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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
R. Keith Kelly, Circuit Court Judge

JEREL WORTHY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000055

APPENDIX

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1 THE COURT: Ms. Jordan, I believe you have a list of
2 those who are here to offer guilty pleas this morning, if
3 you'll call their names. When your name is called, please
4 stand and remain standing.

5 MS. JORDAN: Thank Your Honor. Lanita Anderson (stood),
6 Eric Davidson (stood), Thomas Davis (stood), Ricky Gilstrap
7 (stood), Donald Hunt (stood), Malcolm Martin (stood), Patrick
8 Monaghan (stood), Lacey Myles (stood), Richard Silvers
9 (stood), Larry Thomas Taylor (stood), Demetrius Wilkins
10 (stood) and Jerel Worthy (stood). Your Honor, everyone's
11 represented by the public defender's office with the exception
12 of Mr. Worthy, he's *pro se*.

13 THE COURT: Alright, thank you very much. I'd ask that
14 the clerk please swear the defendants that are standing.

15 THE CLERK: Yes, sir.

16 (Whereupon, the defendants were sworn.)

17 THE COURT: Thank you, you can be seated. Now if any of
18 you either failed or refused to take the oath that was just
19 administered by the clerk, I'd ask that you now please stand.

20 (No response.)

21 THE COURT: Alright, the Court record then will reflect
22 that all defendants have been sworn for purposes of my
23 discussion with you at this time. Now at this time I'm not
24 going to ask for your plea in this case, my understanding is
25 that you're here to offer either a guilty plea or a no contest

1 plea in your case. What I am going to do is to go over
2 matters that would be common to all of your cases should you
3 later on decide to offer a guilty plea. Now you have a right
4 to discuss anything I ask you with your attorney, so if at
5 any -- if you're represented, I understand one of you is not,
6 if you would like to discuss anything that I've asked you with
7 your attorney before you respond to me, please let me know,
8 I'll be happy to allow you to do so. Again, you have every
9 right to discuss anything with your attorney before you
10 respond to any inquiry by this court. Also, I'm going to tell
11 you I've not seen the paperwork in your cases yet. Later on
12 we'll call your name individually, you'll come in front of the
13 Court and at that time I'll be given the documents and papers
14 that are involved in your case, for that reason I do not know
15 whether or not your case has gone to the grand jury at this
16 time. I will advise you that under the Constitution you have
17 a right to have a grand jury consider your case before it
18 comes to this court for either a trial or a plea. I cannot
19 take up your case unless the grand jury has issued what is
20 called a "true bill" in your case or you are willing to waive
21 or give up that step in the process. Now the grand jury
22 doesn't determine your guilt or innocence, they decide whether
23 the State has enough evidence to justify the case moving
24 forward to this court for conducting of a trial or a plea.
25 Neither you or your lawyer's allowed to be present at grand

1 jury proceedings, they are conducted in secret, so when you
2 come in front of me I'll check your indictments if they've
3 already been true billed by the grand jury and it's properly
4 before the Court. If it has not yet gone to the grand jury,
5 you and I will discuss whether or not you wish to proceed
6 today by giving up your right to have the grand jury consider
7 your case.

8 Now I'm going to ask you a series of questions, I'll ask
9 that you stand if you have a response, I'll need to get your
10 name on the record before I discuss your response with me.
11 The first question I have: Do any of you currently suffer from
12 any mental, physical, nervous conditions, any problems or
13 difficulties that would affect your abilities to make
14 decisions today or to be able to handle a plea today, if
15 that's true please stand.

16 (No response.)

17 THE COURT: Now if any of you have taken or used any
18 drugs, medicines or other substances that would somehow affect
19 your ability to reason or to make good decisions today, I'd
20 ask that you now please stand.

21 (No response.)

22 THE COURT: Now if anyone has threatened you, coerced
23 you, put pressure on you, tried to intimidate you or done
24 anything else to try to force you or make you offer a plea
25 today, please stand.

1 (No response.)

2 THE COURT: Your plea must be offered freely and
3 voluntarily, that means it's something you've thought about
4 and you've made a decision that that's the best way to proceed
5 in your case and you've done that independently and freely.
6 Now if any of you were to be brought in front of me today to
7 offer a plea, if somehow it would be your belief that that's
8 something that you didn't want to do or something that would
9 be done against your wishes, please stand.

10 (No response.)

11 THE COURT: If any of you feel that you've not had enough
12 time in which to think about your case or prepare a defense to
13 the charges that are before this court, please stand.

14 (No response.)

15 THE COURT: If anyone has made any promises, guarantees
16 or assurances to you about anything in connection with your
17 plea today including but not limited to such things as pardon,
18 parole, probation, early release or length of sentence, please
19 stand.

20 (No response.)

21 THE COURT: Now I'm going to go over your constitutional
22 rights with you, I will tell that when you plead guilty or
23 plead no contest you are waiving or giving up most of your
24 constitutional rights. I have to be sure that you've done
25 that knowingly and intelligently; in other words, you know

1 what your rights are and you've made an intelligent decision
2 to proceed with a plea in spite of the fact that you have to
3 give up those rights as they relate to the charges that are
4 before the Court. Now once I finish going over your
5 constitutional rights with you I will give you an opportunity
6 to ask any questions about them, I wanna be sure you
7 understand these rights.

8 First of all, I've already explained under the
9 Constitution you have a right to have your case considered by
10 the grand jury, we'll talk about that when I see your
11 indictments. You have a right to to your attorney's
12 representation and your attorney is available and is a --
13 is -- will be available to you throughout this proceeding if
14 you are represented. You have a right to a trial by a jury.
15 At the trial you would be presumed to be innocent until and
16 unless the State proved your guilt beyond a reasonable doubt,
17 for that reason the State has the only burden of proving
18 anything in a trial, a defendant is not required to prove
19 anything since the the defendant is presumed to be innocent.
20 At the trial and under the Constitution you'd have the right
21 to have the clerk issue subpoenas to witnesses to require that
22 they attend the hearings, you would have the right, excuse me,
23 to confront or question anyone who might testify during the
24 hearings. At the trial you'd have the right to present all
25 the defenses that you have to the charges that are before the

1 Court and you'd be given the opportunity to challenge under
2 the Constitution any evidence that the State may have against
3 you and that includes statements that you might have
4 previously made. At all times during your criminal proceeding
5 you have the right to remain silent. If you chose to remain
6 silent during a trial, the judge conducting the trial is
7 required to instruct the jury that your silence cannot be used
8 against you, those are your rights under the Constitution. If
9 you do not understand those rights I explained, please stand.

10 (No response.)

11 THE COURT: If you have any questions about those rights,
12 please stand.

13 (No response.)

14 THE COURT: It appears that you understand your rights so
15 I will explain that if you plead guilty or plead no contest
16 you give up all of those rights as they relate to the charges
17 that are before the Court except the right of having your
18 lawyer represent you. Now if any of -- if there's any other
19 rights that you would be giving up in connection with a plea
20 today that you do not wish to give up in connection with a
21 plea, please stand.

22 (No response.)

23 THE COURT: I will advise each of you that you have ten
24 days from the date that you enter a plea and receive a
25 sentence in which to file an appeal of that plea. Also, when

1 you come in front of me later on, the the oath that you've
2 taken to tell the truth will apply to that cons --
3 conversation as well. Also, I will explain if the State has
4 made -- is making a recommendation to this court concerning
5 your sentencing, it is a recommendation. I am not required to
6 follow recommendations, I will consider them, however I have
7 the right under the law to sentence anyone up to the maximum
8 allowed by the law for that particular crime. Alright, I'll
9 declare that these defendants are qualified to proceed with a
10 plea if they choose to do so. State may call the first case.

11 MR. SPIVEY: Your Honor, ---

12 (Whereupon, a discussion was held off the record.)

13 MR. SPIVEY: Alright. You Honor, Mr. Worthy is *pro se*
14 this mornin'. He is here on Indictment 2010-GS-42-6279, it's
15 for possession of cocaine base. Your Honor, it would be the
16 third offense, he's pleading with no recommendation to a first
17 offense.

18 EXAMINATION BY THE COURT:

19 Q. Alright, you are Jerel Lamar Worthy, is that correct,
20 sir?

21 A. Yes, sir.

22 Q. Now, Mr. Worthy, you're appearing in front of me today
23 without a lawyer, you have the constitutional right to have a
24 lawyer if you choose to have one, do you understand that?

25 A. Yes, sir.

1 Q. Alright, sir, and are you asking that you be allowed to
2 proceed today without an attorney?
3 A. Yes, sir. yes, sir.
4 Q. Now if at any time during this process, Mr. Worthy, you
5 change your mind and feel that you need an attorney, I'm going
6 to ask that you let me know that, will you do that, sir?
7 A. Yes, sir.
8 Q. Alright, now have you ever been in court before when you
9 were represented by a lawyer?
10 A. Yes, sir.
11 Q. So do you understand the kinds of things that lawyers do
12 to help people in your situation?
13 A. Yes, sir.
14 Q. So I don't need to explain all that to you, do I?
15 A. No, sir.
16 Q. How old are ya, Mr. Worthy?
17 A. Forty.
18 Q. And how far did you go in school?
19 A. To eleventh grade.
20 Q. Did you ever get a GED?
21 A. No, sir.
22 Q. Are you married?
23 A. No, sir.
24 Q. Do you have children?
25 A. Yes, sir.

1 Q. How many?

2 A. Five.

3 Q. And what ages are they?

4 A. Twenty-four, 23, 20, 19 and 7.

5 Q. How many of those live at your home?

6 A. None.

7 Q. Do you have a job on the outside, Mr. Worthy?

8 A. Yes, sir.

9 Q. What is your job?

10 A. I do landscapin' and painting.

11 Q. For who?

12 A. For Johnson -- John -- well he just self-employed and he
13 just let me work with him.

14 Q. Okay, who is that?

15 A. Mr. Johnson, he a good friend of the family's.

16 Q. Mr. Johnson, okay. I see the probation officer standing,
17 is the gentleman on probation as well?

18 AGENT MANIGAN: Yes, Your Honor.

19 THE COURT: Alright, tell me about his probation please,
20 Ms. Manigan.

21 AGENT MANIGAN: Your Honor, Mr. Worthy was sentenced
22 before Judge Cole on February the 1st of 2010 for the offense
23 of distribution of crack within a half a mile of a school ---

24 THE COURT: Um-hum.

25 AGENT MANIGAN: --- and he received a sentence of 15

1 years suspended to 5 years probation. He also had the special
 2 conditions of attend and complete substance abuse treatment,
 3 pay fine and fees as instructed, random drug testing, attend
 4 Vocation Rehabilitation and a hundred hours of public service.
 5 Your Honor, ---

6 THE COURT: Had he completed any a those requirements
 7 before he got arrested again?

8 AGENT MANIGAN: Uh, the public service he's been
 9 terminated from for four times. He's never completed public
 10 service, Your Honor, and I was lookin' in the file to check on
 11 the substance abuse counseling.

12 THE COURT: Um-hum.

13 AGENT MANIGAN: I don't see anything that says he
 14 complete it. He has prior violations on the case, Your Honor.

15 THE COURT: Yes, ma'am.

16 AGENT MANIGAN: On March the 6th of 2011, they did a
 17 paperwork review to address the arrears, the public service
 18 employment and they ordered that the defendant be continued on
 19 probation and that he follow through with the Voc Rehab
 20 recommendation and they converted fees of \$575 to a hundred
 21 and fifteen hours of public service to help him with his
 22 financial obligation. Your Honor, he was supposed to have a
 23 hearin' on March the 23rd of this year ---

24 THE COURT: Yes, ma'am.

25 AGENT MANIGAN: --- and, Your Honor, he did not have that

1 hearing because he tested positive for THC and Judge Cooper
2 took him into contempt, had contempt charge and so that's,
3 think that's why he's still in jail today because he's serving
4 that contempt and the violations on that was failin' to pay
5 supervision fee, failin' to pay a fine, failin' to pay drug
6 test fee, failin' to complete public service and failed to
7 follow advice and instructions of the agent.

8 THE COURT: Now this plea would it be a violation of his
9 current probation?

10 AGENT MANIGAN: Yes, Your Honor, the date is a violation.

11 THE COURT: Thank you.

12 EXAMINATION BY THE COURT:

13 Q. Mr. Worthy, are you aware that you're a probation
14 probationer in this matter?

15 A. Yes, sir.

16 Q. Are you also aware that if you plead guilty to this
17 charge that would be a violation of your probation?

18 A. Yes, sir.

19 Q. And are you asking me to go forward both on this charge
20 and the probation matter today?

21 A. Yes, sir.

22 Q. And you understand that you would not be represented by
23 counsel on either of those, do you understand that?

24 A. Yeah.

25 Q. Alright. Now the charge that you face is possession of

1 cocaine base first, that carries up to 3 years in prison and/
2 or a fine, it's a drug offense and could be used in the future
3 to make future drug offenses the sentences more severe, do you
4 understand that, sir?

5 A. Yes, sir.

6 Q. Now the State, the the State has presented this to the
7 grand jury and the grand jury has issued a true bill so it's
8 properly before the Court. The State's not making any
9 recommendations on sentencing so I would have the right to
10 sentence you up to 3 years and/or a fine of up to \$5,000, I
11 could run that consecutive to the probation revocation, I
12 believe I heard that Judge Cole had put put you under an
13 original sentence of up to 15 years, you understand that,
14 sir?

15 A. Yes, sir.

16 Q. Alright. Now as to the charge that's before me today,
17 how do you plead?

18 A. Guilty.

19 Q. Alright. Now I'm I'm seeing that you're 40 years of age
20 and I've gone over your situation as far as your education and
21 that sort of thing, do you still feel that you're able to
22 handle this plea yourself, Mr. Worthy?

23 A. Yes, sir.

24 Q. Alright. I'm gonna ask the solicitor to go over the
25 facts in your case, if you'll listen to what he says then I

1 I'll be asking you about that. Mr. Spivey.

2 MR. SPIVEY: Thank you, Your Honor. On March 1st 2010
3 Spartanburg Public Safety Department pulled the defendant over
4 for a a violation of tag light, there was no working tag light
5 on the car.

6 THE COURT: Um-hum.

7 MR. SPIVEY: Defendant was actually a passenger in the
8 car, the driver was gentleman named Willie Barber. Defendant
9 would being a passenger it appeared he was extremely nervous
10 to the officer and he refused to to remain in the car when
11 instructed to do so by the officer. The officer walked around
12 to that side a the car and could see what appeared to be crack
13 cocaine in the floor board of the car. The officer then got
14 some of the substance and it tested positive for crack cocaine
15 and it weighed .19 grams.

16 EXAMINATION BY THE COURT:

17 Q. Mr. Worthy, did you hear what the solicitor told me?

18 A. Yes, sir.

19 Q. Is that what happened?

20 A. Yes, sir.

21 Q. Now have you told me the truth today?

22 A. Yes, sir.

23 Q. Did anyone tell ya how to answer the questions that I've
24 asked?

25 A. No, sir.

1 Q. So the answers you've given me have been your own
2 answers, is that correct?

3 A. Yes, sir.

4 Q. Is there any part of what we discussed now or when you're
5 in the box that you'd like to con -- reconsider what you've
6 told me?

7 A. Oh, no, sir.

8 Q. So if I were to ask those same questions again, would I
9 get the same answers verbally at this time?

10 A. Yes, sir.

11 Q. Alright. I'm gonna find that the plea is freely and
12 voluntarily given, the defendant is aware of the charges, he's
13 aware of his probationary status and he has knowingly and
14 intelligently waived his right to counsel and there's a
15 factual basis for Mr. Worthy to offer this plea. At this
16 time, Mr. Worthy, I'll be happy to hear from you if you'd like
17 to talk with me about this situation, you have the right to do
18 so.

19 A. Okay, I I pled guilty to the charge which the solicitor
20 read out but with probation I ain't know I had all that, like,
21 you know, some a the things she read. I I didn't know I
22 didn't finish payin', I didn't finish my community service and
23 I didn't finish payin' what I owed 'em.

24 Q. You don't re -- you didn't remember ---

25 A. I didn't know that I had ---

1 Q. --- not finishin' -- wait a second. You didn't re --
2 remember not finishing drug counseling?

3 A. I didn't know -- I had never started drug counselin'. I
4 didn't never know that I had ---

5 Q. So you hadn't ---

6 A. --- dru ---

7 Q. --- do you, do you -- well that woulda been announced to
8 ya when Judge Cole gave ya your sentence.

9 A. I didn't know that I had drug counselin'. I didn't even,
10 I I never -- that's somethin' I never knew.

11 Q. This time when I announce my sentence you listen because
12 I'll announce everything that I give ya.

13 A. Okay.

14 Q. I'm sure Judge Cole did the same thing. He's been doin'
15 this a long time, I would suspect he did that.

16 A. Okay, but -- alright. Well well I didn't, I had -- well
17 I didn't understand I had to go to, you know, drug counselin'
18 or rehab or whatever but I knew I didn't finish payin' the
19 money ---

20 Q. How 'bout that community service? Are you aware you
21 didn't finish that too?

22 A. And I -- the reason why I didn't finish that because at
23 the time my grandmother got terribly ill and like she was
24 losin' her sight and I had to, I was really at home with her a
25 lot and my friend girl was diagnosed with cancer so it kinda

1 just, I was basic was in the house a lot, that my grandmother
2 and and girlfriend she was sick so I really couldn't do
3 nothin', I was just tryin' to make it out to them and she just
4 got outta the hospital just just Friday for same thing that we
5 talkin' about now 'cuz when she, when she was diagnosed with
6 it, she had -- she was late in the stages and she then didn't
7 know till it was real late so I've had to kinda stay home and
8 watch after my grandmother ---

9 Q. Well where was she the night you were ridin' around in
10 car with cocaine in it?

11 A. She was, most likely she was at home with my
12 grandmother ---

13 Q. Um-hum. Okay.

14 A. --- and and that was it, sir. I mean, I know I, know I
15 made a mistake and everything but I was just with the wrong
16 people at wrong time.

17 Q. Um-hum.

18 A. Sorry.

19 THE COURT: Prior record?

20 MR. SPIVEY: Your Honor, 1991 domestic violence; '93
21 shoplifting; '94 possession a drug paraphernalia, possession
22 with intent to distribute crack, '94 drug paraphernalia,
23 trespassing second; '95 trespass, '95 failure to comply, '95
24 possession with intent to distribute crack; 2002 entry on
25 another's land; 2003 trespass; 2004 possession with intent to

1 distribute near a school and 2010 a half mile possession of
2 crack with intent to distribute near a school.

3 (Pause.)

4 THE COURT: Mr. Worthy, it appears that you did not
5 cooperate with your probation before your violation and this
6 particular offense is a violation of your probation as well,
7 for that reason I'm going to revoke your probation in full,
8 I'm ordering that you serve on this charge 3 years, I'll run
9 it concurrent with the probation revocation. I have
10 recommended, however, that you go to the Addiction Treatment
11 Unit while you're incarcerated, obviously you've got a very
12 serious drug problem and that that needs to be dealt with so
13 that'll give us an opportunity to help you to address that.
14 Good luck to ya, sir.

15 MR. SPIVEY: Thank Your Honor.

16

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CERTIFICATE OF REPORTER

1
2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on May 14, 2012 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 2 through 18, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

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

13 May 11, 2013

14
15 

16 Margaret A. Woods, Court Reporter

17 in and for the State of South Carolina at Large.
18
19
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF Spartanburg S.C.)
)
 Jewel Worthy # 302465)
)
Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

2013-CP-42-1234

v.)
)
State of South Carolina)

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 J.W. ~~Spartanburg~~ South Carolina Dept. of Corrections (SCDC)
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004GS4203301A
 - (b) 2003GS4203300 ✓
 - (c) 2000-10* 2010GS4206279
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) DATE: Indictment 2010 - May 14, 2012
 - (b) 6/2/2004 - (B)

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CLERK OF COURT
SPARTANBURG COUNTY
MAR 12 PM 3:29
JEWEL WORTHY

See Attachments for Terms of Sentence.

(c) 2004GS4203301A (6/2/2004)

6. Check whether a finding of guilty was made:

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

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

NO.

8. If you answered "yes" to (7), list: N/A

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

- i.
- ii.
- iii.

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

- i.
- ii.
- iii.

(c) the date of each such result:

- i.
- ii.
- iii.

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

results: N/A

- i.
- ii.
- iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) My Attorney said Appeals would
- (b) Be Futile or waste of
- (c) Time regarding Original Sentence.

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

custody unlawfully: Judge (Court) Lacked Jurisdiction To Revoke My Probationary Sentence

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 SPARTANBURG COUNTY
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 M. HUGHES BLACKEY

Absence of Attorney he knew I Requested

- (a) (B) Ineffective Assistance of Counsel
- (b) (C) CDR Code Not Complied To
- (c) _____

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

- (a) The Sentence Sheet in Indictment
- (b) Number: 2010 GS 4206 279 confirms
- (c) I was sentenced without an attorney

12. Prior to this application have you filed with respect to this conviction: Not Applicable

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

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A

(a) the specific nature thereof: N/A

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed: N/A

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof: N/A

- i. _____
- ii. _____
- iii. _____

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 SPARTANBURG COUNTY
 2013 MAR 12 PM 3:29
 M. J. L. BLANCHLEY

- iv. _____
- (d) the date of each such disposition: *N/A*
- i. _____
- ii. _____
- iii. _____
- iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: *N/A*
- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO.

15. If you answered "yes" to (14) identify: *None.*

(a) which grounds have been presented: *None.*

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised: *N/A*

- i. _____
- ii. _____
- iii. _____

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

- (a) _____ *My Attorney said no grounds were necessary, when I originally*
- (b) _____ *was found to violate the law*
- (c) _____ *when pleading to Drug offense(s).*

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

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 SPARTANBURG COUNTY
 2013 MAR 12 PM 3:29
 PHILIP BLAUNLEY

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

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. Don't Remember, please
 - ii. See Sentence Sheet of 2004
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea of June 2, 2004
 - ii. _____
 - iii. _____

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

*Sentence
Modification
And Evidentiary Hear.*

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

NO

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAR 12 PM 3:29
 FR. JUDGE CLACKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Spartanburg)

I, Jerel Lamar Worthy # 302465

, 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.

Jerel Worthy

SWORN to and subscribed before me this 9
day of Nov., 2012

Cynthia B. Sanders (L.S.)
Notary Public

My Commission Expires: 3/9/12

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 12 PM 3:29
M. HOPE BLACKLEY

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

1. Jerel Lamar Worthy # 302465, 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.

Jerel Worthy
Applicant

SWORN or affirmed to and subscribed before me this
9 day of Nov, 2012

Cynthia S. Sanders
Notary Public

My Commission Expires: 3/9/21

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 12 PM 3:29
P. LINDA BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
 Jerel Worthy, #302465,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2013-CP-42-1234

RETURN

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 12, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the October 2003 term of the Spartanburg County Grand Jury for two charges of distribution of crack cocaine and distribution within one half mile (2003-GS-42-3300, -3301, counts one and two). The Applicant was represented by James A. Check, Esquire. The Applicant pled guilty to distribution of crack cocaine – 3rd offense before the Honorable J. Derham Cole on June 2, 2004. Judge Cole sentenced Applicant to consecutive sentence of three years for distribution of crack cocaine – 3rd offense and fifteen years and \$10,000, suspended upon service to five years of probation for distribution of crack within one half mile. Upon information and belief, Applicant’s community supervision was revoked for six months on September 18, 2009, and he subsequently had a portion of his probation revoked.

Applicant was then indicted at the November 2010 term (amended May 2012 term) to possession of crack cocaine (2010-GS-42-6279). The Applicant proceeded *pro se* and pled guilty on May 14, 2012. The Honorable Roger L. Couch sentenced Applicant to three years. At the same time, on May 14, 2012, Judge Couch revoked Applicant's probation in full, ordering Applicant to serve fifteen years. The Applicant did not appeal his conviction, sentence, or probation violation.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, Applicant's probation records and the guilty plea/probation revocation transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- a. Ineffective assistance of counsel;
- b. Violation of constitutional rights, in that;
 - i. Applicant requested an attorney, but one was not present,
 - ii. CDR code not complied with,
- c. Lack of jurisdiction.

III.

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

(1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

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

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

In as much as the Applicant is attempting to attack his original guilty plea from 2004, the Respondent submits that the claim is barred by the statute of limitations and should be summarily dismissed. However, Respondent acknowledges that claims against his May 2012 guilty plea and probation revocation would be timely.

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 also claims that his rights were violated when his plea was accepted and probation revoked in full without the assistance of counsel. A valid waiver of counsel requires the defendant be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975). However, if the trial judge fails to make a specific inquiry addressing the disadvantages of a *pro se* defense as required by the second Faretta prong, the entire record may be reviewed to determine whether the defendant had a sufficient background or was apprised of his rights by some other source. Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990).

The Respondent submits that the Applicant made a knowing and voluntary waiver of counsel at his guilty plea and probation revocation. However, the allegation probably raises questions of fact that should be reviewed in combination with the record. 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).

V.

The Respondent submits that the Applicant's allegation that the trial court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and

determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 472 S.E.2d 38 (S.C. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. The respondent moves for summary dismissal pursuant to South Carolina Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 18, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Jerel Worthy,

2013-CP-42-1234

Applicant,

v.

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

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
P.O. Box 1015
Rock Hill, SC 29730



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 18th day of March, 2014.

I N D E X

Jerel Worthy PCR

Page:

Ms. White's Recitation of Facts.....	3
Ms. Moody's Comments.....	4

W I T N E S S E S

(No witnesses were called by either party.)

E X H I B I T S

Applicant's Exhibits:	Marked:	Received:
(None)		

Respondent's Exhibits:	Marked:	Received:
(None)		

Court's Exhibits:	Marked:	Received:
(None)		

Reporter's Certification:	9
--	---

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

Reporter's Note: Some names in this transcript are spelled phonetically.

Pamela S. Faucette, CVR-M - (home) 864-574-9534 (cell) 336-260-2864

November 5, 2014

11:58 A. m.

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(Off-the-Record Comments)

THE COURT: All right.

(Brief Pause)

(Off-the-Record Comments)

THE COURT: Okay.

MS. WHITE: Your Honor, this is *Jerel Worthy vs.*

The State. It's case number 2013-CP-42-1234. Mr. Worthy filed this application March 12th, 2013.

He had some charges that he pled guilty to in 2004, was sentenced to a sentence that was suspended with five years of probation. Upon information and belief, we believe there was a revocation of community supervision.

Subsequently, he was, then, indicted in September of 2010, then, amended 2012 to possession of crack cocaine; proceeded pro se and pled guilty.

He received a sentence of three (3) years. And, at the same time, his rev — revocation or his probation was revoked in full from the 2004 charges.

He's alleged ineffective assistance of counsel, violation of constitutional rights, and lack of jurisdiction. Your Honor, the State has filed a return.

All allegations involving the 2004 and the two thousand — anything — and the 2011 charges, we would argue were barred by the statute of limitations. The only — anything that would be timely is related to the May 14th, 2012, plea and probation.

However, Mr. Worthy represented himself at that. And, on the record, the judge asked him about that. So we would argue that it should be

1 dismissed because the record on its face refutes his claims. And that there
2 really is no claim to proceed on a PCR appeal.

3 **THE COURT:** Ms. Moody, how about that?

4 **MS. MOODY:** Thank you, Your Honor. May it please the Court?

5 The State is correct, he did file his application on the basis of ineffective
6 assistance of counsel and violation of his constitutional rights and lack of
7 jurisdiction.

8 As I understand it from Mr. Worthy, the events went as he had a — a
9 charge that he was indicted for, the — the possession of cocaine first. There
10 was no negotiation with the State other than to let him — allow him to plead to
11 a first, which I believe in the transcript, it — it indicates what the — not the —
12 the negotiation or the recommendation, but that he was entering a plea.
13 He was exposed to three years.

14 At that time, he tells me that he did have an attorney that came through
15 the public defender's office, which he paid for — I guess he paid his
16 assessment is what he's talking about, the \$40 assessment fee.

17 He was supposed to have a hearing, for the probation violation, based
18 off his conversation with his probation agent.

19 She indicated to him that he needed to have an attorney on that
20 Friday. As Mr. Worthy tells me, he tells me that he went forward thinking that
21 he was only dealing with that charge. And I guess that was a Wednesday; it
22 was May 14th. It was a Wednesday, and that he would, then, come back to
23 court on Friday.

24 Based on his understanding and maybe it's — it's not knowing that the
25 Court or I should say the judge would not know whether or not he had an

1 attorney for the probation violation or not. He says he thought the Court
2 understood that.

3 I don't have a name of — of who the person would have been to handle
4 his probation violation, but he says he paid for an attorney and that attorney
5 was not there on Wednesday. But he understood that he would meet that
6 attorney on Friday.

7 So, basically, his position is he didn't understand his constitutional
8 rights in terms of one, we talked his going forward on his own. And, based on
9 my conversations with him, he thought he had a recommendation of three
10 years.

11 However, he negotiated or he talked to the prosecutor regarding his
12 possible — or the recommendation that he would get three years.

13 And, at that time, he had Mr. Spivey I believe as the prosecutor on the
14 case. He went forward. The judge did ask him some questions about
15 proceeding on his violation.

16 He didn't understand that he could get the full 15 years — the full 15
17 years of the suspended sentence that he had been on probation for. The
18 probation was on the distribution of crack cocaine within the proximity or the ½
19 mile proximity of a school. And that sentence was 15 years suspended upon
20 five (5) years probation.

21 He tells me he did not understand that. And he says it was a violation
22 of his constitutional rights. But, again, in terms of a PCR, there needs to be
23 an attorney that is the subject of the PCR, in terms of ineffective assistance
24 and the prejudice to him.

25 So ---

1 **THE COURT:** I'm still searching for a lawyer.

2 **MS. MOODY:** He doesn't —

3 **MR. WORTHY:** All I have is a receipt because they — they told me
4 or my — my probation officer told me, she said that for me to pay for a lawyer
5 and to be in court Friday when they do probation and bond hearings Friday.
6 And a lawyer would be present.

7 And I did only what she told me to do. And — but I didn't — I didn't get
8 that — I didn't get that far. I didn't make it till Friday. For some reason, that ---
9 when I was amend — when I — when I got out of jail (phonetic), I went over to
10 Mr. Spivey for my charge, they came --- she came into the courtroom then
11 and; you know, proceeded with the case.

12 And I was — I was told to pay. And, then, on Friday, with the attorney,
13 and we would go from there. So that's why I had nobody. I was in there by
14 myself because I'm — I'm — I'm thinking that Friday, when I broke — at my
15 probation hearing, that's when my attorney will be there. And my attorney
16 wasn't there.

17 I didn't even make till Friday. When Friday came, I was already in the
18 — in the Department of Corrections.

19 **(Off-the-Record Comments)**

20 **MR. WORTHY:** The secretary — the secretary at — at the public
21 defender's office, she — after I paid for it, she didn't tell me who it was. She
22 just told me that they would meet me there Friday when I have my probation
23 violation hearing.

24 And I was — that's when — that's when my attorney and my probation
25 officer would come to an agreement then. They — they would meet me there.

1 But, like I said, I didn't make it — I didn't get till Friday. When Friday
2 came, I was in — I was already in SCDC.

3 So, that's why — you know, that's why I was there by myself. I — they
4 never — I never had an attorney, after I was advised to get one, and I paid —
5 paid for one.

6 (Brief Pause)

7 **MS. WHITE:** Your Honor, the State would just note, on Page 12,
8 the judge confirms with him that he realizes that he's pleading guilty. He said,
9 "Are you asking me to go forward on both this charge and the probation matter
10 today?" And he says, "Yes, sir."

11 "And do you understand you would not be represented by counsel on
12 either of those and do you understand that?" "Yes."

13 **THE COURT:** Yes, and on Page 9 I believe it is, Judge Couch
14 asked him, on Page 9, Line 1, "Are you asking that you be allowed to proceed
15 without a lawyer?" "Answer: Yes, sir, yes, sir."

16 Anything further?

17 **MS. MOODY:** Nothing further, Your Honor.

18 **THE COURT:** Okay. Let me ask this while — sir, we're on the
19 record here. Do you have any — are you satisfied with your PCR lawyer, Ms.
20 Moody?

21 **MR. WORTHY:** Yes, sir.

22 **THE COURT:** Has she done a good job for you?

23 **MR. WORTHY:** Yes, sir.

24 **THE COURT:** Okay. Do you have any complaints whatsoever
25 about her?

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MR. WORTHY: No, sir.

THE COURT: Has she gone over everything in the file with you?

MR. WORTHY: Yes, sir.

THE COURT: Okay. All right. That'll conclude the hearing. She'll be letting you know what happened, sir. Thank you.

MS. WHITE: Thank you, Your Honor.

(Whereupon, the proceeding concluded at 12:05 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned PAMELA FAUCETTE, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 8, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

March 21, 2015.



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Jerel Worthy, #302465,)	2013-CP-42-1234
)	
Applicant,)	
)	
v.)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	
)	

2014 DEC -2 AM 8:35
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 12, 2013. The Respondent made its Return on February 25, 2014. An evidentiary hearing was convened on November 5, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the State moved to dismiss all claims as either barred by the statute of limitations or for failure to state a claim cognizable in post-conviction relief. Arguments were presented by counsel for both parties. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the PCR Application, the Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the October 2003 term of the Spartanburg County Grand Jury for two charges of distribution of crack cocaine and distribution within one half mile (2003-GS-42-3300, -3301, counts one and two). The Applicant was represented by James A. Cheek, Esquire. The Applicant pled guilty to

distribution of crack cocaine – 3rd offense before the Honorable J. Derham Cole on June 2, 2004. Judge Cole sentenced Applicant to consecutive sentence of three years for distribution of crack cocaine – 3rd offense and fifteen years and \$10,000, suspended upon service to five years of probation for distribution of crack within one half mile. Upon information and belief, Applicant's community supervision was revoked for six months on September 18, 2009, and he subsequently had a portion of his probation revoked.

Applicant was then indicted at the November 2010 term (amended May 2012 term) to possession of crack cocaine (2010-GS-42-6279). The Applicant proceeded *pro se* and pled guilty on May 14, 2012. The Honorable Roger L. Couch sentenced Applicant to three years. At the same time, on May 14, 2012, Judge Couch revoked Applicant's probation in full, ordering Applicant to serve fifteen years. The Applicant did not appeal his conviction, sentence, or probation violation.

ALLEGATIONS

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

- a. Ineffective assistance of counsel;
- b. Violation of constitutional rights, in that:
 - i. Applicant requested an attorney, but one was not present.
 - ii. CDR code not complied with.
- c. Lack of jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

As to any and all claims of ineffective assistance, this Court finds that claims should be summarily dismissed. This Court finds that any allegations related to Applicant's original 2004 guilty plea or community supervision revocation in 2009 should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this Application on June 2, 2004. There was no appeal filed following Applicant's guilty plea. Therefore, the Applicant was required to file his application prior to June 2, 2005. Applicant also had his community supervision revoked September 18, 2009. Therefore, the Applicant was required to file an application on those charges by September 18, 2010. This Application was filed on March 12, 2013, well after the one year statutory filing period had expired on all claims.

As to any claims of ineffective assistance of counsel as to his 2012 plea and probation revocation, this Court finds that there is no valid claim as the Applicant represented himself.

Violation of Constitutional Rights

This Court also finds that the Applicant's claims that his rights were violated when his plea was accepted and probation revoked in full without the assistance of counsel should be summarily dismissed. A valid waiver of counsel requires the defendant be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975). However, if the trial judge fails to make a

specific inquiry addressing the disadvantages of a *pro se* defense as required by the second Faretta prong, the entire record may be reviewed to determine whether the defendant had a sufficient background or was apprised of his rights by some other source. Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990).

This Court finds that the record is clear that reflects that Applicant made a knowing and voluntary waiver of counsel at his guilty plea and probation revocation. The plea judge asked Applicant if he was aware of his constitutional right to have an attorney and if Applicant wished to proceed without an attorney. (Tr. p. 8-9). Applicant was also advised that he should inform the judge if Applicant felt he needed an attorney at any time. (Tr. p. 9). Applicant acknowledged that he had previously been represented by an attorney in court and was aware of what the attorney could do to help Applicant. (Tr. p. 9). The plea judge also asked Applicant if he was aware of the probation revocation hearing scheduled that day as well and if he wished to go forward without an attorney on either matter. (Tr. p. 12). Finally, the judge asked Applicant if based on his age and education he felt able to represent himself and the Applicant affirmed. (Tr. p. 13).

This Court finds that it is clear from the record that the Applicant was aware of his constitutional right to have an attorney represent him at his guilty plea and probation revocation and the court ensured that Applicant was familiar with the judicial process, understanding how an attorney could assist, but chose to proceed *pro se*. Therefore, this claim is summarily dismissed.

Lack of Jurisdiction

This Court finds that the allegation of a lack of jurisdiction, although presented in the application, was not presented as a claim at the hearing. Therefore, this Court finds that the

Applicant voluntarily abandoned this claim.

CONCLUSION

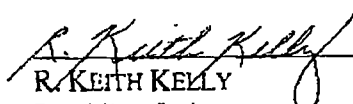
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

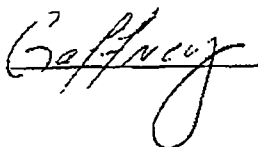
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26 day of November, 2014.


 R. KEITH KELLY
 Presiding Judge

 South Carolina

2014 DEC -2 AM 8:35
 ENTERED

WITNESSES

R M FORRESTER

SPTG DEPT PUBLIC SAFETY

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

True Bill
Boyd L. Lamm
Foreperson of Grand Jury
Date: *10/2/03*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO - **03-GS-42-3300**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 06 2003

TERM

THE STATE
vs.

JEREL LAMAR WORTHY

*Annex 9-23-03
PW# 13497*

Indictment for

DISTRIBUTION OF CRACK COCAINE;
DISTRIBUTION WITHIN ONE-HALF MILE

SC Code: 44-53-375; 44-53-445

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 02 2003 the

Grand Jurors of Spartanburg County present upon their oath:


COUNT ONE - DISTRIBUTION OF CRACK COCAINE

That Jerel Lamar Worthy did in Spartanburg County on or about May 20, 2003, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Crack Cocaine, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

COUNT TWO- DISTRIBUTION WITHIN ONE-HALF MILE

That Jerel Lamar Worthy did in Spartanburg County on or about May 20, 2003, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Crack Cocaine, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Fairforest Park and the Bethlehem Center, under provisions of §44-53-445 of *THE 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.


 ASSISTANT SOLICITOR

WITNESSES

R M FORRESTER

SPTG DEPT PUBLIC SAFETY

1. SERVICE MADE

2. REPORT MADE

3. CARD PULLED

4. INDEXED

Computer

ARRESTS

5. CHARGE AND ARREST WARRANT NUMBER

6. ASSESSMENT AND FINE CARD MADE

7. DIRECT INDICTMENT

8. VIOLATION CODE

ACTION OF GRAND JURY

Bill
Brady
Foreperson of Grand Jury
Date: 10/2/03

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

03-GS-42-3300

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 06 2003

TERM

THE STATE
vs.

JEREL LAMAR WORTHY

*BW# 13491 - Criminal Part 3-03
Served 10-13-03*

BW# 2003-WS-42-3300 Served 4-29-08

Indictment for

DISTRIBUTION OF CRACK COCAINE;
DISTRIBUTION WITHIN ONE-HALF MILE

SC Code: 44-53-375; 44-53-445

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 02 2003 , the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE - DISTRIBUTION OF CRACK COCAINE

That Jerel Lamar Worthy did in Spartanburg County on or about May ¹⁹20, 2003, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Crack Cocaine, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

COUNT TWO- DISTRIBUTION WITHIN ONE-HALF MILE

That Jerel Lamar Worthy did in Spartanburg County on or about May ¹⁹20, 2003, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Crack Cocaine, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Fairforest Park and the Bethlehem Center, under provisions of §44-53-445 of *THE 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.



 ASSISTANT SOLICITOR

WITNESSES

R M FORRESTER

SPTG DEPT PUBLIC SAFETY

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

True Bill

Becky St. Laurent

Foreperson of Grand Jury

Date: *10/2/03*

VERDICT

Foreperson of Petit Jury

Date:

03-GS-42-3301

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 06 2003

TERM

THE STATE

VS.

JEREL LAMAR WORTHY

Indictment for

DISTRIBUTION OF CRACK COCAINE;
DISTRIBUTION WITHIN ONE-HALF MILE

SC Code: 44-53-375; 44-53-445

BWF 13491-011-03

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 02 2003, the
 Grand Jurors of Spartanburg County present upon their oath:

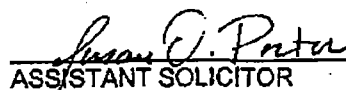
COUNT ONE - DISTRIBUTION OF CRACK COCAINE

That Jerel Lamar Worthy did in Spartanburg County on or about May 20, 2003, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Crack Cocaine, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

COUNT TWO- DISTRIBUTION WITHIN ONE-HALF MILE

That Jerel Lamar Worthy did in Spartanburg County on or about May 20, 2003, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Crack Cocaine, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Fairforest Park and the Bethlehem Center, under provisions of §44-53-445 of *THE 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.


 ASSISTANT SOLICITOR

WITNESSES

SPTG DEPT PUBLIC SAFETY

Compute

ARREST WARRANT NUMBER

M421911 (AMENDED)

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

MAY 03 2012

VERDICT

Foreperson of Petit Jury

Date:

DOC# 10

10-GS-42-0279

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2012

TERM

THE STATE

vs.

JEREL LAMAR WORTHY

Indictment for

POSSESSION OF COCAINE BASE

SC Code: 44-53-375

RECEIVED
COURT OF COURTS
SPARTANBURG COUNTY

2012 MAY -9 PM 2:01

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT


MAY 03 2017

At a Court of General Sessions, convened on: _____ the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION OF COCAINE BASE

That Jerel Lamar Worthy did in Spartanburg County on or about March 1, 2010, possess or attempt to possess a quantity of Cocaine Base, a schedule II controlled substance, in violation of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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



ASSISTANT SOLICITOR

WITNESSES

TBG CITY PUBLIC SAFETY

[Handwritten signature]

ARREST WARRANT NUMBER

421911

ACTION OF GRAND JURY

True Bill

Representative of Grand Jury

Date: NOV 24 2010

VERDICT

Representative of Petit Jury

Date:

DOCKET NO.

10-03-00-0279

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 24 2010

TERM

THE STATE

vs.

JEREL LAMAR WORTHY

Indictment for

POSSESSION OF COCAINE BASE or
METHAMPHETAMINE

SC Code: 44-53-375

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 DEC -2 PM 1:06

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on NOV 24 2010 the

Grand Jurors of Spartanburg County present upon their oath:

POSSESSION OF COCAINE BASE OR METHAMPHETAMINE

That Jerel Lamar Worthy did in Spartanburg County on or about March 1, 2010, possess or attempt to possess a quantity of Cocaine Base or Methamphetamine, a schedule II controlled substance, in violation of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976)*, as amended.

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


ASSISTANT SOLICITOR