.

7 Now, do you understand your rights to trial by jury?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Understanding your rights, do you still
10 wish to plead guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anybody promised you anything, held
13 out any hope of reward or threatened you, other than the
14 negotiations, in order to make you plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: You've been represented by Mr. Wayne
17 Floyd?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you satisfied with his legal
20 representation?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In your opinion, has he had enough time to
23 spend with you, enough time to research the law and
24 investigate the facts so that he can properly defend you
25 here this morning?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is there anything else you want him to do
3 for you today before we move forward other than speak up
4 on your behalf?

5 THE DEFENDANT: Request to see my mother and my
6 girlfriend before I leave.

7 THE COURT: See your mom and your girlfriend before
8 you leave?

9 THE DEFENDANT: Yeah.

10 THE COURT: Okay. That's not an unreasonable
11 request.

12 Are you today under the influence of alcohol, drugs or
13 prescription medication?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you today aware of anything, mental,
16 nervous or emotional conditions, which precludes you from
17 -- send him out of the courtroom, please.

18 Mr. Bailiff. They can't hear anything.

19 THE BAILIFF: Yes, sir.

20 THE COURT: Get him out.

21 THE BAILIFF: All right.

22 THE COURT: Anything that precludes you from not
23 understanding these proceedings?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you pleading guilty of your own free

1 will?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: As to Indictment 1078, did you in Aiken
4 County on August 17th, 2011, sell to an undercover
5 operative a quantity of crack cocaine?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: As to Indictment 1079, did you on August
8 11, 2011, have in your possession a quantity of crack
9 cocaine between ten and 28 grams constituting
10 trafficking?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: As to Indictment 1080, did you, sir, on
13 September 15, 2011, have in your possession between ten
14 and 28 grams of crack cocaine constituting trafficking?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: As to Indictment 1081, did you, sir, here
17 in Aiken County on or about September 23 have in your
18 possession between ten and 28 grams of crack cocaine
19 constituting trafficking?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: As to Indictment 1082, did you, sir, here
22 in August 11, 2011, sell a quantity of crack cocaine while
23 within a one-half mile radius of Ridge Spring-Monetta High
24 School?

25 THE DEFENDANT: Yes, sir

1 THE COURT: As to Indictment 1084, did you, sir, here
2 in Aiken County on September 15, 2011, sell a quantity of
3 crack cocaine while within one half-mile radius of Ridge
4 Spring-Monetta High School?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And lastly, on Indictment 1083, did you,
7 sir, on August 17, 2011, sell crack cocaine while within
8 one-half mile radius of Ridge Spring-Monetta High School?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Sapp, are you pleading guilty to each
11 of these indictments because you are in fact guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you pleading guilty to each of these
14 indictments because you did what is alleged in the
15 indictments and thereby violating the laws of the State of
16 South Carolina?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Mr. Sapp, I find your decision
19 to plead guilty to be freely and voluntarily and
20 intelligently made. You've had the representation of an
21 excellent lawyer, Mr. Wayne Floyd, who's of the Richland
22 and Lexington County Bars and you say you're satisfied
23 with him and I will accept your plea.

24 If you disagree with these proceedings or my sentence,
25 you have ten days from today's date to file a notice of

1 intent to appeal. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Mr. Sapp, what we're going to
4 do in order to be efficient with our time, I'm going to
5 let you step back there with the officers. We're not
6 through. We'll come back out and I'll listen to the
7 solicitor, I'll listen to your lawyer, and you want to
8 have a hug from your mama.

9 THE DEFENDANT: Yeah, and my girlfriend.

10 THE COURT: We'll arrange that. Just go back over
11 there.

12 Wayne, stick with me a minute. Let me get the jurors
13 drawn and we'll get right back to you.

14 All right. Anything else before we bring the jury in?
15 Where is Ms. Alves?

16 (Thereafter, other matters were heard by the Court
17 commencing at 10:50 a.m., and lasting until the hearing of
18 this cause resumed at 11:20 a.m.:)

19 THE COURT: We're going to continue on with the
20 Anthony Sapp plea.

21 Earlier this morning I accepted his plea. So I think
22 we're at a point -- Ms. Alves, before you make any
23 representation to him, let me look at his complete
24 record. Is it anywhere close to the max of this thing?

25 MS. ALVES: Yes, sir.

1 THE COURT: I just have to see his full record but
2 probably be close to what I said.

3 MS. ALVES: Judge, is he in custody or not?

4 THE COURT: Ma'am?

5 MS. ALVES: Is he in custody or not?

6 THE COURT: He's out on bond.

7 MS. ALVES: Yes, sir.

8 THE COURT: I haven't sworn the jury.

9 MS. ALVES: Is it okay if I take him outside?

10 THE COURT: Okay.

11 Ms. Beth Ann Young, I think it's appropriate now to
12 tell me the State's situation.

13 MS. YOUNG: Thank you, Your Honor.

14 This case was a joint collaboration between the Aiken
15 County Sheriff's Office Narcotics Unit as well as the
16 State Law Enforcement Division and the Edgefield County
17 Sheriff's Office. It originated with the Edgefield County
18 Sheriff's Office who developed a confidential informant
19 that felt that he could purchase narcotics from Mr. Sapp.

20 And so he came over to attempt to establish that
21 relationship and he in fact did establish that
22 relationship. It was the same confidential informant used
23 in every case. And we have audio and video from every
24 case that Mr. Floyd has had the opportunity to see.

25 Your Honor, I'll go through the facts. And I have

1 pulled some still photographs from the audio and video,
2 well, not from the audio, but from the video recordings of
3 the Defendant and I'd like to pass up at the appropriate
4 time.

5 THE COURT: Absolutely. Before you start with the
6 facts, ma'am, would you give me his record, if any?

7 MS. YOUNG: Yes, sir.

8 He has a conviction in 2002 for simple assault and
9 battery.

10 He has 2009, criminal domestic violence first offense
11 and unlawful use of the telephone.

12 Simple assault in 2010. A giving false information in
13 2010.

14 And on September 21st of last year, he pled guilty in
15 general sessions to possession of less than one gram of
16 meth or cocaine base first offense. And it appears that
17 it was plea down from PWID.

18 THE COURT: Is he on probation for that or what did he
19 get?

20 MS. YOUNG: He got 90 days or a fine, so he's not.

21 THE COURT: Okay. Thank you.

22 MS. YOUNG: Thank you, Your Honor.

23 This investigation against Mr. Sapp began on August
24 the 11th of 2011. At that point in time Aiken County
25 along with Edgefield County met with the CI for the

1 purpose of conducting this undercover narcotics
2 transaction. All of these took place in the Monetta Area.

3 THE COURT: You said August 11, '09?

4 MS. YOUNG: If I said '09, I meant to say August 11,
5 2011. I apologize, Your Honor.

6 THE COURT: No, I may have heard you wrong.

7 MS. YOUNG: They all got together and prepared the
8 confidential informant to do this undercover transaction.
9 The confidential informant was searched and wired with
10 recording devices.

11 And he had advised the officers at that point in time
12 that he could buy a half-ounce of crack cocaine from
13 Anthony Sapp. And he stated he usually charged \$550. So
14 that was the preparation for this particular deal that
15 that was going to be the attempt to purchase.

16 The confidential informant called Mr. Sapp. He did
17 not answer his phone but called him back about 15 minutes
18 later and told him to meet at Mr. Sapp's mother's home,
19 [REDACTED], and he could purchase the crack cocaine
20 at the agreed-upon price of \$550.

21 This was a recorded phone call. The confidential
22 informant proceeded to [REDACTED]. Both of these are in
23 Monetta. Mr. Sapp lives at [REDACTED]. His mother
24 lived at [REDACTED].

25 So he went to Old Lane because that's where he was

1 told to go. He went and asked for Mr. Sapp. Mr. Sapp was
2 not there. He waited on him to arrive. When Mr. Sapp got
3 there he asked the CI to take him to [REDACTED] [REDACTED].

4 He basically told him that he needed to go to a
5 location and have the crack prepared or, quote, whipped up
6 because it was not ready yet. They took him to -- they
7 drove on to 3581 Columbia Highway North which is also in
8 Monetta.

9 Mr. Sapp went inside the residence. About 15 minutes
10 later he came back outside and got into the CI vehicle.
11 They drove back to the original location of [REDACTED].

12 At the [REDACTED] location the CI was given the crack
13 cocaine by Mr. Sapp. And the CI weighed it and told him
14 that the weight was short. And so they agreed instead of
15 the charge of \$550 that he would pay him \$510.

16 The item was tested. It did come back positive for
17 cocaine base 11.22 grams.

18 And Old Lane is approximately .25 miles from Ridge
19 Spring-Monetta High School. You can actually see across
20 the field, Your Honor, between the high school and this
21 trailer park where these trailer homes are located.

22 So that would be the subject of the first trafficking
23 and proximity charge.

24 With regard to the case that we're prepared to try
25 here today, on August 17th, 2011, investigators with Aiken

1 County and Edgefield County met again with the same CI.
2 The same procedures were followed. The CI was issued \$550
3 in documented funds. The CI made a recorded phone call to
4 the Defendant and he agreed to meet him at a location in
5 Monetta off of Vanest Road and to sell him the crack
6 cocaine at that point time.

7 The CI drove down to pick the Defendant up and then
8 went back to Old Lane. They were inside the residence for
9 a period of time and exchanged a quantity of what appeared
10 to be crack cocaine.

11 And the Defendant told Mr.-- or the CI, rather, that
12 he could just pay him in the yard. So when they got to
13 the yard he gave him the money. He was not able to
14 provide him with \$550's worth that day so they agreed to
15 pay \$150 for the crack cocaine.

16 Mr. Sapp had kind of a calling card or something
17 special that he did to his cocaine; he colored it. On
18 this particular date it was colored blue and green and the
19 other times it was colored red. The only significance of
20 that is for some reason the red was considered to be
21 better, but that was kind of his calling card, Your Honor.

22 This is the same location that's within a half-mile or
23 within visual sight of Ridge Spring-Monetta High School.

24 The items did test positive for cocaine base 2.93
25 grams.

1 THE COURT: 2.93?

2 MS. YOUNG: Yes, sir.

3 And on the way back to dropping Mr. Sapp off at the
4 original location where he picked him up from, Your Honor,
5 Mr. Sapp had the CI stop on the side of the road so he
6 could sell powder cocaine to an unknown individual.

7 Obviously that wouldn't have come in at the trial but
8 it was recorded on an in-car video. It was very clear
9 what was going on. And that transaction did take place
10 during the course of the confidential purchase. It was
11 just an additional narcotics sale.

12 On September 15th, 2011, SLED came down assist in
13 working a case with the same CI. The potential purchase
14 that day was going to be for \$525's worth. And it was
15 supposed to take place at [REDACTED] which is in
16 Monetta.

17 The procedures were done with the CI in regards to
18 searching and issuing of the State documented funds. He
19 again made a recorded telephone call to Mr. Sapp. And
20 Mr. Sapp told him where to meet at about 5:15 p.m. at
21 about -- at or around this [REDACTED]

22 The CI drove to that location. Like I said, that he
23 was waiting for Mr. Sapp. When he got there he got a
24 phone call from Mr. Sapp and Mr. Sapp told him he could
25 only give him 12 grams or that the deal would be for 12

1 grams for \$525.

2 Mr. Sapp comes to the residence in another car, and he
3 walks up to the door of the vehicle where the CI was and
4 hands him a clear plastic bag containing a red-in-color
5 rock-like substance that appeared to be crack cocaine.

6 The CI said: Do you have a scale so I can weigh it
7 out. And he followed him into the residence which ended
8 up actually being [REDACTED] [REDACTED] -- Mr. Sapp always
9 had the habit of moving around -- because he told him he
10 wanted to weigh it because he didn't think it was the
11 correct weight.

12 So there's really a good video and Your Honor will get
13 to see the stills of both, Mr. Sapp walking up and handing
14 him this red cocaine, and also when he went into the house
15 to have him weigh it out for him.

16 The item was tested and it did come back positive for
17 cocaine base 10.6 grams.

18 THE COURT: 10.6?

19 MS. YOUNG: Yes, sir.

20 On September the 23rd, SLED again came down to do a
21 deal in this case using the same CI. They met and did the
22 same procedures, made another recorded phone call with
23 Mr. Sapp -- all these calls were made to the same
24 number -- and set up the deal.

25 They agreed to meet at [REDACTED] [REDACTED] in Monetta

1 which was Mr. Sapp's mom to do the location.

2 In this particular case -- Your Honor, all of these
3 took place during the daytime hours -- the CI pulls up in
4 the yard and in the video you can see Mr. Sapp walking
5 from the house with the crack cocaine in his hand and a
6 scale. And they do a transaction on the hood of the CI's
7 vehicle.

8 And it's very clear that it's a drug transaction, that
9 money is being exchanged and what's going on. The CI gave
10 him \$525 and he gave him, again, a red rock-like
11 substance.

12 It was tested. It did come back positive 12.6 grams.

13 Your Honor, I'm going to pass up these pictures I've
14 pulled from the video stills. They're stapled together.
15 Each one has the date. And you can see Mr. Sapp clearly
16 in all of them except for the August 11th, his face was
17 not shown. But based on the content of the conversation,
18 his voice and other things, it was very clear that it was
19 Mr. Sapp.

20 For Aiken County, Your Honor, this is some -- a fairly
21 large weight. You know, we usually have \$20 rock sales
22 and that's distribution.

23 I wanted to commend law enforcement in this case. We
24 asked them to make us good cases and I would say this is
25 probably the best evidence I've ever seen in a drug case.

1 Agent Todd Strange from SLED is here as well as Lieutenant
2 Mike Powell from Aiken County Sheriff's Office and Sean
3 Zeigler from Aiken County Sheriff's Office. They worked
4 extremely hard and did an extremely thorough and well
5 documented investigation.

6 And it was for this reason that we negotiated a
7 15-year sentence. And I believe that they are satisfied
8 with that.

9 THE COURT: Mr. Floyd?

10 MR. FLOYD: Thank you, Your Honor.

11 Anthony's 36 years of age, Your Honor. He's a high
12 school graduate. And actually had a semester at Denmark
13 Tech where he got a barber's license. He takes care of
14 two children, ages seven and three.

15 THE COURT: Seven and three. Little boys? Little
16 girls? What?

17 THE DEFENDANT: Two boys.

18 THE COURT: Two boys.

19 MR. FLOYD: Your Honor, he got off into the wrong
20 situation there with the drugs.

21 Once he got arrested though, he got his life in
22 order. And he has, since he got out of jail in May he's
23 been working at Amick's Poultry on the night shift.

24 And he's back in church at the Jersalem Baptist
25 Church. His mother confirms to me he goes every Sunday.

1 We wish we could get into a situation where we did the
2 last time, but we understand this is what it is, and we
3 ask Your Honor to accept it.

4 THE COURT: Well, it's what it is because obviously --
5 Mr. Floyd, you and I have been doing this a long time and
6 if I could get rid of crack cocaine in the community we
7 wouldn't have near as much general sessions court.

8 MR. FLOYD: Yes, Your Honor.

9 THE COURT: Mr. Sapp, you know, you got two little
10 boys, seven and three. When do you want the drug dealers
11 to start selling to them?

12 THE DEFENDANT: (Shakes head.)

13 THE COURT: Sir?

14 THE DEFENDANT: I don't -- say it again, sir.

15 THE COURT: I said: When do you want the drug dealers
16 to start selling to your boys?

17 THE DEFENDANT: Never.

18 THE COURT: Well then, how am I going to make sure
19 your boys don't get an opportunity to buy? By putting
20 drug dealers in jail.

21 You know, I hate to send a 30-some-year-old man to
22 jail for a long time, but we live by the rule of law and
23 the law is that that stuff is dangerous, it causes crimes,
24 it ruins peoples' lives.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You've chosen to do it. I've seen bigger
2 dealers but pretty good size for Aiken County.

3 Anything you want to tell me?

4 THE DEFENDANT: I made a mistake. I wish I could
5 change, but ...

6 MR. FLOYD: It's a shame, Judge. He's intelligent,
7 he's personable. He's a good person.

8 THE COURT: Well, I'm not saying -- I'm certainly not
9 suggesting he's not a good person, but he has gotten into
10 a bad line of habits. It causes misery throughout the
11 community.

12 I want to commend the SLED agents and all of those who
13 were involved in the investigation and the type of
14 evidence that y'all presented to us. Thank you.

15 I'LL GO ALONG WITH THE NEGOTIATIONS.

16 AS TO INDICTMENT 12-GS-2-1078, THAT'S THE INDICTMENT
17 FOR COCAINE, THAT WOULD BE A 15-YEAR SENTENCE.

18 1079 IS A 15-YEAR SENTENCE.

19 1080 IS A 15-YEAR SENTENCE.

20 1081 IS LIKEWISE A 15-YEAR SENTENCE.

21 1082 IS A 10-YEAR SENTENCE.

22 1084, A 10-YEAR SENTENCES.

23 AND 1083 LIKEWISE A 10-YEAR SENTENCE, ALL RUNNING
24 CONCURRENT TO 1078. I'LL GIVE YOU CREDIT FOR YOUR TIME
25 SERVED.

1 Good luck to you.

2 MS. YOUNG: Thank you, Your Honor.

3 MR. FLOYD: Thank you, Your Honor. Can he still have
4 his brief moment with his kin?

5 THE COURT: Yes, he can. One at a time, right there
6 at the door.

7 END OF PROCEEDINGS: 11:44 A.M.

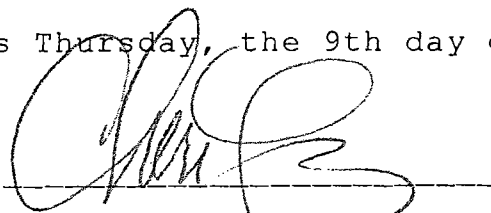
8 CERTIFICATE OF REPORTER

9 STATE OF SOUTH CAROLINA)

10 COUNTY OF AIKEN)

11 I, Cheri L. Young, Registered Professional Reporter
12 and Official Court Reporter for the State of South
13 Carolina, Second Circuit-At Large, do hereby certify that
14 the foregoing is a true, accurate and complete transcript
15 of record of the proceedings had and evidence introduced
16 in the hearing of the captioned case, relative to appeal,
17 in the Court of General Sessions for Aiken County, on the
18 7th day of August, 2012.

19 I do further certify that I am neither of kin,
20 counsel, nor interest to any party hereto. I have
21 hereunder set my hand this Thursday, the 9th day of May,
22 2013.

23 
24 Cheri L. Young, RPR
25 Official Court Reporter

M 030256, 030251, 030253,
030255, 030252, 030257, 030254

FORM 5

2013 CP-02 CD600
2012 CS-02 107 108 109 107A
108A, 1084, 1081
Filed 3/14/2013
C.C.C.P. & G.S. Aiken County
COMMUNAL PLEAS 8:30 am
Deputy Clerk
Trial Judge
Trial Atty. H. Wayne Hould
Court Reporter
Sec. PCR Petitioner
General Sessions Atty. Gen.
Appointed Atty.

27

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

Anthony Salik Sapp 351929

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

v.

State of South Carolina

IN THE COURT OF

APPLICATION FOR

POST-CONVICTION RELIEF

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 SDC Litch Correctional Institution Ridgville S.C 29472
2. Name and location of Court which imposed sentence Aiken County Court of General Session
3. Name(s) of co-defendant(s) (if any) 0
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012GS0201078, 2012GS0201083, 2012GS0201080
 - (b) 2012GS0201079, 2012GS0201082
 - (c) 2012GS0201084, 2012GS0201081
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 6, 7 of 2012 SENTENCE ON the 7th
 - (b) 15yrs 2nd offense Violent

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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 lawyer wouldn't do it for me
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) SEE additional PAGE Ineffective Assistance of Counsel
 (b) SEE additional page Double Jeopardy, Multiple counts, Pleaded under Duress
 (c) SEE additional PAGE Due-Process, Abuse of Discretion
Possesses and Understanding, Reasonable Probability
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE additional page
 (b) SEE additional page
 (c) SEE additional page
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:

(a) N/A

(b) N/A

(c) N/A

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? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. WAYNE FLOYD P.O. Box 3972 West Columbia S.C. 29171
 - ii. WAYNE FLOYD P.O. Box 3972 West Columbia S.C. 29171
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

SEE additional page

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, AS, 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.

Anthony Sepp

SWORN to and subscribed before me this 19th
day of February, 2013.

Lucheen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, AS, 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.

Antly Lpp
Applicant

SWORN or affirmed to and subscribed before me this
19th day of February, 2013.

Ludman Bryant
Notary Public

My Commission Expires: May 26, 2020

SAPP V. STATE
P C R
Post-Conviction Relief
Form Number(s) Five Application

In the court of
Common PLEAS

Questions and Answers from Application

(1.)

Question Number (10) TEN:

1 of 23

State Concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

ANSWERS NUMBER (10) TEN:

(A.)

"INEFFECTIVE ASSISTANCE OF COUNSEL:"

"PLEA COUNSEL'S ADVICE:"

"COUNSEL FAIL TO CHALLENGE AND INVESTIGATE:"

"COUNSEL FAILED TO DISCUSS:"

"COUNSEL FAILED TO PRESENT A DEFENSE:"

"PLEA COUNSEL UNPREPARED TO TRY MY CASE:"

(B.)

Double Jeopardy / Multiple counts:

PLEADED UNDER DURESS:

(C.)

"DUE-PROCESS:"

"POSSESSES AND UNDERSTANDING:"

"ABUSE OF DISCRETION:"

"REASONABLE PROBABILITY:"

"PAGE 1 OF 23"

Question Number (11)

(2)

State Concisely and in the same order 2 of 23
the facts which support each of the
grounds set out in (10)

ANSWERS Number (11)

(A.)

"Ineffective Assistance of Counsel"

- (1.) My Plea of guilty was in violation of the Constitution of the United States or of the Constitution of laws of the State of South Carolina insofar as my right to effective assistance of counsel, as protected by the 6 and 14 amendments to the United States Constitution and the South Carolina Const. Art. 1 § 14 was violated at my Plea hearing, and the resulting plea was involuntary and not knowingly and intelligently entered into.
- (2.) My Plea counsel entirely failed to subject the prosecution's case to any meaningful adversarial testing, when he failed to investigate my case. SEE → United States v. Cronin, 466 U.S. 648 (1984).

CONTINUE...

(3)

3 of 23

I suffered on 6th amend violation for which prejudice should be presumed. The so-called tape that the state/prosecution had was a critical element to my defense, my plea counsel should have EXERCISE REASONABLE professional judgment "466 US, at 690. MOREOVER presuming prejudice when my plea counsel has entirely failed to function as an adversary.

- (3.) The presiding plea Judge told me that I could appeal my plea. Plea counsel has an affirmative duty to determine if a client wishes to appeal, and to advise him or her of the method and MANNER of taking an appeal, see → White V. State, 263 S.C. 110 208 S.E. 2d 35 (1974); Cherry V. State 300 S.C. 386 S.E. 2d 624 (1989) matter of Anonymous member of the bar 303 S.C. 306 400 S.E. 2d 483 (1991) where counsel failed in this case to determine in a timely fashion if petitioner wished to appeal. In my case there were calls made to plea counsel in a timely manner..

"Plea Counsel's Advice"

(4)

(1.) Under my plea counsel's ERRONEOUS 4 of 23

errors and advice to plea guilty, for me not having the true facts before me, about me being eligible for parole a 3rd of my time. I would not have Plea guilty and would have insisted on going to trial. see → Strader v. Garrison 611 F.2d 61 (4th Cir 1979) and Hinso v. State 377 S.E 2d 338 (1989)..

We, me and my plea counsel did not have the time to go over the plea at all. My plea counsel told me that I had to plea today, and to say yes to what the judge will ask, and don't say no or he will take away the plea. I do know that Counsel can not anticipate potential changes in the law, plea counsel should know, the law, in which were in existence at the time of plea. There is a "reasonable probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding would have been different had counsel →

CONTINUE...

had the true facts before me about me being eligible for parole at the time of plea, I would not have pled guilty and would have insisted on going to trial. See → Hill v. Lockhart 474 U.S. 52 106 S.Ct. 366 881 Ed 2d 203 (1985) (5.) 5 of 23

- (2.) A plea of guilty is more than a mere confession," see → Reed v. Becka, 511 S.E. 2d 396 (S.C. App 1999). The waive of constitutional rights that occurs when a plea of guilty is entered is so great that it demands the upmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he or she has a full understanding of what the plea connotes and of its consequences. see → Bowers v. Moore, 266 GA 893 894 (L) 471 S.E. 2d 869 (1996) unquestionably, my plea counsel failed in his duty at my plea hearing.

- (3.) This gave the prosecutor a powerful rhetorical tool, A criminal defendant is entitled to plea or to be tried only on indicted offenses..

Material Variance

A defendant must be convicted if →

CONTINUE...

(6.)

6 of 23

convicted at all of the particular offense charged in the bill of the Indictment, see → State v. Jones, 536 S.E. 2d 396 (2000) not at any time did I waive presentment to the Grand Jury.

Without a proper Indictment the circuit court lacks Subject matter jurisdiction to enter a conviction or to impose a sentence for a crime S.C. code 17-19-10, Const. Art. I, § 11.

"Counsel fail to challenge and Investigate"

(1.) Plea counsel failure to challenge the indictments, I didn't see the indictments until after I was in S.C.D.C. when the clerk of court sent me a copy of the indictments. This also deprived me the applicant of my constitutional right to know the true nature of the charges against me and to be able to defend against such.

My plea counsel did not articulate any strategy for not challenging that I did not see or waiver any presentation

Continue...

(7.)

7 of 23

to the Grand Jury at anytime. Moreover, it appears that my plea counsel did not recognize a distinction between an indictment that was or was not before the Grand Jury. It is therefore questionable whether plea counsel transmitted the right information to me at my plea hearing. There is a "reasonable probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding would have been different had counsel challenge and investigated the case. I would not have pled guilty, but would have insisted upon a trial..

- (2.) The indictments failed to referred to the specific code section which charged the offense within the body of the indictment, "44-53-110" is just the general definitional portion of the statute and contains NO REFERENCE to the requirement that possession of the substance must be knowing or intentional. See → Tyrone Mason V. State (2002)...

Continue...

(8.)

(3.) My plea counsel entirely failed to challenge 8 of 23 and investigate the indictments, and the criminal procedure of the issuing of the arrest warrants. Clearly the penalty of such failure is to render the whole proceedings null and void. see Ketchum v. Landecker 32 S.C. 165, 10 S.E. 936. Rule (1) Sheriff to file affidavits on arrest, where the affidavits upon which a warrant of attachment is based are not filed in the clerk's office within 15 days after the warrant was issued as required by law and the rule of court, the defendant is entitled on motion to have the attachment vacated, Counsel also failed to check for defects in arrest warrants...

(4.) Also my plea counsel failing to challenge the plea of a second time offender. The court has previously recognized that South Carolina Code Ann. 17-25-50 is part of an overall legislative scheme for recidivist sentencing. At this time I would like to challenge that I was incorrectly

CONTINUE...

Sentenced as a second time offender... (9.) 9 of 23

"Counsel Fail to Discuss"

- (1.) In P.C.R the focus is usually upon alleged errors made by plea or trial counsel, see → Al-Shabazz v. State, 338 S.C. 354 363 527 S.E. 2d 742 747 (2000). Therefore, I'm asserting violation of my constitution rights, and other errors in my P.C.R proceeding must be frame, in the ineffective assistance of my plea counsel. I must say it's difficult to imagine why any competent lawyer would so readily abandon any effort to, Just look at my indictment for it's failure to specify the felony in which I intended to commit.
- (2.) Counsel failed to oppose the indictment or the prosecution case throughout the plea as a whole, and failed to do so at specific points in the whole plea.

CONTINUE...

(10)

10 of 23

(3.) My P.L.R. is based upon what I have learned of matters since the plea. GENUINE issue of facts, is whether I had an timely opportunity to read and understand, before signing the plea, and thus as to whether the plea agreement was legally binding or whether the courts and or my plea counsel satisfied the condition. That we could not possibly have had the opportunity to discuss and read and understand before signing or whether the courts or plea counsel, exercised "reasonable care" in accordance with the law or Due process, from failure to timely give me an opportunity to talk to my plea counsel at the time of signing. There is a "reasonable probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding ~~would~~ have been different had counsel gave me some further explanation of the law. I would not have plead guilty and insisted upon a trial...

"Counsel Failed to present a Defense"

(11)

11 of 23

- (1.) My indictment by the Aiken County Grand Jury was on August 6 2012, my plea hearing was on August 6 2012, the same day. This presented ~~an~~ significant obstacle in preparing an adequate defense, and receiving a fair plea, to show error and prejudice. It's apparent from the dates that my plea counsel and the state was clearly not taking me to trial at all. The state, and my plea counsel, cannot be allowed to take action depriving individuals of one of the most basic principles and essential rights or proceedings that's in our constitution, my plea counsel did not satisfactorily discharge his sixth amendment responsibilities. In all fairness it would be extremely difficult to be indicted one day and have a trial the same day. My plea counsel told me that we was going to trial for Distribution 2nd, I did not have an opportunity to present or rebuttal or properly prepare the case. →

Continue

(12.)

12 of 23

there is a reasonable probability, "which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding would have been different had counsel looked and examined the circumstances surrounding the dates on the indictments, I would not have plead guilty and insisted upon a trial...

"Plea counsel unprepared to try my case"

- (1.) Plea counsel did not afford me representation within the range of competence demanded of attorneys in criminal cases. On August 6, 2012 my plea counsel told me that he was not prepared to go to trial at that time. How am I expected to go to trial if he is unprepared? If plea counsel / defense counsel is unprepared to try a case, he or she is also inadequately prepared to advise me, his client about the case, or he or she cannot intelligently advise me to plead guilty and accept a plea bargain, calling for a substantial sentence. This is more of the prejudice that I suffered with my plea counsel's advice...

Continue...

(13)

13 of 23

(2.) It's difficult to imagine why any competent lawyer would be so readily to abandon any efforts to go trial and to keep emphasizing to persuade me to take a plea. I expressed my uncertainty to my lawyer at that time, but all he wanted was to take a plea. My plea counsel fail to challenge the state's case or articulate any strategy for challenging the state's case.

(3.) With my plea counsel being unprepared to try my case, he went to the judge to let them know on August 6, 2012, this behavior completely destroys and rescind the channels of open communication needed for the relationship to function as contemplated in the constitution. It's my right to expect that my "lawyer plea counsel" will use every skill expend every energy and tap every legitimate resource in the exercise of independent professional judgement on behalf of the client and in undertaking representation on the clients behalf." see →

Continued...

Thomas v. Municipal Court 878 F.2d 285 289 (9th Cir 1989). "Also there is a reasonable probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding would have been different had counsel been prepared to try my case. I would not have pled guilty, but would have insisted upon a trial.

(14.)

14 of 23

(B.)

"Double Jeopardy / Multiple counts"

- (1.) The "Double Jeopardy" clauses of both state and federal constitution protect the accused in criminal proceeding from multiple punishment for the same offense, SEE → Con. Amd number (5) five. I did not get to see my indictment until I got to the (S.C.D.C) South Carolina Department of corrections, when I requested a copy of my indictments from the clerk of court. This also deprived me of my 6th sixth amendment right to know the true nature of the charges against me and to be able to answer and defend →

CONTINUE...

(15.)

against such. Also violating my rights, 13 of 23
for the indictments are Flawed and
defective not legally.

(2.) In the indictments I have 7 seven, the
courts has previously recognized that
South Carolina code ann; 17-25-50
is part of an overall legislative
scheme for recidivist sentencing,
statute, directing trial courts to
treat as one offense any number
of offenses committed at times so
closely connected in point of time
that they may be considered as one
offense.

(3.) My case should have been remanded
for trial, and further proceeding to be
examined by an trial court judge, so
the state could not violate my rights.
For the above mentioned constitutional
Violations my plea and conviction
must be vacated and the indictments
must be dismissed with prejudice, for I
have a right to be free of multiple

CONTINUE...

(16.)

counts, for the same conduct it has been referred to as substantive bar against double jeopardy. Also there is a "reasonable probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding would have been different had counsel raise the issue of the multiple counts at the plea hearing, I would not have plead guilty and insisted upon a trial...

16 of 23

PLEADED UNDER DURESS

- (1.) The prejudiced that I suffered is apparent throughout the proceedings from the time I was indicted on August 6, 2012 to the next day, when I accepted my lawyer's / plea counsel's advice to plead guilty, I had insisted on going to trial, but with my lawyer telling me if I did not plea the judge would not take my plea, or I could get more time than the (15) years, if I did not plea right then. →

Continue...

(17.)

17 of 23

- (2.) (2-A) My plea counsel failed to adequately investigate my case.
- (2-B) My plea counsel failed to advise me that I could withdraw my plea prior to the court accepting the plea.
- (2-C) My plea counsel failed to discuss in good faith defenses available to me.
- (2-D) My plea counsel, coerced me into pleading guilty.
- (2-E) That my plea of guilty was not knowingly and intelligently entered, inasmuch.
- (2A-2E) ARE some of the valid reasons why I should be allowed to depart far from my plea.

With respect to my guilty plea, that there is an REASONABLE probability, that, but for counsel's alleged errors, I would have not pled guilty and would have insisted on going to trial. SEE → Hill v Lockhart 474, U.S. 52, 106 S.Ct. 366, 881 Ed.2d 203 (1985)...

Contract
 ("DURESS") USE OF FORCE: compulsion. (19.) 18 of 23
 The law does not require a person to
 fulfill a contract signed under duress.

(C.)
"DUE - PROCESS"

- (1.) Not only does a defendant have an constitutional right to know the true nature of the charges against him or her. A defendant also have an Constitutional right to demand that a grand Jury which is properly established and constituted under the law consider the criminal allegations against him or her. see → South Carolina Const. Art. I § 11 and art V. § 22. One who demands and is refused the right to be tried for a crime charged against him or her only upon an indictment presented by a legal Grand Jury, in instances where such indictment is required, may thereafter justly take the position that he has been deprived of life, Liberty or Property with due process of law "in violation of the state constitution →

CONTINUE

(19.)

SEE → EVANS V. State 363 S.C. 495, 611 19 of 23
S.E. 2d 510 ..

- (2.) The Audio and Video that the state had was not good at all, you could not tell who was talking at times or see transactions made and my lawyer only let me see just 2 dvd recordings on August 3, 2012. The state suppresses the Audio and Video until the week we was going to trial. In Brady Provides that a criminal defendant is denied due - process when the prosecution suppresses evidence that is favorable to him, see → Brady v. Maryland, 373, U.S. 83. 87. 83 S.Ct. 1194 101 Ed.2d 215 (1963) Failed to disclose constituted a denial of due - process, and the United States Supreme Court agreed. Also there is a "reasonable probability", which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceeding would have been different had counsel file for a →

CONTINUE...

(20.)

Motion of continuance to properly prepare the case, had he done so I would not have pled guilty, but would have insisted upon a trial... 20 of 23

"Possesses and Understanding"

(1.) I went to court on August 6, 2012 and August 7, 2012, at that time I did not understand what was going on. The 1st day we were going to trial, then the next thing I know we were coming back the next day. Overborne by the circumstances surrounding the (2) two days in court and not understanding what was going on; my plea was in itself coercion...

(2.) Unless the defendant possesses an understanding of the law in relation to the facts → see McCarthy v. United States 394 U.S. 459 466 (1969).

"Abuse of Discretion" (21)

- (1.) The plea Judge did error, and abuse 21 of 23
his discretion, by refusing to let my plea
counsel have more time to prepare for
trial. My lawyer told the judge that he
was not prepare for trial, but he made
us come back the next day, for a plea.
If my case was going to trial that day
of August 6, 2012, is the same day I
was indicted. If I was going to trial,
I know that the judge looked at the
indictments, my lawyer did not tell
me that I was indicted that day at
all. I was prejudiced when the judge
knew that my counsel was unprepared
to represent me effectively.

"Reasonable Probability"

- (1.) That the factual allegations set forth
in this (P.C.R) Post-conviction Relief
application is sufficient to raise a
right to relief, above the speculative
level to the relevant portions thereof.
With my counsel being Ineffective,
Plea under Duress, Courts errors,
Prejudice, and several constitutional

Continued

(22)

violations. That there is an Reasonable Probability, that if the ERRORS had not happen the result of my plea would have BEEN different...

22 of 23

(2.) That there are principles rooted in due-process and best belief that Justice is best served when a plea or trial is fundamentally fair.. see → Brecht v. Abrahamson, 507 U.S. 619, 113 S.Ct. 1710, 1717, 1231 Ed. 2d 353, 367 (1993). Wainwright v. Greenfield, 474 U.S. 284, 296, 106 S.Ct. 634, 638, 881 Ed 2d 623, 630 (1986)..

"At this time I would like to make or mount an Collateral Attack on the Sufficiency of my Indictments..."

Question Number (19)

(23.)

State clearly the relief you seek in
filling this application? 23 of 23

ANSWERS Number (19)

Thus, in my P.C.R application I have demonstrated deficient in my plea counsel's performance, reasonable probability, both prejudice and error as needed in Strickland, Supra; Rhodes v. State 349 S.C. 25 561 S.E. 2d 606 (2002). At this time I would ask this court of common pleas to vacate my conviction and sentence with prejudice, and dismiss my indictments with prejudice also...

"page. 23 of 23"

2012-GS-02-1084	10 years, concurrent
2012-GS-02-1083	10 years, concurrent
2012-GS-02-1082	10 years, concurrent
2012-GS-02-1081	15 years, concurrent
2012-GS-02-1080	15 years, concurrent
2012-GS-02-1079	15 years, concurrent
2012-GS-02-1078	15 years.

All sentences to run concurrent to 2012-GS-02-1078. The Applicant did not appeal his sentence or conviction.

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

II.

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

1. Ineffective Assistance of Counsel.
 - a. "Plea Counsel advice"
 - b. "Counsel fail to challenge and investigate"
 - c. "Counsel failed to discuss"
 - d. "Plea counsel unprepared to try my case."
 - e. Failed to file an appeal
 - f. "Errors and advice to plea guilty for me not having the true facts before me about me being eligible for parole a 3rd of my time. I would not have pled guilty and would have insisted on going to trial."

- g. "Plea Counsel failure to challenge the indictments. I didn't see the indictments until after I was in SCDC when the clerk of court sent me a copy of the indictments. "Also my plea counsel failing to challenge the plea of a second time offender."
- h. Plea counsel failed to prepare and adequate defense.
- i. "Plea counsel failed to advise me that I could withdraw my plea prior to the court accepting the plea."
- j. Counsel failed to challenge the indictments.
- 2. "Double Jeopardy/Multiple Counts"
 - a. "The Double Jeopardy clauses of both the State and federal constitution protect the accused in criminal proceeding from multiple punishment for the same offense...I did not get to see my indictment until I got to the (SCDC) South Carolina Department of Corrections, when I requested a copy of my indictments from the clerk of court."
 - b. "In the indictments I have 7 seven, the courts has previously recognized that South Carolina Code ann.: 17-25-50 is part of an overall legislative scheme for recidivist sentencing statute, directing trial courts to treat as one offense nay number of offenses committed at times so closely connected in point of time that they may be considered as one offense."
- 3. Involuntary guilty plea
 - a. "Plea underdress"
- 4. "Due Process"
 - a. "Possesses and understanding"
 - i. "I went to court on August 6, 20212 and August 7, 2012 at that time I did not understand what was going on. The 1st day we were going to trial, then the next thing I know we were coming back the next day.
 - b. "Abuse of discretion"
 - i. "Plea judge did error, and abuse his discretion, by refusing to let my plea counsel have more time to prepare for trial. My lawyer told the judge that he was no prepare for trial, but he made us come back the next day for a plea."
 - c. "The audio and video that the state had was not good at all, you could not tell who was talking at times or see transactions made and my lawyer only let me just 2 dvd recordings on August 3, 2012. The State suppresses the Audio and video until the week we was going to trial."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should

be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent

requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant contends that he was subjected to double jeopardy. This issue is not one that can be raised in a post-conviction relief proceeding. PCR is not a substitute for a direct appeal. Claims that could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Sellers v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973) (double jeopardy). Nevertheless, Respondent submits that Applicant's allegation of a double jeopardy violation is without merit.

The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently granted mistrial. When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing judge from prescribing greater punishment than the legislature intended. Missouri v. Hunter, 459 U.S. 359 (1983); State v. Wilson, 311 S.C. 382, 429 S.E.2d 453 (1993). Accordingly, Respondent moves for a summary dismissal of the double jeopardy allegation because it is a direct appeal issue and because no constitutional violations occurred in this case.

V.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the

plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

VI.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing

which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VII.

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

[signature block on following page]

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of Ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 13th, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2013-CP-02-600
	)	
ANTHONY S. SAPP, 351929,	)	
	)	
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 by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
Tommy A. Thomas, PC
7588 Woodrow Street; Harrington Building
Irmo, SC 29063

DATED this 13rd day of June, 2013.



Caroline Kaiser, Legal Assistant
For Respondent

1 State of South Carolina) In the Court
2 County of Aiken) Of Common Pleas
3
4 Docket No: 2013-CP-02-0600
5
6 Anthony S. Sapp,)
7 Applicant,)
8 vs.) Transcript of Record
9 State of South Carolina,)
10 Respondent.)
11
12 August 1, 2014
13 Aiken, South Carolina
14
15 B E F O R E:
16 The Honorable R. Knox McMahon, Judge.
17
18 A P P E A R A N C E S:
19 Tommy Arthur Thomas, Esquire
20 Attorney for the Applicant
21 Daniel Gourley, Assistant Attorney General
22 Attorney for the Respondent
23
24 Brenda J. Sigwald, Circuit Court Reporter
25 To the Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 **THE COURT:** All right. Mr. Gourley?

2 **MR. GOURLEY:** Yes, Your Honor, this is Anthony Sapp
3 versus the State of South Carolina, Docket 2013-CP-02-0600.
4 He is presently confined in the South Carolina Department
5 of Corrections pursuant to orders of the Aiken County Clerk
6 of Court. He was true-bill indicted at the August 2012
7 term of the Aiken County Grand Jury for three counts
8 distribution cocaine base within proximity of a school,
9 three counts of trafficking in cocaine base and
10 distribution of cocaine base.

11 Mr. Wayne Floyd represented him. Applicant pled
12 guilty as indicted to three counts of distribution of
13 cocaine base within proximity of the school, distribution
14 of cocaine base, second offense, one count of trafficking
15 in cocaine base 10 grams or less than 28 grams, second
16 offense and two counts of the lesser-included offense of
17 trafficking cocaine base 10 grams or more but less than 28
18 grams second offense.

19 August 7th, 2012, the Honorable Doyet A. Early, III
20 sentenced the applicant pursuant to the plea negotiations
21 to essentially, Your Honor, 15 years. He had three 10-year
22 sentences and four 15-year sentences that were all run
23 concurrent. The applicant did not appeal his guilty plea
24 or sentence. He filed a timely application for post
25 conviction relief on March 14th, 2013, alleging ineffective

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 assistance of counsel, involuntary guilty plea, a due
2 process violation. The State filed its return on June 13,
3 2013. He's represented here today by Mr. Tommy Thomas.

4 **THE COURT:** All right. Yes, sir, Mr. Thomas?

5 **MR. THOMAS:** Your Honor, if it please the Court,
6 we'd call Mr. Sapp to the stand.

7 **THE COURT:** All right. If you'd come around,
8 Mr. Sapp and be sworn, please.

9 **ANTHONY S. SAPP,**
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Have a seat, state your name for the
12 record.

13 **THE WITNESS:** My name is Anthony Sapp.

14 **MR. THOMAS:** Your Honor, if it please the Court?

15 **THE COURT:** Yes, sir.

16 **DIRECT EXAMINATION**

17 **BY MR. THOMAS:**

18 **Q** Mr. Sapp, you're currently incarcerated with the
19 South Carolina Department of Corrections?

20 **A** Yes, sir, I am.

21 **Q** All right, sir. And what kind of sentences are you
22 serving?

23 **A** I'm serving a distribution and traffic and traffic
24 and another traffic for a second offense, 15 years.

25 **Q** Three of those were in proximity of a school?

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 A And three other counts.

2 Q How many charges were there? Seven charges
3 altogether?

4 A Seven charges.

5 Q And this was a negotiated plea?

6 A Yes, sir.

7 Q And it was negotiated for 15 years; is that
8 correct?

9 A Yes, sir.

10 Q And that's in fact, what you received?

11 A Yes, sir.

12 Q All right, sir. Now, you understand that you're
13 asking today for the Court to grant you a post conviction
14 relief?

15 A Yes, sir.

16 Q You understand that the only relief that you can
17 receive is a new trial or a new plea?

18 A Yes, sir.

19 Q That any charges that were dismissed could be
20 reinstated?

21 A Yes, sir.

22 Q And that you can actually be taken back and tried
23 for these offenses and receive the maximum penalty?

24 A Yes, sir.

25 Q And they could run consecutive?

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 A Yes, sir.

2 Q So you have what we call as exposure in this case?

3 A Yes, sir.

4 Q And that if that happened, potentially, you could
5 get more time than what you have today?

6 A Yes, sir.

7 Q You willing to accept that risk?

8 A Yes, sir.

9 Q And you wish to proceed?

10 A Yes, sir.

11 Q All right, sir. Mr. Sapp, you were arrested when?
12 Roughly? Do you remember?

13 A I turned myself in, I think somewhere between
14 February.

15 Q Of what year?

16 A 2012.

17 Q All right, sir. And who were you arrested by?
18 What law enforcement?

19 A No, I turned myself in to Aiken County Sheriff's
20 Department.

21 Q Aiken County. Okay. And were you appointed --
22 were you appointed an attorney or did you retain someone to
23 represent you?

24 A I retained somebody.

25 Q And who did you retain?

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 A Mr. Wayne Floyd.

2 Q All right, sir. And did you make bond or were you
3 in jail for a period of time?

4 A I was in there for about two months, but I had to
5 wait for a bond reduction and then I made bond.

6 Q All right, sir. So how long -- how long were you
7 in the county facility awaiting bond?

8 A I was in the -- probably about two months and a
9 week.

10 Q Okay. That's when you got your bond reduction.
11 And then how long from there until your case was called to
12 trial?

13 A Three months. Three months to be exact.

14 Q So you had about a five-month period between when
15 you were arrested and when the case came to court?

16 A Yes, sir.

17 Q All right, sir. Now, during that period of time,
18 how many times did you meet with your lawyer?

19 A How many times did I meet with him?

20 Q Yes, sir.

21 A I met with him one time before the hearing.

22 Q Now, were you incarcerated -- were you in the
23 county or were you out on bail?

24 A I was out --

25 THE COURT: Was that one time before the bond

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 hearing?

2 THE WITNESS: No, that was one time -- well, I met
3 him at the bond hearing, but then I met him one time before
4 the hearing. That was on August 30th.

5 BY MR. THOMAS:

6 Q And did you meet with him after that?

7 A At the plea hearing. I met with him August 6th,
8 that morning, for like 10 minutes.

9 Q Okay. So how many times did you meet with him
10 totally?

11 A Three full times.

12 Q The three times?

13 A Yes, sir.

14 Q Okay.

15 A Besides the bond hearing.

16 Q Sir?

17 A Besides at the bond hearing, you know.

18 Q Okay.

19 A And that was just for the bond hearing.

20 Q Okay. During that period of time, did you have an
21 opportunity to go over the case with him?

22 A No, sir, we never went over the case. We never
23 discovered -- I mean we never went over the case, we never
24 discussed the elements of the charge or anything, no
25 possible defense, trial strategy or nothing.

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 Q Okay. How did -- did you see your discovery -- do
2 you know what I'm talking about with regards to discovery?

3 A Yeah, he gave it to me at the bond hearing. And
4 that was it, he just gave it to me and said this is the
5 Rule 5 and -- and also he was missing -- they was missing a
6 charge, you know the 9-15-11. It was missing that, so I
7 went back to the county with my Rule 5 and that was it. We
8 never discussed it again.

9 Q Did -- now, you've been pretty active in preparing
10 for this hearing today?

11 A Yeah, somewhat.

12 Q You've spent some time in the library and --

13 A Yes, sir.

14 Q And you feel like you have a lot more knowledge
15 today about what's going on than you did then?

16 A Yes, sir, I do.

17 Q All right, sir. Now, did you feel like you had any
18 defense to these charges?

19 A Yes, sir, I do.

20 Q And what kind of defenses did you feel like you
21 had?

22 A My lawyer could have suppressed the evidence. We
23 could have had a suppression hearing. If he was thoroughly
24 investigating the case, he could point out discrepancy
25 between the supplement reports and the CI statements and

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 the application of arrest warrants.

2 Q So you feel like there were some discrepancies
3 between the statements that were given and the
4 investigative reports and those kinds of things that could
5 have been brought up at a trial?

6 A Yes, sir.

7 Q All right. And what else was there?

8 A He could identify the errors in the chain of
9 custody, in the evidence form.

10 Q What kind of errors did you think were in the
11 chain?

12 A There was some missing links -- I mean some weak
13 links and there wasn't no -- they didn't know who picked up
14 the evidence or what condition was it in. The evidence bag
15 wasn't signed. It had no initials or none of that.

16 Q And you've got the chain with you?

17 A Yes, sir. And also some of the drug analysis
18 request forms were not in the file. I had to request those
19 from SLED. The evidence wasn't took back to the office. I
20 guess the officer must have took them home or whatnot and
21 then took it to the chemical analysis the next day.

22 MR. THOMAS: Your Honor, I beg the Court's
23 indulgence.

24 BY MR. THOMAS:

25 Q Now, Anthony, this was an alleged sale to an

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 undercover policeman or a CI?

2 A A CI.

3 Q Okay. And they -- the allegations were they were
4 all sales to the CI; is that correct?

5 A Yes, sir.

6 Q Okay. And the weights of these drugs were real
7 close or above the 10 grams?

8 A Yes, sir.

9 Q To indicate trafficking?

10 A Yeah, they was real close to the statute that
11 constitutes trafficking, 10-28 and it was exactly 10.6,
12 11.2, 12.6 and 2.9.

13 Q Okay. And I know that you and I had talked about
14 that this case is a little bit different in that you're
15 actually saying that -- you're saying that you're guilty of
16 this or not guilty to this crime?

17 A Well, today, I'm not here to prove my guilt or
18 innocence. I'm here to prove my lawyer's ineffectiveness
19 and how he pressed me into pleading guilty due to lack of
20 preparation.

21 Q So you're telling the Court that you may be guilty
22 of some of these crimes, but you feel like you're not
23 guilty of the trafficking?

24 A Yes, sir.

25 Q And why do you feel that you were not of the

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 trafficking?

2 A Because the drugs was, in fact, wet. I mean,
3 that's what makes the drugs a little heavier than they're
4 supposed to be and plus the bag weighs a gram. And the
5 CI -- the State said -- on the video, you know, he said,
6 you know the bag actually weighs a gram. And he weighs it
7 with the bag. So if you weigh 11 grams with the bag and
8 then take it to testing, it's not going to come back being
9 tested on --

10 Q Now, did you talk to Mr. Floyd about that? About
11 the heaviness of those drugs?

12 A No, he never discussed any possible defense or
13 nothing.

14 Q Okay. And most of this is what you have discovered
15 since you have been incarcerated?

16 A Yes, sir.

17 Q All right.

18 MR. THOMAS: Could I have a second, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. THOMAS:

21 Q Anthony, I want to show you this document and see
22 if you can identify that.

23 A Yes, sir. This is the incident that occurred on
24 9/15 -- I mean -- yeah, 9/15, 2011.

25 Q What is that document?

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 A This is the forensic services laboratory report.

2 Q For one of the drugs?

3 A For one of the drugs. He tested like six of them.

4 It was exactly 11 grams with the bag.

5 Q All right. Now that I know that you've pointed
6 this out to me down here does it say something about the
7 plastic bag?

8 A Plastic bag containing rock substance is on it.

9 Q All right. Does it give a weight?

10 A No, sir.

11 Q No, but does it give a weight of the total?

12 A Of the total? 10.6, 163.5 grains.

13 Q All right. And that document -- this document or
14 these documents on your dugs is what gave you some concern
15 about with the way that the plastic bag had been included?

16 A Yes, sir.

17 Q Okay. And it was your concern that on that SLED
18 report that that was the gross weight, rather than the net
19 weight?

20 A Yes, sir.

21 Q Okay.

22 A And also some of the other drug analysis were never
23 along with the chain of custody and motions and stuff like
24 that filed.

25 Q All right.

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 MR. THOMAS: Court's indulgence, Your Honor.

2 THE COURT: All right.

3 MR. THOMAS: May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. THOMAS:

6 Q Anthony, I want to show you this document. See at
7 the top there. What is that?

8 A This is a sign in law enforcement division where
9 it's the Service Laboratory Policy Manual.

10 Q Okay.

11 A And it says --

12 Q And is that something that you received from the
13 Freedom Of Information Act?

14 A Yes, sir, from the SLED Department.

15 Q All right. And does it talk about net weight and
16 gross weight?

17 A It talks about weighing and presumptive tests.

18 Q Okay. See where it says net and gross?

19 A Net and gross.

20 Q Here?

21 A Number one.

22 Q Right. And what does it say about a net weight?
23 Does the net weight include the packaging?

24 A Net weight says when results are reported for --
25 the weight will be a net weight. Net weight is defined as

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 the weight of the remaining substance after all the
2 packaging has been removed. Net weight can be reported for
3 one item or for the combined weight of multiple or similar
4 items. If combined weights are used, the items will be
5 maintained independently.

6 Q Okay. But -- and based upon that, you had concern
7 that you brought out to me that these SLED weights were not
8 necessarily net weights that they could potentially be
9 gross weights?

10 A Yes, sir.

11 Q It calls reference to a bag?

12 A Yes, sir.

13 Q Did you talk to Mr. Floyd about that?

14 A No, sir.

15 Q All right. And are you concerned today that these
16 weights could potentially be less than 10 grams?

17 A Oh, yes, sir. In fact, they were.

18 Q Okay. And you feel like the weight is less than
19 the 10 grams because of the water that would have been in
20 the drugs as well as the weighing of the bag?

21 A Yes, sir.

22 Q Now, you and I talked about this. You understand
23 that there's case law out there that says that if you take
24 pounds of baking powder and you add a spoonful of cocaine
25 to that it packs a pound of cake?

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 A Yeah, yeah.

2 Q Because this's included in the weight?

3 A Yes, sir.

4 Q But you feel this is different?

5 A Yes, sir.

6 Q And why do you feel this is different?

7 A Because of the fact -- one of the reason, the bag
8 and plus the moisture, the water consent that was in it.

9 Q All right. And you feel like Mr. Floyd should have
10 done something in regards to investigating this?

11 A Yes, sir. Because when they received the drugs in
12 2011, this case was almost out to like almost a year.

13 Q Yes, sir.

14 A So the drugs would have -- eventually changed
15 weight then and he could have challenged the chain of
16 custody by independently weighing the bag and the drugs.

17 Q Which would have potentially brought you underneath
18 that threshold?

19 A To a nonviolent sentence. Even if it had been
20 under 85 -- instead of nonviolent 85, which I received the
21 violent 85.

22 Q Now -- and you are, in fact, a violent, 85 percent
23 crime?

24 A Yes, sir.

25 Q And are you parole eligible?

Anthony S. Sapp - Direct Examination by Mr. Thomas

- 1 A No, sir.
- 2 Q Are you parole eligible under the new law?
- 3 A No, sir.
- 4 Q Now, your case was actually called for trial?
- 5 A Called for trial? Yes, sir. My case was called to
- 6 trial August 6th.
- 7 Q And you wanted to go to trial; is that correct?
- 8 A Yes, sir.
- 9 Q You wanted --
- 10 A I insisted.
- 11 Q Why did you want a trial?
- 12 A Because I felt like if I went to trial then my
- 13 rights wouldn't have been violated.
- 14 Q Okay. Because you felt like you had defenses?
- 15 A Yeah, I had defenses.
- 16 Q Okay. And you ended up doing a negotiated plea the
- 17 next day; is that correct?
- 18 A Yes, sir, the next day.
- 19 Q And as a matter of fact, the jury had been
- 20 impanelled?
- 21 A Yes, sir. We was there while the jury was being
- 22 called.
- 23 Q Why did you decide to enter into a plea?
- 24 A Because, basically my lawyer coerced me into it
- 25 because he seen that he was unprepared for trial. He

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 wasn't ready. And on August 6, he got up and said he would
2 like to ask for a continuance and we got denied. So
3 basically I was forced to plead and then they also said
4 I'll be eligible for parole, so really it was an unkept
5 promise.

6 Q And you feel like you were ready for trial?

7 A No, because we hasn't -- we never talked. No, sir,
8 we never discussed nothing. We never went over the
9 indictments, the warrants, no defense. We never had time
10 to confer.

11 Q And you felt at the time that you had certain
12 defenses, but a lot of this information you discovered on
13 your own since you've been incarcerated; is that correct?

14 A Yes, sir.

15 Q All right, sir. Now, tell me about your plea. Why
16 did you agree to enter into this plea? What was your
17 understanding about this plea?

18 A What was my understanding of the plea?

19 Q It was a negotiated plea?

20 A Yeah, it was a negotiated plea at first, you know.
21 Like I said --

22 Q You knew that you were going to get 15 years?

23 A Yeah, when we came and talked to me like on August
24 6th and we got denied and he told me we had to come back
25 August 7th and he got it down to 15. He said there was

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 three options I could take and I said, What are those
2 options. He said, For one, you can go ahead and go to
3 trial and lose because we're not prepared, or two, you can
4 take 15 and get paroled. And I said, Well, when would I be
5 eligible for parole. And he said, well, you're pleading to
6 15, so it would be 30 percent of time which would be five
7 years. You go down the road and keep your nose clean and
8 you might make it since this is your first time going in.

9 Or the third option is to go ahead with an open
10 plea, 0 to 15. So I said, okay, will the judge go off the
11 plea? He said there's a possibility. So I said really
12 there ain't no option here. I said, you know, I still got
13 to go to trial. And he said, well, just think about it for
14 a minute. So he walks out, leaves me and my mother and my
15 girlfriend was out there in the hallway and, you know, we
16 talked about it. And then, so when he came back in like
17 five minutes, it was only a 10 minute talk. And he said
18 have you decided yet. And I said, yeah, I be wanting to go
19 to trial.

20 And he said, I know you want to, but we're not
21 prepared. And he asked me again, I mean, I told him -- my
22 mama asked -- my mama said -- you said he got parole,
23 right. And he said, yes, you got parole, which would be,
24 you know, five years. And so he was like go ahead and take
25 that. And I said, man, I said, are you sure. I insisted

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 like several times. I said are you sure I got parole and
2 he said, yes, you do. The law changed in 2010. You know
3 what I'm saying, they tried to change the law on drug
4 sentences because prison don't quite help. And so, you
5 know, I thought about it again and then, I accepted the
6 plea. So that's what eventually made me plead guilty.

7 Q So your plea was based upon the fact that you were
8 informed that although it's an 85 percent crime?

9 A Yes, sir.

10 Q That under that recent omnibus crime bill that you
11 were going to be parole eligible?

12 A Yes, sir.

13 Q Okay. Now, have you had prior experience with the
14 judicial system? You've had some prior trouble before?

15 A Yes, sir.

16 Q All right. But you never served time before?

17 A No. I never served time, I never been on
18 probation, never knew anything about the law like that.
19 Because all my charges been like misdemeanors or five year
20 or -- they're all misdemeanors.

21 Q But you understood the concept of parole?

22 A Yeah.

23 Q You'd been involved in the system enough that you
24 knew what parole was about?

25 A Yeah, I knew what parole was.

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 Q All right. And did you know prior to that that
2 there were some offenses that were parole eligible and some
3 that were not?

4 A No, I never knew that because I never kept up with
5 the law like that or the changes in the law. So I never
6 knew that the law did change like that.

7 Q So the only way that you're saying that you knew
8 about the omnibus crime bill was what you'd been told by
9 your attorney, correct?

10 A No, only because I inquired. No, he didn't tell
11 me. I inquired. I asked him would I be parole eligible
12 and then he gave me that misinformation.

13 MR. THOMAS: Your Honor, may I approach?

14 THE COURT: Yes, sir.

15 MR. THOMAS: Your Honor, this is page 5 of the
16 transcript, lines 17 through 22.

17 BY MR. THOMAS:

18 Q Anthony, I'm going to show you this in the
19 transcript. And I've marked pages 17 through 22. If you'd
20 read that just to yourself.

21 A (Reading.)

22 Q All right. What's the judge telling you there?

23 A He's telling me that there's negotiation of 15 year
24 sentence and that I'd received 85 percent and whatever the
25 math is and then I would be released to community

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 supervision after my release.

2 Q All right. Okay. And Anthony, I want to show you
3 on page 8 of the transcript, lines 5 through 8. If you'll
4 look at that section, page 8, lines 5 through 8, and read
5 that to yourself. What's the judge telling you there?

6 A That I'd receive an 85 percent sentence of whatever
7 the sentence is and that I would be released to community
8 supervision.

9 Q Okay.

10 MR. THOMAS: Your Honor, if I could beg the Court's
11 indulgence just one second.

12 THE COURT: Yes, sir.

13 (WHEREUPON there was a pause in the proceedings.)

14 BY MR. THOMAS:

15 Q And the judge told you that you would not be parole
16 eligible, didn't he?

17 A Yes, sir.

18 Q Okay. And what did you think when the judge told
19 you, you wouldn't be eligible for parole?

20 A I was confused at the time because it's like I
21 couldn't say nothing because my lawyer told me to go in
22 there and just give answers to the Court -- that the Court
23 would inquire for him to accept my guilty plea --

24 Q Did you talk to your attorney about the questions
25 that were going to be asked of you in regards to the Court

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 accepting your plea?

2 A Yeah, basically, he just told me to go in, just
3 answer the questions, you know, don't say nothing out of
4 the way because the judge would go off the plea. So I felt
5 pressure right there. You know, I felt like if I said
6 anything I'd wait and the judge could give me anything.

7 Q He told you it was possible that the judge would
8 not accept the plea?

9 A Yeah, would not accept the plea. So that's why I
10 didn't respond back.

11 Q Was the basis for you entering into the plea was
12 the fact that you felt like you were told you would be
13 parole eligible?

14 A Yes, sir.

15 Q Okay. Now, was any kind of suppression hearing
16 held on the chain? Was that ever talked about?

17 A No, we never had a suppression hearing.

18 Q Okay.

19 A Never even discussed a State's Exhibit suppression
20 hearing. Never nothing discussed about this case.

21 Q All right. And -- and drugs, in fact, were seized?

22 A Were seized?

23 Q There were drugs seized and weighed?

24 A Yes, sir. From the informant.

25 Q Okay.

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 A Yeah.

2 Q Okay. And there was also video?

3 A Yes, sir.

4 Q And were you able -- did you review those videos
5 with your attorney?

6 A No, sir. On August 3rd, me and my sister went to
7 his office like around about 5:30 and it was about closing
8 time, so it was like 10 CD's and he let me review like one
9 and we kind of skipped over that. I seen the transaction
10 on that and then he let me see another one and we kind of
11 skipped over that a little bit. There was no transaction
12 on that because we got in the car. And then he was like,
13 some of them, you can hear things and you can't hear stuff
14 and some of them kind transactions some of them don't.

15 But, I was like, can I get a copy of that and he
16 said, well, it's too late now because we got to go to trial
17 August 6th. So I was like -- he was like, what you want to
18 do. I said I want to go to trial. So he sent a paper to
19 me saying 20 years or wear a wire. And I said, no, I don't
20 want to wear a wire and I was like, no, I'm not set for a
21 plea. I want to go to trial. And I said, what are we
22 going the trial for? And he said, I don't know right now,
23 we'll find out when we get to August 6th.

24 So then we left. We never discussed nothing.
25 Never went over the indictments, the elements of the

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 offense and the charges, didn't explain that or a defense
2 or nothing. And I was like -- exactly like 20 minutes.
3 That was just a 20 minute meeting right there. And then on
4 Saturday, he called me and said we're going to court for
5 distribution first and he said -- I said, so are you ready
6 and he said, yeah, we're ready and we're going to go to
7 trial. And I said okay. That's what I want to hear.
8 That's what I like to hear. And then, like I said, August
9 6 get here and he said he wasn't prepared.

10 Q So they didn't call all of your cases for trial,
11 they just called one of them?

12 A Yeah, we were just going to trial for distribution.

13 Q For the distribution?

14 A Yeah.

15 Q Did you know if they were going to try the other
16 cases if you were convicted of what was --

17 A No, I didn't know how they was going to do that or
18 how it was going to go. I didn't fully understand how the
19 sentences would run concurrent because like I said, this
20 was my first time. So...

21 Q All right. Do you believe that your plea was
22 freely and voluntarily entered into?

23 A No, sir. My plea of guilt was not voluntary and it
24 was unintelligent in that my counsel misadvised me.

25 Q And was it knowing and intelligently given?

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 A No, sir, it was not.

2 Q Anthony, I know you and I talked about this and
3 you've been waiting for this day for a long time.

4 A Yes, sir.

5 Q I'm not implying that there's anything that you
6 should say, is there anything that I may have left out or
7 I've forgotten or that you feel that you should bring to
8 the Court's attention?

9 A Yes, sir, I just want to bring two of the
10 statements that I just wrote down about my counsel
11 unprepared.

12 Q All right.

13 A Can I read off?

14 Q Yes, sir.

15 A Dealing with the parole situation my plea of guilty
16 was involuntary and unintelligent in that my counsel,
17 Mr. Wayne Floyd, improperly advised me as to being eligible
18 for parole. After I inquired several times about being
19 eligible for parole. Mr. Wayne Floyd still insisted that
20 I'd be eligible for parole and Mr. Wayne Floyd advised me
21 about being eligible for parole impacted my decision to
22 enter into a guilty plea and enter my plea upon this
23 assumption and the State insisted and that's what induced
24 me to plead guilty and as a result of that incorrect
25 advice, I did not fully understand the consequences of my

Anthony S. Sapp - Direct Examination by Mr. Thomas

1 plea and I was lead to believe and believed therefore my
2 guilty plea would be induced on misstatement of the law and
3 unkept promise and therefore it was not free and was
4 forced. And there's a reasonable probability that by my
5 counsel's advise that he had the true facts before me about
6 me being eligible for parole, I would have insisted on
7 going to trial.

8 And the other one is about, my plea counsel was
9 unprepared for trial under better circumstances and the
10 consequences of the facts of this case, I'm dissatisfied
11 with my counsel's representation due to Mr. Wayne Floyd's
12 lack of preparation. In terms of my decision to plead
13 guilty, I felt under duress to accept the plea because
14 Mr. Wayne Floyd was not prepared for trial and I was
15 pressured into pleading guilty without a full and complete
16 understanding and knowledge of exculpatory evidence and
17 available defense to the crime charged. And me and
18 Mr. Wayne never discussed the case or reviewed the State's
19 evidence and I would not have pled guilty had he properly
20 explained the charges to me and the evidence of the offense
21 and viewed the State's evidence with me, I would not have
22 pled guilty, I would have insisted on going to trial.

23 Q And you feel that you were not guilty of the
24 trafficking charges?

25 A No, sir.

Anthony S. Sapp - Cross-Examination by Mr .Gourley

1 Q And you feel that you entered into this plea with
2 improper information regarding your parole?

3 A Yes, sir.

4 MR. THOMAS: Nothing further, Your Honor.

5 THE COURT: Thank you, thank you very much.

6 Mr. Gourley?

7 MR. GOURLEY: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. GOURLEY:

10 Q Mr. Sapp, you said you met with Mr. Floyd three
11 times?

12 A Yes, sir. And one was at the bond hearing.

13 Q One was at the bond hearing.

14 A Yeah; that was not really a meeting that day.

15 Q And you said he gave you a copy of your discovery?

16 A Yeah, he just gave me a copy of my discovery and
17 then we parted.

18 Q And that was at the bond hearing as well?

19 A Yes, sir.

20 Q Okay. And y'all never discussed any of your
21 defenses or anything like that?

22 A No, sir.

23 Q Did you ever give him any information or witnesses
24 to investigate on your behalf?

25 A No, sir.

Anthony S. Sapp - Cross-Examination by Mr .Gourley

1 Q Okay. You recall waiving your constitutional
2 rights during your trial -- I mean in your plea?

3 A In my plea?

4 Q Yeah.

5 A I mean, yes, sir, because like I say I was advised
6 and I was coerced to.

7 Q You were coerced to --

8 A To plead guilty.

9 Q -- to plead guilty?

10 A Yeah.

11 Q We'll get to that in just a minute.

12 A Okay.

13 Q And you recall telling the plea judge that you were
14 satisfied with your counsel?

15 A Yes, sir, the reason I expressed satisfaction with
16 my counsel's representation was because I lacked the
17 necessary information to raise any challenge at the plea
18 proceeding.

19 Q Okay. But you also told the judge that he had
20 enough time to research the law and investigate and give it
21 to you?

22 A Yes, sir, because I was advised and instructed by
23 my counsel to give answers to the Court in order for him to
24 accept my guilty plea.

25 Q Okay. But you also told the judge that no one was

Anthony S. Sapp - Cross-Examination by Mr .Gourley

1 promising you or threatened you to plead guilty, correct?

2 A Yes, sir, because I didn't know they had to -- I
3 didn't know that I had to say anything about a plea bargain
4 in order for the -- to require the court -- I mean --

5 Q About a plea bargain?

6 A I mean, a negotiation or unkept promise. I didn't
7 know that I had to say anything because like I say I was
8 inquired to just answer the questions.

9 Q And the unkept promise being the parole --

10 A The parole situation.

11 Q Okay. But you told the judge you wanted to plead
12 guilty, right?

13 A Yes, sir.

14 Q You told the judge you were indeed guilty of these
15 charges, right?

16 A Yes, sir, because I was induced.

17 Q But you are guilty of these charges, though?

18 A Well, sir, today I'm not here to prove, like I say,
19 my guilt or innocence.

20 Q Right. But I'm asking you, you are guilty of these
21 charges, though, right?

22 A I'm not guilty of trafficking.

23 Q You're not guilty of trafficking, okay. And this
24 was a negotiated plea for 15 years, right?

25 A You can say that.

Anthony S. Sapp - Cross-Examination by Mr .Gourley

1 Q Sir?

2 A I said you could say that, sir.

3 Q Okay. And you got 15 years, right?

4 A Fifteen years without parole.

5 Q And the judge advised you that you were going to
6 have to serve 85 percent of that 15 years, right?

7 A Yes, sir. But my lawyer also said that I would be
8 parole eligible.

9 Q And the judge asked you if you had any questions
10 about the fact that you were going to have to serve 85
11 percent and you said no?

12 A Yes, sir. My lawyer also told me not to say
13 nothing out of the way.

14 Q Okay. But you're doing the time, right? Not your
15 lawyer.

16 A Yeah, but also, my lawyer is like my adviser, so
17 that's what I pay him for, you know, to --

18 Q Right. But you're doing the time, right, Mr. Sapp?

19 A Yeah.

20 Q And your lawyer told you, you were going to be
21 parole eligible in five years, right?

22 A Yes, sir.

23 Q And then you've got the plea judge telling you that
24 you're going to have to do 85 percent of 15 years. That's
25 not five years, correct?

Anthony S. Sapp - Cross-Examination by Mr .Gourley

1 A And my lawyer said if I said anything out of the
2 way, that the judge would go off my plea, so -- what was I
3 supposed to do my first time in? I was confused.

4 Q Okay. And in your opinion, your attorney should
5 have researched the chain of custody for the drugs, right?

6 A Yes, sir. He could have, yeah.

7 Q Okay. And the weight of the drugs?

8 A Yes, sir.

9 Q Okay. And this was a CI buy, right?

10 A Yes, sir, it was.

11 Q And you were on video and audio, right?

12 A On some of them.

13 Q On some of them?

14 A Yes, sir.

15 Q All of the telephone calls were recorded, right?

16 A Yes, sir, you couldn't tell what was said on some
17 of them.

18 Q Okay. And you have a special crack cocaine, it was
19 dyed red?

20 A Sir?

21 Q Your crack cocaine was dyed red?

22 A That's what the State said.

23 Q And I think blue as well, right?

24 A That's what the State said.

25 Q Okay. And this wasn't your first time in court,

Anthony S. Sapp - Cross-Examination by Mr .Gourley

1 though, was it?

2 A No. I always been in like magistrate court,
3 misdemeanor charges.

4 Q In 2002, you got a simple assault and battery,
5 right?

6 A Yes, sir.

7 Q And in 2009, you got a criminal domestic violence
8 first offense, right?

9 A Yes, sir.

10 Q 2010 a simple assault?

11 A Yes, sir, which almost -- was all the way dropped.

12 Q Okay. And then in 2010, you had a giving false
13 information, right?

14 A False information, yes, sir. All was dropped.

15 Q And then in September 2011, you pled to possession
16 less than one gram of meth and cocaine base, right?

17 A Yes, sir, which I received a \$100 fine, which was a
18 misdemeanor.

19 Q Okay. And you also told the plea court that you
20 made a mistake and you wish you could change it, right?

21 A About me pleading?

22 Q Uh-huh.

23 A Yes, sir.

24 Q Okay. And the judge advised you of all the
25 sentences and things like that that you were facing, right?

Anthony S. Sapp - Redirect Examination by Mr. Thomas

1 A Yes, sir, he did, but my lawyer never did.

2 Q Okay.

3 A My lawyer never went over the minimum that I could
4 face, the max or none of that.

5 Q Right. But the judge did, right?

6 A Yeah. And I did not fully understand what the
7 judge said.

8 Q You never asked the judge any questions, right?

9 A Because my lawyer told me not to.

10 Q Okay. But again, you're doing the time, right,
11 Mr. Sapp?

12 A So you say.

13 MR. GOURLEY: Your Honor, I don't have any further
14 questions.

15 Thank you, Mr. Sapp.

16 THE COURT: Redirect?

17 MR. THOMAS: Your Honor, just one question.

18 THE COURT: Sure.

19 MR. THOMAS: Please the Court.

20 **REDIRECT EXAMINATION**

21 **BY MR. THOMAS:**

22 Q Anthony, you said on cross-examination an unkept
23 promise?

24 A Yes, sir.

25 Q And that unkept promise in your mind was the fact

Anthony S. Sapp - Redirect Examination by Mr. Thomas

1 that part of the deal with this plea was that you were
2 going to be parole eligible?

3 A Yes, sir. That was the whole part of the deal, the
4 reason that I plead because I was lead to believe and I
5 believed that. That's the only reason I pled.

6 Q All right. And normally -- and I know you know
7 this now --

8 A Uh-huh.

9 Q -- normally trafficking 10 to 28 would be parole
10 eligible?

11 A Yes, sir. Well, now, I know first offense is and
12 not second or third, but all other drug offenses are parole
13 eligible and you have 85 nonviolent and 65 violent and -- I
14 mean all kinds of things. But second offense don't have
15 nothing.

16 Q Okay. But a 10 to 28 first offense would have been
17 parole eligible?

18 A Yes, sir.

19 Q All right. And it was your understanding that you
20 would have been parole eligible under the 10 to 28 that you
21 pled to, even though it was the same offense?

22 A Say that again, sir?

23 Q That -- it was your belief that you would be parole
24 eligible in pleaing to the 10 to 28 trafficking --

25 A Yes, sir.

Anthony S. Sapp - Redirect Examination by Mr. Thomas

1 Q -- even though it was a second offense?

2 A Yes, sir.

3 Q And that was because of the last omnibus crime
4 bill.

5 A Yes, sir.

6 Q Now, so you feel like that you had in essence, a
7 bargain, a negotiated plea?

8 A Yes, sir.

9 Q And you feel like you didn't receive the benefit of
10 that bargain?

11 A No, sir, I didn't because like I said, when he left
12 out, he left me and my mama and my girl to talk like 10
13 minutes and when he left out to talk to -- I mean, I don't
14 know who he talked to, that's why I thought -- you know
15 that's what they were talking about. But he never told me
16 that, okay. That the trafficking was still -- I thought I
17 was pleading to distribution. Like I said, I never
18 understood how the sentences would run concurrent. So if
19 I'm getting distribution, I'm thinking everything would run
20 with the distribution. I didn't know that still played to
21 all of them.

22 Q Because you remember in court for the distribution?

23 A Yeah. See I was in court for the distribution, so
24 he said, well, just plead to distribution today and they'll
25 run everything with that. So that's what I'm thinking.

Anna Beth Kent - Direct Examination by Mr. Thomas

1 Q So in essence you were pleading to all of them?

2 A Yeah.

3 Q All right.

4 MR. THOMAS: Your Honor, I have no further
5 questions.

6 THE COURT: Recross examination?

7 MR. GOURLEY: I have no other questions, Your
8 Honor.

9 THE COURT: Thank you. Thank you very much, you
10 can step down.

11 MR. THOMAS: Your Honor, may I beg the Court's
12 indulgence for just one second?

13 THE COURT: Yes, sir.

14 (WHEREUPON there was a pause in the proceedings.)

15 MR. THOMAS: Your Honor, if it please the Court,
16 we'd call Ms. Anna Beth Kent to the stand.

17 THE CLERK: Have a seat and say your name for the
18 record.

19 **DIRECT EXAMINATION**

20 BY MR. THOMAS:

21 Q Ma'am, would you say your name?

22 A Anna Beth Kent, Anna Beth.

23 Q Okay. And you are Mr. Sapp's mother?

24 A Yes.

25 Q And you've been sworn to tell the truth?

Anna Beth Kent - Direct Examination by Mr. Thomas

1 A Yes.

2 Q And you understand you're here to tell the truth;
3 is that right?

4 A Yes.

5 Q And you're not here to reward anyone, I mean he's
6 your son, but you understand you have to tell the truth?

7 A Yes.

8 Q Were you present when your son and Mr. Floyd were
9 talking about his plea?

10 A Yeah.

11 Q And you were a part of that?

12 A Yes, I was.

13 Q And you were concerned about your son going to
14 trial?

15 A Yes, sir, I was.

16 Q Okay. And what did Mr. Floyd say about the parole
17 eligibility? Do you remember?

18 A Yes, sir, he had said to me and him that he would
19 be eligible within five years for probation or parole. And
20 that's what we were thinking when he came to trial. Then
21 after that, they told me he was looking at 15 years, take a
22 plea bargain or take it the trial, then he was looking at
23 30 years. So I told him no, go ahead and take the 15
24 years.

25 Q You encouraged him to take the plea?

Anna Beth Kent - Cross-Examination by Mr. Gourley

1 A Yes, I did.

2 Q And you encouraged him to take the plea because you
3 thought he was parole eligible?

4 A Yes, sir, I did.

5 Q Okay. And that's what you had heard and that's
6 what you understood when you were there?

7 A Yes, I did. That's what I was told, uh-huh.

8 MR. THOMAS: I have no further questions, Your
9 Honor.

10 THE COURT: Thank you Mr. Thomas.
11 Mr. Gourley?

12 **CROSS-EXAMINATION**

13 BY MR. GOURLEY:

14 Q Yes, ma'am, you were at your son's guilty plea?

15 A Yes, I was.

16 Q Did you speak on his behalf during the guilty plea?

17 A No, I kept talking to his lawyer about it.

18 Q Okay. And when were you present during these
19 meetings?

20 A The day of the trial.

21 Q The day of the guilty plea?

22 A Well, I attend both times, though.

23 Q Both times? You were there the second time?

24 A The second time, that's when they sentenced my son.
25 But the first time, they told him what he was looking at.

Wayne Floyd - Direct Examination by Mr. Gourley

1 Q Okay. All right. Thank you.

2 A Uh-huh.

3 Q No further questions.

4 A Uh-huh.

5 MR. THOMAS: Nothing further.

6 THE COURT: Thank you, ma'am.

7 THE WITNESS: Uh-huh.

8 MR. THOMAS: Your Honor, please the Court, that's
9 the applicant's case.

10 THE COURT: Thank you, thank you Mr. Thomas.
11 Mr. Gourley?

12 MR. GOURLEY: Your Honor, we'd call Mr. Floyd to
13 the stand, please.

14 THE COURT: All right. Mr. Floyd if you would come
15 around and be sworn, please.

16 WAYNE FLOYD,
17 having been duly sworn, testified as follows:

18 THE CLERK: Have a seat and state your name for the
19 record.

20 THE WITNESS: My name is Wayne Floyd.

21

22 MR. GOURLEY: May it please the Court?

23 THE COURT: Yes, sir.

24 **DIRECT EXAMINATION**

25 **BY MR. GOURLEY:**

Wayne Floyd - Direct Examination by Mr. Gourley

1 Q Mr. Floyd, how long have you been practicing law?

2 A Forty years.

3 Q And you were retained in this case?

4 A Yes, I was.

5 Q And the applicant was charged with numerous
6 trafficking and distribution charges of cocaine?

7 A I'm sorry?

8 Q I'll move up. The applicant was charged with
9 trafficking and distribution of cocaine?

10 A That's correct.

11 Q Okay.

12 A And proximity.

13 Q And y'all were proceeding to trial, correct?

14 A That's correct.

15 Q Were you prepared for trial?

16 A Yes, I was.

17 Q How many times did you meet with the applicant?

18 A I couldn't tell you exactly, three, four. He
19 actually retained me before he surrendered himself, so we
20 met then. Then I did a bond reduction which an original
21 bond was 75,000. We did a bond reduction, got it reduced
22 to 40,000 he got out of jail then. We did meet at that
23 time. Before the case was getting called for trial, we had
24 received a plea offer of 20 years is what the solicitor
25 wanted from him. We also had received the video tapes of

Wayne Floyd - Direct Examination by Mr. Gourley

1 the transactions. So we met and looked through those.

2 They were going to call the distribution case first
3 because that was their most -- I guess their best video
4 tape because it had the entire transaction.

5 Q Right.

6 A And so that's the one we really focused on because
7 that was the one that was being called for trial.

8 Q Okay.

9 A And we looked through that one together.

10 Q Did you file Rule 5 and Brady motions?

11 A Yes, I did.

12 Q And did you review the discovery with Mr. Sapp?

13 A Yes, I gave him a document of the documentary
14 discovery and then we looked at the tape.

15 Q Did y'all discuss his version of the facts in the
16 case?

17 A Yeah, we discussed the case.

18 Q Okay. Did y'all discuss any possible defenses to
19 charges?

20 A Yeah, we discussed everything. The video tape was
21 going to be hard to overcome because it was a good quality.
22 The county had called SLED in. For some reason they were
23 focused on Mr. Sapp and wanted to get him and so they had
24 very good quality video tape from SLED.

25 Q Okay. Did y'all go over the elements of the

Wayne Floyd - Direct Examination by Mr. Gourley

1 charges that the State needed to meet?

2 A Yeah, we discussed what they had to prove of the
3 incident.

4 Q And can you briefly describe the evidence the State
5 had against Mr. Sapp?

6 A Well, they -- there were four buys, they were all
7 from the same confidential informant. They had video tape
8 of the buys. Some of them were not as inclusive as others,
9 as to casing everything.

10 Q Uh-huh.

11 A They had some telephone calls and they had the CI
12 prepared to testify.

13 Q Okay. Would you characterize this evidence as
14 overwhelming.

15 A Yeah -- well, I thought our chances at trial were
16 not good, yes.

17 Q Okay. Did the applicant ever give you any leads or
18 witnesses to investigate on his behalf?

19 A No, we really didn't have anything to confront it
20 with.

21 Q Okay. Did you explain or review his constitutional
22 rights with him prior to his plea?

23 A Yes.

24 Q Okay. Did he ever tell you he didn't understand
25 something or have any questions?

Wayne Floyd - Direct Examination by Mr. Gourley

1 A No, not about the case, he was -- he was always
2 concerned they were asking for more time from him than he
3 thought and then the case was moving faster than he wanted.

4 Q And you entered into plea negotiations on his
5 behalf, correct?

6 A Yes, but the State wouldn't move off the 20 years,
7 but we went in with Judge Early and we were supposed to go
8 in and talk with Judge Early and discussed that and we felt
9 that the 20 years was too much and Judge Early kind of
10 intervened and got them to consent 15 years and that's
11 where we ended up.

12 Q Did you discuss that offer with Mr. Sapp?

13 A Yes.

14 Q And did he seem to understand that discussion?

15 A I thought he did.

16 Q Did y'all discuss his eligibility for parole?

17 A Yeah, I told him it was an 85 percent situation and
18 he was looking at 12 to 13 years.

19 Q Okay. So you never promised him that he was going
20 to be getting five years?

21 A No.

22 Q And the judge advised him that was going to be 85
23 percent, correct?

24 A That's correct.

25 Q And whose decision was it to plead guilty?

Wayne Floyd - Direct Examination by Mr. Gourley

1 A Mr. Sapp's.

2 Q Did he ever -- strike that. Regarding the chain of
3 custody, were you able to look at that and research the
4 chain of custody with the drugs?

5 A Yeah, I felt they had sufficient chain of custody.

6 Q Okay. And if you had proceeded to trial, were you
7 prepared to potentially challenge that chain of custody?

8 A Sure, you always do that. You try to figure out
9 any kind of flaw in a case and attack it.

10 Q Were you concerned about the weight of the drugs?

11 A Well, the weight of the drugs, on the distribution,
12 of course, it didn't matter.

13 Q Uh-huh.

14 A It was two grams or something like that, between
15 two and three grams. On the trafficking cases, they were
16 all close, somewhere between 11 and 12 grams on each one,
17 although I thought that satisfied the weight requirement,
18 I'm not sure it mattered a lot because if we had tried all
19 the cases, even if they weren't trafficking, they would
20 have been distribution thirds, which would have been a
21 minimum of 25 years.

22 Q Okay. But you reviewed the test and the weight of
23 the drugs?

24 A Yeah.

25 Q Did you review that with an applicant?

Wayne Floyd - Cross-Examination by Mr. Thomas

1 A Yeah, we -- we had the documents from SLED with the
2 weights.

3 Q Okay.

4 MR. GOURLEY: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. GOURLEY: I have no further questions. Thank
7 you Mr. Floyd.

8 THE COURT: Thank you Mr. Gourley.

9 Mr. Thomas?

10 MR. THOMAS: Your Honor, may it please the Court.

11 CROSS EXAMINATION

12 BY MR. THOMAS:

13 Q Mr. Floyd, on the chain of custody, you looked at
14 the chain and you thought that it was sufficient?

15 A That's correct.

16 Q Okay. But it would have been your policy if this
17 had gone to trial, you would have filed a suppression
18 motion or would --

19 A Well, we would have -- that would have been part of
20 the process of the trial.

21 Q Okay. All right. How about -- talking about my
22 client, he was concerned about the weight of the bag being
23 included in the net weight of the drugs, is that something
24 that you looked into or --

25 A Well, here we're looking at that gap first because

Wayne Floyd - Cross-Examination by Mr. Thomas

1 we were going to trial first on the distribution.

2 Q Okay. So --

3 A Not the trafficking.

4 Q Yeah. How about the moisture of the drugs? Have
5 you had any experience with that in regards to -- is that a
6 reason to attempt to suppress or to reduce those weights?

7 A Well, I've never been successful in that type of
8 argument. You kind of take it whatever the weight is. I
9 agree that's unfair, the example you gave, I think would
10 have been a good illustration of it if we got some amount
11 of the drug in the mixture, the law allows them to use the
12 weight of the mixture.

13 Q Right.

14 A And you can't get into the purity --

15 Q Right.

16 A -- argument. And so I don't know if we would have
17 gotten anywhere with the moisture being part of the weight.

18 Q Yeah, but I was curious as to your experience, if
19 you had any experience with water being considered any
20 differently than baking powder or something for example
21 that would have been part of the mixture?

22 A No, I've never had that.

23 Q Okay.

24 A I've had one where the mixture itself turned
25 liquid.

Wayne Floyd - Cross-Examination by Mr. Thomas

1 Q Yeah, I've had that too.

2 A You know, through the -- but the judge still
3 allowed it anyhow.

4 Q Okay?

5 A In that case.

6 Q Does SLED require the drugs be dry? Do you know of
7 any provision or requirement that there be some sort of
8 drying process in regards to testing the drugs?

9 A Not that I know of.

10 Q Okay. All right. Now, in regards to parole
11 eligibility, it is, in fact, true that the legislature
12 passed a recent omnibus crime bill which allowed certain 85
13 percent crimes to become parole eligible?

14 A That's correct.

15 Q Okay. So in circumstances -- and I think
16 distribution second, would now be 85 percent but could be
17 parole eligible. Do you know?

18 A That's right. Now, I did not discuss the omnibus
19 crime bill with Mr. Sapp. I did not think that it applied
20 in that case.

21 Q All right. So you didn't advise him that he would
22 be parole eligible if he accepted the plea?

23 A No.

24 Q What was it -- was there a theory of defense if he
25 went to trial?

Wayne Floyd - Cross-Examination by Mr. Thomas

1 A The only thing -- the only thing -- the way we
2 could have attacked it if we'd been able to suppress the
3 evidence through some fashion because the video on the
4 distribution was pretty comprehensive. It even had another
5 sell on the tape, than the one we were going to trial on.

6 Q What was the solicitor's intent? Were they going
7 to actually try him on the distribution and if they got a
8 conviction, were they going to continue to try him?

9 A That's what they told me.

10 MR. GOURLEY: Objection.

11 THE COURT: Excuse me?

12 MR. GOURLEY: I would object to speculation.

13 THE COURT: Well, if it was part of the discussion
14 or process.

15 MR. THOMAS: And I think it's relevant, Your Honor,
16 too, as far as what his strategy would have been as regards
17 to what their intentions were in trying this case.

18 THE COURT: If Mr. Floyd knows that answer, he can
19 answer it.

20 THE WITNESS: Well, that's what they told me, we'll
21 just try him on this one --

22 BY MR. THOMAS:

23 Q And keep going?

24 A -- and keep going. Because I thought the 20 year
25 offer was harsh.

Wayne Floyd - Cross-Examination by Mr. Thomas

1 Q Yeah.

2 A And I had discussions with her about that. And I
3 thought particularly because of the volume, although there
4 technically may have been trafficking, they were just
5 barely traffickings.

6 Q Right.

7 A And I felt in areas of the state those would not be
8 considered large quantities and 20 years was a harsh
9 sentence for what they had here.

10 Q And he had no significant prior record?

11 A No, he didn't have a significant prior record. I
12 think the only general sessions might have been that
13 possession of meth charge that he had recently occurred --
14 incurred. But, yes, I really thought 15 years was a little
15 too harsh for Anthony but that was as good as it got.

16 Q Right. Did you get -- do you remember being --
17 when you were talking with him in regards to the plea, was
18 his mother present? Do you remember?

19 A Yeah. I think it was several family members or
20 friends here.

21 Q Possibly his girlfriend?

22 THE DEFENDANT: My girlfriend, cousins.

23 THE WITNESS: Yeah, there were several people here.

24 BY MR. THOMAS:

25 Q Right. And did they encourage him to accept the

Wayne Floyd - Cross-Examination by Mr. Thomas

1 plea?

2 A I think there were concerns about what might
3 happen.

4 Q He was looking at a lot of exposure?

5 A Well, even if we lost the distribution, we were
6 facing, what, five to thirty to the distribution second,
7 so, he actually could have gotten more than 15 if we'd gone
8 to trial on the one count.

9 Q Right.

10 A So I think everybody was concerned because they
11 didn't want Anthony to go away for a long, long time. And
12 15 years was a long time. So it was -- he was not in a
13 good position.

14 Q Right.

15 A And everybody understood that, I thought.

16 Q How was SLED involved?

17 A Well, according to solicitor's office, they brought
18 them in for their technological assistance. They had a
19 guy. They were wanting to get Anthony. They had a guy
20 they thought could get Anthony, a CI that could work. And
21 they brought SLED in with their technology and their
22 equipment to assist.

23 Q You think that's kind of why these numbers on these
24 substances were higher than we would normally expect?

25 A Right. I think it was, you know -- I think

Wayne Floyd - Cross-Examination by Mr. Thomas

1 Anthony's a good guy. I like Anthony. But they felt he
2 was active and they wanted to get him -- get him off the
3 street and so they made a concerted effort to do that.

4 **MR. THOMAS:** Your Honor, can I beg the Court's
5 indulgence?

6 **THE COURT:** Yes, sir.

7 **MR. THOMAS:** I just have one final question, Your
8 Honor.

9 **BY MR. THOMAS:**

10 **Q** Mr. Floyd, did -- you didn't file and admit the
11 suppression motion prior to the call of the distribution
12 case?

13 **A** No, I didn't.

14 **Q** Right. Had you filed a suppression motion prior in
15 regards, I guess, to the trafficking, you think that that
16 could have influenced the State's position in regards to
17 the distribution and/or I guess the offer? In other words,
18 if you'd filed it would you have gotten them to back off?

19 **MR. GOURLEY:** Your Honor, I would again object to
20 speculation.

21 **THE COURT:** That may be speculative. I'll agree
22 with that.

23 **MR. THOMAS:** Your Honor, I was kind of going to the
24 strategy in regards to that.

25 **THE COURT:** Well, why was there a strategy in not

1 filing the suppression motion.

2 MR. THOMAS: Well, Your Honor, I was just asking
3 the question if he had filed the motion, would that have
4 been something that he would typically do in regards to
5 trying to --

6 THE COURT: I know that answer. You can answer
7 that.

8 THE WITNESS: No, because you really -- usually, it
9 comes up at trial.

10 BY MR. THOMAS:

11 Q Okay. All right. Do you ever file a suppression
12 motion prior?

13 A I think I have done it on occasion.

14 Q Have you ever had the Court -- been able to get the
15 Court to hear them prior to trial?

16 A No, they're usually heard, you know --

17 Q When the case is called?

18 A When the case is called. You might hear it --
19 usually after you swear the jury in, but sometimes before.

20 MR. THOMAS: No further questions, Your Honor.

21 MR. GOURLEY: Nothing further, Your Honor.

22 THE COURT: Thank you. Thank you, Mr. Floyd.

23 THE WITNESS: Thank you, Judge.

24 MR. GOURLEY: We have no further witnesses.

25 THE COURT: Any reply?

1 **MR. THOMAS:** Nothing in reply.

2 Your Honor, in lieu of arguing, we would just ask
3 the Court that there was sufficient evidence presented that
4 would entitle Mr. Sapp to be granted post conviction
5 relief.

6 **THE COURT:** All right. Thirty days on proposed
7 orders? Would that be sufficient?

8 **MR. GOURLEY:** Yes, sir.

9 **THE COURT:** Thank you.

10 **MR. FLOYD:** May I be excused?

11 **THE COURT:** Yes, sir, you may be excused,
12 Mr. Floyd. Thank you very much.

13

14 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

2 County of Aiken)

Certificate of Reporter

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6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 1st day of August, 2014.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 19th day of January, 2015.

19
20
21
22 Brenda J. Sigwald

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Anthony Sapp, # 351929,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2013-CP-02-600

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 14, 2013. Respondent made its return on June 13, 2013. An evidentiary hearing into the matter was convened on August 1, 2014, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true billed indicted at the August 2012 term of the Aiken County Grand Jury for three counts of Distribution of Cocaine Base within proximity of a school (2012-GS-02-1082; -1083; -1084); three counts of Trafficking in cocaine base (2012-GS-02-1079; -1080; -1081); and Distribution of Cocaine base (2012-GS-02-1078). Wayne Floyd, Esquire, represented him. Applicant pled guilty as indicted three counts Distribution of cocaine base within proximity of a school, distribution of cocaine base- 2nd offense, one count trafficking in cocaine base- 10 grams or more, but less than 28 grams- 2nd offense and two counts of the

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9/24/14
J. P. G. S.
Deputy Clerk

lesser included offense of Trafficking in cocaine base- 10 grams or more, but less than 28 grams- 2nd offense. On August 7, 2012 the Honorable Doyet A. Early, III, sentenced Applicant pursuant to negotiations to the following sentence structure:

2012-GS-02-1084	10 years, concurrent
2012-GS-02-1083	10 years, concurrent
2012-GS-02-1082	10 years, concurrent
2012-GS-02-1081	15 years, concurrent
2012-GS-02-1080	15 years, concurrent
2012-GS-02-1079	15 years, concurrent
2012-GS-02-1078	15 years.

All sentences to run concurrently to 2012-GS-02-1078. The Applicant did not appeal his sentence or conviction.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel.
 - a. "Plea Counsel advice"
 - b. "Counsel fail to challenge and investigate"
 - c. "Counsel failed to discuss"
 - d. "Plea counsel unprepared to try my case."
 - e. Failed to file an appeal
 - f. "Errors and advice to plea guilty for me not having the true facts before me about me being eligible for parole a 3rd of my time. I would not have pled guilty and would have insisted on going to trial."
 - g. "Plea Counsel failure to challenge the indictments. I didn't see the indictments until after I was in SCDC when the clerk of court sent me a copy of the indictments. "Also my plea counsel failing to challenge the plea of a second time offender."
 - h. Plea counsel failed to prepare and adequate defense.
 - i. "Plea counsel failed to advise me that I could withdraw my plea prior to the court accepting the plea."
 - j. Counsel failed to challenge the indictments.
2. "Double Jeopardy/Multiple Counts"
 - a. "The Double Jeopardy clauses of both the State and federal constitution protect the accused in criminal proceeding from multiple punishment for the same offense....I did not get to see

my indictment until I got to the (SCDC) South Carolina Department of Corrections, when I requested a copy of my indictments from the clerk of court."

- b. "In the indictments I have 7 seven, the courts has previously recognized that South Carolina Code ann.: 17-25-50 is part of an overall legislative scheme for recidivist sentencing statute, directing trial courts to treat as one offense nay number of offenses committed at times so closely connected in point of time that they may be considered as one offense."
- 3. Involuntary guilty plea
 - a. "Plea under duress"
- 4. "Due Process"
 - a. "Possesses and understanding"
 - i. "I went to court on August 6, 2012 and August 7, 2012 at that time I did not understand what was going on. The 1st day we were going to trial, then the next thing I know we were coming back the next day.
 - b. "Abuse of discretion"
 - i. "Plea judge did error, and abuse his discretion, by refusing to let my plea counsel have more time to prepare for trial. My lawyer told the judge that he was not prepare for trial, but he made us come hack the next day for a plea."
 - c. "The audio and video that the state had was not good at all, you could not tell who was talking at times or see transactions made and my lawyer only let me just 2 dvd recordings on August 3, 2012. The State suppresses the Audio and video until the week we was going to trial."

At the PCR hearing, Applicant proceeded only on the allegations of ineffective assistance of counsel for failing to provide proper representation, failing to challenge the chain of custody, and improperly advising him of his parole eligibility.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Wayne Floyd, Esquire. (hereinafter "Plea Counsel"). This Court also had before it a copy of the guilty plea transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.



During the evidentiary hearing Applicant testified on his own behalf. Applicant stated that he turned himself into police around February 2012. Applicant stated he retained Plea Counsel to represent him. Applicant stated he was incarcerated for approximately two months prior to being released on bond. Applicant stated he spent three months out on bond prior to his plea. Applicant stated he met with Plea counsel three times. Specifically, Applicant stated he met with Plea Counsel at his bond hearing, once prior to his plea for ten minutes, and during his plea. Applicant stated he received the discovery material at his bond hearing, but he never reviewed the material with Plea Counsel. Applicant further stated he never discussed the elements of the crimes, any possible defenses, or trial strategy. However, Applicant recalled telling the plea judge that he was satisfied with Plea Counsel's services. Applicant further recalled telling the plea court that Plea Counsel had enough time to research the law, investigate the facts, and meet with Applicant prior to his plea.

Applicant stated Plea Counsel should have requested a suppression hearing because there were errors in the chain of custody regarding the drug evidence. Specifically, Applicant stated the evidence bag was not notarized or signed. Applicant stated Plea Counsel could have brought up supplemental reports and confidential informant reports during trial. Applicant stated that he was charged with multiple counts of distribution and trafficking cocaine. Applicant stated he sold the cocaine to the same confidential informant. Applicant stated that the weight of the drugs did not meet the ten gram threshold requirement to be charged with trafficking. Applicant stated that the weight calculated by South Carolina Law Enforcement Division (hereinafter "SLED") included the cocaine, water, and bag.

Applicant stated he wanted to proceed to trial and the case was called for trial on August 6, 2012. Applicant stated he was only proceeding to trial on one of the several counts of

distribution. Applicant stated he received a negotiated plea offer on August 7, 2012. Applicant stated his lawyer coerced him into accepting the plea offer by telling him that he would be eligible for parole in five years. Applicant stated he understood that a negotiated fifteen year offer meant that the plea judge would sentence him to fifteen years. Applicant stated he felt like he had no other choice because his lawyer was not prepared to proceed to trial. However, Applicant recalled telling the plea judge that no one was promising him or coercing him in an effort to get him to plead guilty. Applicant further recalled the plea judge advising him that this was a violent offense and he would be required to serve eighty-five percent of his sentence.

Applicant concluded that his plea was freely and voluntarily but not intelligently entered into. Applicant stated he would not have plead guilty had he known he was not going to be parole eligible after five years. Applicant further stated that he did not feel he was guilty of trafficking, but was guilty of distribution. Applicant recalled telling the plea judge that he wanted to plead guilty and was guilty of all the charges. Applicant further recalled waiving his constitutional rights.

Following Applicant's testimony, Annabelle Kenya (hereinafter "Kenya") was called to testify. Kenya stated she was Applicant's mother. Kenya stated she was present during Applicant's meeting with Plea Counsel. Kenya stated she was concerned about Applicant proceeding to trial. Kenya stated Plea Counsel told Applicant that he would be eligible for parole after five years. Kenya stated that knowing Applicant would receive fifteen years and be eligible for parole after five years was the deciding factor for Applicant to plead. Kenya stated she was present for both the start of trial and plea.

Following Kenya's testimony, Plea Counsel was called to testify. Plea Counsel testified that he has been practicing law for approximately forty years. Plea Counsel testified that he was



retained in the case. Plea Counsel testified that he met with Applicant three or four times prior to his plea. Plea Counsel stated Applicant was out on bond. Plea Counsel stated he filed Rule 5 and Brady motions. Plea Counsel stated he reviewed all discovery material with Applicant. Plea Counsel stated they discussed Applicant's version of facts. Plea Counsel stated that he reviewed the elements of the charges with Applicant prior to his plea. Plea Counsel stated Applicant did not give him any leads or witnesses to investigate on his behalf.

Plea Counsel recalled reviewing Applicant's constitutional rights prior to his plea. Plea Counsel stated the State offered twenty years initially, but they were able to agree on fifteen years. Plea Counsel stated he discussed the plea offer with Applicant and he wanted to accept the offer. Plea Counsel stated he told Applicant that he was going to be required to serve eighty-five percent of the sentence. Plea Counsel stated that he did not tell him that he was going to serve only five years. Plea Counsel stated it was Applicant's decision to plead guilty. Plea Counsel stated Applicant's mother and several family members were present during the plea.

Plea Counsel stated he felt there was a sufficient chain of custody, but he was prepared to challenge it if they proceeded to trial. Plea Counsel stated his trial strategy would have been to attempt to suppress the evidence in some fashion. Plea Counsel stated it was his policy to file a suppression motion and characterized the suppression motion as a "process of trial." Plea Counsel stated he did not file a written suppression motion and that typically a suppression motion would have been heard at the start of trial.

Plea Counsel stated he has argued that moisture being part of the weight; however he has not been successful in his argument. Plea Counsel stated Applicant was charged with trafficking ten grams or more of cocaine and the weight was around eleven or twelve grams. Plea Counsel stated the weight of the cocaine satisfied the minimum requirement for the charges Applicant

faced. Plea Counsel stated he reviewed the test and weight of drugs with Applicant prior to his plea.

Plea Counsel stated it was the Solicitor's intent to try Applicant on each charge separately. Plea Counsel stated Applicant had very few defenses as the evidence against him was "overwhelming." Specifically, Plea Counsel explained that SLED came to Aiken to conduct surveillance and set up the buys from Applicant. Plea Counsel stated there were four separate buys from a confidential informant. Plea Counsel stated all four buys were recorded both by video and audio. In addition to the audio and videos, Plea Counsel stated the State had telephone records linking Applicant to the buys. Plea Counsel further stated the confidential informant was prepared to testify against Applicant if they proceeded to trial.

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. Specifically, this Court finds Counsel's testimony credible and Applicant's testimony not credible. Additionally, this Court finds Applicant's family member's (Kenya's) testimony self-serving and not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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, 88 L.Ed. 2d 203 (1985). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

Plea Counsel failed to provide effective representation.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to provide proper representation and investigate to be without merit. Plea Counsel testified that he met with Applicant three or four times prior to his plea. Plea Counsel stated

Applicant was out on bond. Plea Counsel he filed Rule 5 and Brady motions. Plea Counsel stated he reviewed all discovery material with Applicant. Plea Counsel stated they discussed Applicant's version of facts. Plea Counsel stated that he reviewed the elements of the charges with Applicant prior to his plea. Plea Counsel stated Applicant did not give him any leads or witnesses to investigate on his behalf.

Plea Counsel recalled reviewing Applicant's constitutional rights prior to his plea. Plea Counsel stated the State offered twenty years initially, but they were able to agree on fifteen years. Plea Counsel stated he discussed the plea offer with Applicant and he wanted to accept the offer. Plea Counsel stated he told Applicant that he was going to be required to serve eighty-five percent of the sentence. Plea Counsel stated that he did not tell him that he was going to serve only five years. Plea Counsel stated it was Applicant's decision to plead guilty.

This Court notes that the plea transcript reflects Applicant stating he was fully satisfied with Plea Counsel's services and Plea Counsel had enough time to research, investigate the facts, and meet with the Applicant prior to his plea. (Pl. tr. p. 10--11). This Court finds Applicant's testimony not credible. Furthermore, this Court finds Plea Counsel's representation of Applicant well within the bounds of "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Additionally, this Court finds Applicant can show no prejudice as a result of Plea Counsel's alleged deficiencies. This Court agrees with Plea Counsel's testimony that the evidence against Applicant was overwhelming. Applicant was captured both on video and audio selling cocaine to a confidential informant on four separate occasions. Plea Counsel further stated the State was prepared to present testimony for the confidential informants used in the buys. Additionally, Applicant stated he did not dispute that he was guilty of distribution. Where



there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after Plea Counsel's competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

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 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 Plea Counsel's performance.

The Court concludes the Applicant has not met his burden of proving Plea 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.

Plea Counsel was ineffective for failing to file a suppression motion.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to challenge the chain of custody to be without merit. Plea Counsel stated he felt there was a sufficient chain of custody, but he was prepared to challenge it if they proceeded to trial. Plea Counsel stated his trial strategy would have been to attempt to suppress the evidence in some

fashion. Plea Counsel stated it was his policy to file a suppression motion and characterized the motion as a "process of trial." Plea Counsel stated he did not file a written suppression motion and that typically a suppression motion would have been heard at the start of trial had Applicant not pled guilty. However, Plea Counsel stated that he did not see any basis to suppress the evidence. 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 that Applicant has not shown that Plea Counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Additionally, this Court finds Applicant can show no prejudice as a result of Plea Counsel's alleged deficiencies. This Court agrees with Plea Counsel's testimony that the evidence against Applicant was overwhelming. Applicant was captured both on video and audio selling cocaine to a confidential informant on four separate occasions. Plea Counsel further stated the State was prepared to present testimony for the confidential informants used in the buys. Additionally, Applicant stated he did not dispute that he was guilty of distribution. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance

could have reasonably affected the result of defendant's trial). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after Plea Counsel's competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

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 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 Plea Counsel's performance.

The Court concludes the Applicant has not met his burden of proving Plea 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.

Plea Counsel was ineffective for advising improperly advising Applicant regarding parole eligibility.

This Court finds Applicant's allegation that Plea Counsel was ineffective for misadvising him about his parole eligibility to be without merit. Parole eligibility has been held to be a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). However, if the defendant's attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice, then the plea may be collaterally attacked. See Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989). In the instant case, Applicant alleges that Plea Counsel told him he



would be eligible for parole in five years. However, Plea Counsel stated he did not tell him that he would be eligible for parole in five years. To the contrary, Plea Counsel stated he told Applicant that he was going to be required to serve eighty-five percent of the sentence. This Court finds Plea Counsel's testimony credible, while Applicant's testimony not credible. Additionally, the plea transcript reveals Applicant was advised by the plea court that he would be required to serve eighty-five percent of his sentence. This Court finds that Applicant has not shown that Plea Counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

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 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 Plea Counsel's performance.

The Court concludes the Applicant has not met his burden of proving Plea 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 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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 this 12th day of Sept, 2014.


 R. KNOX MCMAHON
 Presiding Judge
 Second Judicial Circuit

 South Carolina

WITNESSES

Aiken County Sheriff

Sean Zeigler

Law Enforcement Case #: 11-052594

DOCKET NO. 2012GS0201083

The State of South Carolina

County of Aiken

BAY

ARREST WARRANT NUMBER

M030257

FILED

Step 2
L. J. Gaddis
CC, P. & GS

James Thompson
Deputy Clerk

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

THE STATE
vs.

ANTHONY SALIK SAPP
A.K.A. "SAPP"

ACTION OF GRAND JURY

True B:11

Wesley Eastman
Foreperson of Grand Jury
Date: August 2, 2012

VERDICT

CDR #: 0107

Indictment for

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE) WITHIN PROXIMITY
OF A SCHOOL

§ 44-53-0445(A)

Foreperson of Petit Jury
Date:

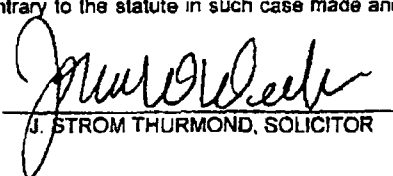
J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF AIKEN) DISTRIBUTION OF COCAINE BASE (CRACK
) COCAINE) WITHIN PROXIMITY OF A SCHOOL
)
 § 44-53-0445(A)

At a Court of General Sessions, convened on August 6, 2012, the Grand Jurors of Aiken County present upon their oath:

That **ANTHONY SALIK SAPP, A.K.A. "SAPP"**, did in Aiken County on or about August 17, 2011, knowingly or intentionally distribute Cocaine Base (Crack Cocaine), a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, while in, on, or within a one-half mile radius of the grounds of a public secondary school, to wit: Ridge Spring Monetta High School, such distribution not having been authorized by law.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Phillip Anders

Law Enforcement Case #: 11-050972

DOCKET NO. 2012GS0201082

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

**THE STATE
vs.**

**ANTHONY SALIK SAPP
A.K.A. "SAPP"**

ARREST WARRANT NUMBER

MO30252

Aug 2, 12
L. J. Hodard
D.C.P. & G.S.
J. Strom Thurmond
Deputy Clerk

ACTION OF GRAND JURY

True 13:11

W. E. Eubank
Foreperson of Grand Jury
Date: August 2, 2012

VERDICT

Foreperson of Petit Jury
Date:

CDR #: 0107

Indictment for

**DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE) WITHIN PROXIMITY
OF A SCHOOL**

§ 44-53-0445(A)

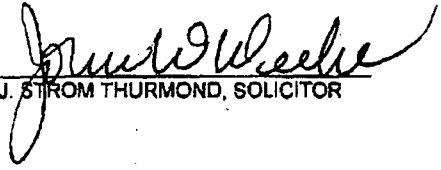
J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE) WITHIN PROXIMITY OF A SCHOOL
§ 44-53-0445(A)

At a Court of General Sessions, convened on August 6, 2012, the Grand Jurors of Aiken County present upon their oath:

That ANTHONY SALIK SAPP, A.K.A. "SAPP", did in Aiken County on or about August 11, 2011, knowingly or intentionally distribute Cocaine Base (Crack Cocaine), a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, while in, on, or within a one-half mile radius of the grounds of a public secondary school, to wit: Ridge Spring Monetta High School, such distribution not having been authorized by law.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

State Law Enforcement Division

Todd Strange

Law Enforcement Case #: 78-110171

BAY

ARREST WARRANT NUMBER

M030255

FILED

Aug 2 2012
Lij Hodard
D.C.P. & G.S.

Thompson Thompson
Deputy Clerk

ACTION OF GRAND JURY

True B:11

Wesley Eubank

Foreperson of Grand Jury
Date: August 2, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0201081

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

THE STATE
vs.

ANTHONY SALIK SAPP
A.K.A. "SAPP"

CDR #: 0452

Indictment for

TRAFFICKING IN COCAINE BASE
(CRACK COCAINE)

§ 44-53-0375(C)(1)(c)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
TRAFFICKING IN COCAINE BASE (CRACK
COCAINE)

§ 44-53-0375(C)(1)(c)

At a Court of General Sessions, convened on August 6, 2012, the Grand Jurors of Aiken County present upon their oath:

That **ANTHONY SALIK SAPP, A.K.A. "SAPP"**, did in Aiken County on or about September 23, 2011, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly, actually or constructively possess, or did knowingly attempt to become in actual or constructive possession of at least 10 grams but less than 28 grams of Cocaine Base (Crack Cocaine), a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

State Law Enforcement Division

Todd Strange

Law Enforcement Case #: 78-110171

DOCKET NO. 2012GS0201080

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

ARREST WARRANT NUMBER

M030253

FILED: Aug 2 4 12

L. J. Haddad
C.C.P. & G.S.

J. Strom Thurmond
Solicitor General

THE STATE
vs.

ANTHONY SALIK SAPP
A.K.A. "SAPP"

ACTION OF GRAND JURY

True Bill

Wesley Edwards
Foreperson of Grand Jury
Date: August 2, 2012

VERDICT

Foreperson of Petit Jury
Date:

CDR #: 0452

Indictment for

TRAFFICKING IN COCAINE BASE
(CRACK COCAINE)

§ 44-53-0375(C)(1)(c)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

INDICTMENT FOR
TRAFFICKING IN COCAINE BASE (CRACK
COCAINE)

§ 44-53-0375(C)(1)(c)

At a Court of General Sessions, convened on August 6, 2012, the Grand Jurors of Aiken County present upon their oath:

That ANTHONY SALIK SAPP, A.K.A. "SAPP", did in Aiken County on or about September 15, 2011, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly, actually or constructively possess, or did knowingly attempt to become in actual or constructive possession of at least 10 grams but less than 28 grams of Cocaine Base (Crack Cocaine), a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

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

John W. Beck
J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Phillip Anders

Law Enforcement Case #: 11-050972

DOCKET NO. 2012GS0201079

The State of South Carolina

County of Aiken

BAY

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

M030251

AUGUST TERM 2012

**THE STATE
vs.**

**ANTHONY SALIK SAPP
A.K.A. "SAPP"**

ACTION OF GRAND JURY

True Bill

Wesley Eubank
Foreperson of Grand Jury
Date: August 2, 2012

VERDICT

CDR #: 0451

Indictment for

**TRAFFICKING IN COCAINE BASE
(CRACK COCAINE)**

§ 44-53-0375(C)(1)(b)

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

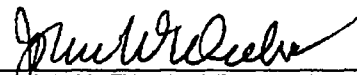
INDICTMENT FOR
TRAFFICKING IN COCAINE BASE (CRACK
COCAINE)

§ 44-53-0375(C)(1)(b)

At a Court of General Sessions, convened on August 6, 2012, the Grand Jurors of Aiken County present upon their oath:

That ANTHONY SALIK SAPP, A.K.A. "SAPP", did in Aiken County on or about August 11, 2011, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly, actually or constructively possess, or did knowingly attempt to become in actual or constructive possession of at least 10 grams but less than 28 grams of Cocaine Base (Crack Cocaine), a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

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


STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Sean Zeigler

Law Enforcement Case #: 11-052594

DOCKET NO. 2012GS0201078

The State of South Carolina

County of Aiken

BAY

ARREST WARRANT NUMBER

M030256

FIFTH

Aug 2 12
L. J. Hodard
S.C.C.P. & G.S.

Spencer Thompson
Deputy Clerk

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

THE STATE
vs.

ANTHONY SALIK SAPP
A.K.A. "SAPP"

ACTION OF GRAND JURY

True B:11

W. L. E. E. E.
Foreperson of Grand Jury
Date: August 2, 2012

VERDICT

CDR #: 3015

Indictment for

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)

§ 44-53-0375(B)(2)

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE)
§ 44-53-0375(B)(2)

At a Court of General Sessions, convened on August 6, 2012, the Grand Jurors of Aiken County present upon their oath:

That ANTHONY SALIK SAPP, A.K.A. "SAPP", did in Aiken County on or about August 17, 2011, knowingly or intentionally distribute to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance under provisions of §44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such distribution not having been authorized by law.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

State Law Enforcement Division

Todd Strange

Law Enforcement Case #: 78-110171

BAY

ARREST WARRANT NUMBER

M030254

Aug 2 12
L. J. Goodland
S.C.P. & G.S. (2)
Spencer Thompson
County Clerk

ACTION OF GRAND JURY

True B:11

Wesley E. Carter
Foreperson of Grand Jury
Date: August 2, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0201084

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

**THE STATE
vs.**

**Anthony Salik Sapp
A.K.A. "SAPP"**

CDR #: 0107

Indictment for

**DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE) WITHIN PROXIMITY
OF A SCHOOL**

§ 44-53-0445(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE) WITHIN PROXIMITY OF A SCHOOL
§ 44-53-0445(A)

At a Court of General Sessions, convened on August 6, 2012, the Grand Jurors of Aiken County present upon their oath:

That ANTHONY SALIK SAPP, A.K.A. "SAPP", did in Aiken County on or about September 15, 2011, knowingly or intentionally distribute Cocaine Base (Crack Cocaine), a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, while in, on, or within a one-half mile radius of the grounds of a public secondary school, to wit: Ridge Spring Monetta High School, such distribution not having been authorized by law.

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

J. STROM THURMOND, SOLICITOR