

RECEIVED

SEP 03 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

S.C. Supreme Court

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

---

HUMBERTO ALONSO GARCIA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001083

---

APPENDIX

---

BENJAMIN JOHN TRIPP  
Appellate Defender

ALAN WILSON  
Attorney General

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

KAREN RATIGAN  
Senior Assistant Deputy Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

|                                                       |    |
|-------------------------------------------------------|----|
| INDEX.....                                            | i  |
| PLEA TRANSCRIPT.....                                  | 1  |
| APPLICATION FOR POST-CONVICTION RELIEF .....          | 22 |
| RETURN .....                                          | 30 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT .....       | 34 |
| POST-CONVICTION RELIEF HEARING EXHIBIT - LETTER ..... | 53 |
| SCDC RECORD SUMMARY REPORT 9/5/14.....                | 67 |
| ORDER OF DISMISSAL .....                              | 69 |
| INDICTMENTS .....                                     | 75 |

|                          |   |                             |
|--------------------------|---|-----------------------------|
| STATE OF SOUTH CAROLINA  | ) | COURT OF GENERAL SESSIONS   |
|                          | ) |                             |
| COUNTY OF GREENVILLE     | ) | Case No(s) : 2012GS2304984, |
|                          | ) | 2012GS2304985               |
| State of South Carolina, | ) |                             |
|                          | ) |                             |
| Plaintiff,               | ) |                             |
|                          | ) |                             |
| -VS-                     | ) | TRANSCRIPT OF RECORD        |
|                          | ) |                             |
| Humberto Alonso Garcia,  | ) |                             |
|                          | ) |                             |
| Defendant.               | ) |                             |
| _____                    | ) |                             |

March 12, 2014  
Greenville, South Carolina

B E F O R E:

HONORABLE LEE S. ALFORD, Judge.

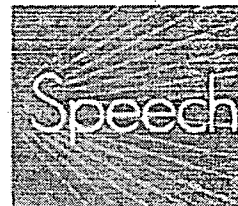
A P P E A R A N C E S:

JOYCE L. MONTS, Esquire  
Attorney for the Plaintiff

ROBERT E. IANAURIO, Esquire  
Attorney for the Defendant

**Teresa B. Johnson**  
Certified Verbatim Reporter  
P.O. Box 2812  
Greenville, S.C. 29602

Records are  
taken and  
produced via



CAT 7

I N D E XDIRECT   CROSS   REDIRECT   RECROSS

|                         |    |
|-------------------------|----|
| Guilty Plea             | 4  |
| Certificate of Reporter | 21 |

EXHIBITS PAGENO.DESCRIPTIONID EV**PLAINTIFF EXHIBITS**

(No exhibits offered.)

**DEFENSE EXHIBITS**

(No exhibits offered.)

**COURT EXHIBITS**

(No exhibits offered.)

**P R O C E E D I N G S**

(WHEREUPON, the proceedings begin on the 12th day of March, 2014 at approximately 2:34 p.m.)

(WHEREUPON, the interpreter is first duly sworn.)

**THE CLERK:** Your Honor, this is case number 2012-GS-23-4984, Humberto Alonso Garcia, indictment for Trafficking Cocaine, pleading to Trafficking in Cocaine 20 grams -- 28 grams or more but less than 100 and 2012-GS-23-4985, indictment for Trafficking Cocaine, pleading to Trafficking in Cocaine more than 28 grams but less than 100. It is also a true bill.

(WHEREUPON, the defendant is duly sworn.)

**THE COURT:** All right. Solicitor.

**MS. MONTS:** May it please the court, Your Honor. This is defendant Humberto Alonso Garcia. He is represented by Robert Ianaurio. He is pleading to two charges that are on the trial docket. One of them has been reduced from Trafficking over 400 grams down -- several levels down to trafficking over 28 grams. The other was from the same date and was a trafficking more than 28 grams. He's also pleading to that same charge, Your Honor.

**THE COURT:** Okay. You're Humberto Alonso

1 Garcia?

2 MR. GARCIA: Yes, Your Honor.

3 THE COURT: How old are you?

4 MR. GARCIA: 40.

5 THE COURT: How far did you go in school?

6 MR. GARCIA: Finished elementary school.

7 THE COURT: What do you do for a job or  
8 occupation?

9 MR. GARCIA: I was doing some truck driver  
10 before I got into trouble.

11 THE COURT: Are you married, sir?

12 MR. GARCIA: No, I'm separated.

13 THE COURT: You have any children under 18  
14 years of age?

15 MR. GARCIA: Yes, 12. And I have four  
16 step-sons.

17 THE COURT: How many days did he serve in  
18 jail on this charge?

19 MS. MONTES: 735.

20 MR. GARCIA: Two years.

21 THE COURT: Mr. Garcia, you are charged  
22 today with two counts of Trafficking in Cocaine  
23 in an amount between 28 and 100 grams, each of  
24 which is classified as a felony, each of which  
25 carries a minimum sentence of seven years and a

1 maximum sentence of 25 years and \$50,000 fine.  
2 Each of them is classified as a serious  
3 offense. The importance of that classification  
4 is should you get three serious offenses on  
5 your record or a combination of three serious  
6 and most serious offenses on your record, upon  
7 receiving the third such offense, you could get  
8 a sentence of life without parole, so called  
9 Three Strikes Rule, these offenses would  
10 classify as a strike. You understand that?

11 MR. GARCIA: Yes.

12 THE COURT: These sentences, whatever you  
13 receive on your charges, will be a no-parole  
14 offense, which means you will expect to serve  
15 the sentence you actually receive. You  
16 understand that?

17 MR. GARCIA: I understand. Yes.

18 THE COURT: These offenses are also  
19 classified as violent offenses. The importance  
20 of that is they could affect your ability to  
21 participate in certain programs and activities  
22 at the Department of Corrections. You  
23 understand that?

24 MR. GARCIA: Yes.

25 THE COURT: If I accept your plea of

1 guilty to these charges, they will constitute a  
2 drug offense on your record. The importance of  
3 that is should you get another drug offense of  
4 any kind in the future, with these charges on  
5 your record, the penalties will be enhanced or  
6 higher because these are on your record. In  
7 other words, the penalties for a second drug  
8 offenses are higher and, in some cases, much  
9 higher than they are for a first offense. You  
10 understand that?

11 MR. GARCIA: Yes, I do.

12 THE COURT: Understanding all that, how do  
13 you wish to plead to these two charges today?  
14 Guilty or not guilty?

15 MR. GARCIA: Guilty.

16 THE COURT: You understand that by  
17 pleading guilty, you give up your right to  
18 remain silent?

19 MR. GARCIA: Yes.

20 THE COURT: You understand that by  
21 pleading guilty, you give up your right to a  
22 trial by jury?

23 MR. GARCIA: Yes.

24 THE COURT: And if you give up your right  
25 to a trial by jury, you also give up your right

1 to assert any legal defenses you might have in  
2 a jury trial.

3 **MR. GARCIA:** Yes.

4 **THE COURT:** I know your attorney has gone  
5 over your rights with you about jury trial. I  
6 want to do so as well. If you will, listen as  
7 I go through them. If you had requested a  
8 trial by jury, the State would give you a  
9 trial. As a matter of fact, we were about to  
10 go into a trial in this case.

11 At trial, you would have the right to  
12 confront and cross-examine all witnesses  
13 against you. You would have the right to  
14 present any witnesses and/or evidence in your  
15 own defense. You would have the right to  
16 testify in your own defense if you wished to do  
17 so. But no one could make you testify in your  
18 own trial.

19 If you decide to go to trial and not  
20 testify, the judge would tell the jury they  
21 could not hold your failure to testify against  
22 you. In fact, the jury couldn't even consider  
23 your failure to testify in their deliberations  
24 on your guilt or innocence.

25 You would be presumed innocent throughout

1        your trial. The State would have to prove you  
2        guilty beyond a reasonable doubt to a jury of  
3        12 people. All 12 people would have to  
4        unanimously agree that you were guilty in order  
5        for you to be guilty. Even if you were  
6        convicted, you would still have the right to  
7        appeal that conviction. Do you understand your  
8        right with regard to a trial by jury?

9            **MR. GARCIA:**     Yes, I do.

10          **THE COURT:**    Understanding your right to a  
11        trial by jury, do you still want to plead  
12        guilty or do you want me to set your case for  
13        trial or go to trial?

14          **MR. GARCIA:**    Guilty.

15          **THE COURT:**    The State has agreed to reduce  
16        one of these trafficking charges. Has anybody  
17        promised you anything other than that in order  
18        to get you to plead guilty?

19          **MR. GARCIA:**    No.

20          **THE COURT:**    Has anybody threatened you or  
21        coerced you to enter a plea of guilty?

22          **MR. GARCIA:**    No.

23          **THE COURT:**    Are you satisfied with the  
24        manner in which your attorney has advised and  
25        represented you in these cases?

1           **MR. GARCIA:**     Yes.

2           **THE COURT:**    Have you and your attorney  
3 fully discussed the charges against you?

4           **INTERPRETER:**   Excuse me. Say that again.

5           **THE COURT:**    Have you and your attorney  
6 fully discussed the charges against you?

7           **MR. GARCIA:**     Yes.

8           **THE COURT:**    Has your attorney told you the  
9 witnesses and the evidence the State has  
10 available to present at trial to prove your  
11 guilt?

12           **MR. GARCIA:**    Yes.

13           **THE COURT:**    Has your attorney discussed  
14 with you any possible legal defenses that might  
15 be available to you if you go to trial?

16           **MR. GARCIA:**    Yes.

17           **THE COURT:**    Have you told your attorney  
18 the names of any and all witnesses that you  
19 know of that your attorney could subpoena and  
20 bring to trial to assist you in your defense if  
21 you go to trial?

22           **MR. GARCIA:**    Witnesses? My witnesses?

23           **THE COURT:**    Yes, if you know of any  
24 witnesses.

25           **MR. GARCIA:**    No.

1           **THE COURT:**   Are you today under the  
2           influence of any mind-altering substance, such  
3           as alcoholic beverages, drugs or prescription  
4           medications which interfere with your judgement  
5           or ability to understand what you are doing in  
6           court?

7           **MR. GARCIA:**   No.

8           **THE COURT:**   Do you have any mental,  
9           emotional or nervous condition that interferes  
10          with your judgement or ability to understand  
11          what you're doing in court.

12          **MR. GARCIA:**   No.

13          **THE COURT:**   Are you pleading guilty today  
14          of your own free will?

15          **MR. GARCIA:**   Yes.

16          **THE COURT:**   Are you, in fact, guilty of  
17          these two charges?

18          **MR. GARCIA:**   Yes.

19          **THE COURT:**   Please give me the facts,  
20          Solicitor.

21          **MS. MONTS:**   May it please the Court, Your  
22          Honor. Your Honor, this case -- these two  
23          incidents that he's pleading guilty to today  
24          occurred on March 7th of 2012. Officer Owens  
25          to my left with the -- excuse me, Wells with

1       the State Law Enforcement Division and  
2       Investigator Markey to my right with the  
3       sheriff's office were conducting a drug  
4       operation on that day. They had previously  
5       purchased at least three times over 10 grams  
6       each of cocaine from the defendant utilizing an  
7       informant. Each of these buys was for \$600.  
8       They had a search warrant in hand but they  
9       wanted to go and talk to the defendant before  
10      serving the search warrant.

11             They did find the defendant, who happened  
12      to be at the magistrate's office on White Horse  
13      Road in Greenville county. Several officers  
14      were at the scene but these two standing beside  
15      me did go into the magistrate's office and  
16      speak with the defendant in private. They did  
17      tell him that he had been -- they had been  
18      investigating him and asked if he understood  
19      that. He gave an affirmative answer.

20             They knew that the vehicle that was in the  
21      parking lot was one that he had been using to  
22      deliver drugs. So they asked him if that was  
23      his vehicle and he said yes. They knew that he  
24      had lived at [REDACTED] Anderson Road in Greenville  
25      county and asked if he lived there. He again

1        said yes. They asked if he wanted to cooperate  
2        with them. He said yes. They asked if there  
3        was any drugs in the car. He said yes, there  
4        was one ounce of cocaine. They asked if there  
5        were any drugs at his house. He said yes,  
6        there were six ounces of cocaine at his house.

7                The defendant then consented to a search of  
8        both the car and the house and provided the  
9        keys to each to law enforcement. Officer then  
10       opened the car and asked where the drugs were.  
11       The defendant said they were under the seat.  
12       When they looked there and didn't find them,  
13       they asked where else they might be. He said  
14       under the console.

15               There was a crowd gathering because this  
16       was at a magistrate's office. They decided to  
17       move the car to a law enforcement office and  
18       continue this investigation. When they got to  
19       that location, they mirandized the defendant.  
20       Officers had already gone to [REDACTED] Anderson Road  
21       based on defendant's consent to search that  
22       house. The defendant then said that he would  
23       like a lawyer and did not want to speak to them  
24       anymore.

25               Inside the car, they had found 96.34 grams

1 of cocaine. They then executed the search  
2 warrant that they already had in hand at the  
3 house. They found located throughout the house  
4 a total of 861.30 grams of cocaine. They also  
5 found marijuana, \$700 in cash, scales, a kilo  
6 press, items throughout the kitchen that  
7 appeared to had been making, uh, the cocaine,  
8 dealing with the cocaine, utensils, powder,  
9 other items.

10 There was also a concealed Pepsi can where  
11 he would hide cocaine. That was found in  
12 there. Some of the cocaine was found in a  
13 cereal box on top of the fridge. Some was  
14 found in a pizza box inside of the fridge.  
15 Some was found in other parts of the house.  
16 Your Honor, that would be the State's showing  
17 as far as the two traffickings.

18 **THE COURT:** Mr. Garcia, you heard the  
19 facts recited to the court by the Solicitor's  
20 office?

21 **MR. GARCIA:** Yes, Your Honor.

22 **THE COURT:** Do you disagree in any way  
23 with what they say happened?

24 **MR. GARCIA:** No.

25 **THE COURT:** I find the decision of the

1       defendant to plead guilty to these two charges  
2       to be made freely, voluntarily and  
3       intelligently. He's had the representation of  
4       a competent attorney with whom he says he is  
5       satisfied. I find the facts presented to the  
6       court by the Solicitor's office and heard by  
7       the defendant fully support the guilty plea in  
8       this case. I'll accept the pleas as freely and  
9       voluntarily made.

10       Mr. Garcia, if you disagree with the  
11       proceeding in which we are currently involved,  
12       you have 10 days from today's date within which  
13       to file a notice of intent to appeal. Do you  
14       understand your right to appeal today's  
15       proceeding?

16       **MR. GARCIA:**     Yes.

17       **THE COURT:**     Counsel?

18       **MR. IANAURIO:**    Thank you, Your Honor. Mr.  
19       Garcia hired me a little over a year ago. I've  
20       gotten to know him very well over the past year  
21       through several meetings. He's been a model  
22       inmate. He's worked in the kitchen and made  
23       his way up to a kitchen supervisor. He's been  
24       attending the church services, assisting the  
25       Spanish-speaking inmates with some

1 translations. His English is okay but not  
2 perfect.

3 He's been in America over 10 years. He  
4 came looking to make a better life for his  
5 family. He was originally employed as a truck  
6 driver. After losing that job, he was employed  
7 as a construction worker. When the  
8 construction market collapsed, he was left  
9 without work. As a result of this, he ended up  
10 selling cocaine. I would like to emphasize  
11 that his purpose in coming to America was not  
12 to sell drugs, not to become another Pablo  
13 Escobar.

14 Since being arrested, he has forfeited his  
15 truck, lost all of his possessions. He truly  
16 has nothing left. After getting to know the  
17 man that Mr. Garcia is, I feel that an extended  
18 period of incarceration will do no furtherance  
19 of reforming him. I firmly believe that he has  
20 learned his lesson and he just wishes to put  
21 this behind him and try to get on with a normal  
22 life.

23 As he does have an ICE hold on him, he will  
24 be deported once his sentence is finished. I  
25 pulled the numbers from the South Carolina

1 Department of Corrections. It currently costs  
2 \$18,299 per year to house an inmate. If you  
3 went with the minimum of seven years, we'd be  
4 looking at \$128,000-- \$128,093. If you went  
5 with 10 years, we'd be looking at almost  
6 \$183,000. When you go to 15, you start looking  
7 at \$275,000. I'd like to ask not only for as  
8 much mercy as you could give Mr. Garcia, but  
9 also take into -- the taxpayers into account as  
10 well. Again, I feel that while the purpose of  
11 sentence is to reform the criminal and  
12 rehabilitate, an extended sentence is not  
13 necessary. That is all, Your Honor.

14 **THE COURT:** Thank you.

15 Mr. Garcia, anything you wish to say to the  
16 court?

17 **MR. GARCIA:** Yes, Your Honor. As my  
18 lawyer said, uh, I came to America is not  
19 without plan. I really had good plans. I lost  
20 my license. Then I had went into this. I  
21 attended school. I went to take English  
22 classes. I can speak and write it. Since I  
23 got -- the first time I got in jail, I started  
24 reading the Bible. God knows that I'm not  
25 lying. I would ask Your Honor to have mercy.

1 the street value was probably close to \$100,000  
2 or more. It would be our request that that  
3 reflect in the amount of jail time.

4 **MS. MONTS:** Your Honor, I would just like  
5 to say that we have given him a great reduction  
6 coming off the mandatory 25 to 30 years. We  
7 believe that was a significant consideration to  
8 give.

9 **THE COURT:** All right. Case number 2012-  
10 GS-23-4984, Humberto Alonso Garcia, having pled  
11 guilty to Trafficking Cocaine amount between 28  
12 and 100 grams, the sentence of the Court is you  
13 be admitted to the State Department of  
14 Corrections for a determinate term of 12 years  
15 concurrent with credit for 735 days of jail  
16 time. Case number 2012-GS-23-4985, Humberto  
17 Alonso Garcia having pled guilty to Trafficking  
18 Cocaine 28 to 100 grams, the sentence of the  
19 court is the same as your previous sentence to  
20 be run concurrent. I certainly take into  
21 consideration the fact that he has decided to  
22 plead guilty inside of going to trial. If he  
23 had gone to trial and been convicted, I would  
24 not have been so inclined.

25 **MR. IANAURIO:** Thank you, Your Honor.

1       That's all I have to say.

2               **THE COURT:**     The State wish to be heard?

3               **MS. MONTS:**    Yes, Your Honor. I think both  
4       officers would like to say something.

5               **OFFICER:**    Your Honor, the informant in  
6       this case was someone I have worked with for  
7       years. He tried to get me for over a year to  
8       work this investigation because he believed  
9       this guy was such a significant cocaine  
10      trafficker. Because of so many other cases, I  
11      could not get to it. When I finally got around  
12      to it, this was the result of it and I wish I  
13      had done it earlier. These cases are very  
14      expensive as far as buying the drugs and the  
15      manpower that it takes to work these cases.

16              **MS. MONTS:**    Mr. Markey.

17              **OFFICER:**    Your Honor, it's the opinion of  
18      myself and other sheriff's office investigators  
19      that the drugs that were seized from the  
20      defendant was a fraction of what was probably  
21      brought into the county and that the  
22      organization that he was associated with is  
23      probably still an active organization in the  
24      county. Just to give some significance to the  
25      value of the drugs that we did find him with,

1                   **MS. MONTES:**     Thank you, Your Honor.

2

3                   **(WHEREUPON,** the proceedings conclude at  
4 approximately 3:01 p.m.)

5

[illegible]

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

Johnson

Official Court Reporter

## FORM 5

STATE OF SOUTH CAROLINA )

County of Greenville )Humberto Alonso Garcia )

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

SCDC # 359253 )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEF

2014-CP-23-04293

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS  
2014 AUG 4 PM 3:39INSTRUCTIONS - 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 Greenville County Detention Center.
2. Name and location of Court which imposed sentence Circuit Court Greenville, SC 296  
Division Greenville County Courthouse 305 East North St. ←
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 12-GS-23-2304984
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 12<sup>th</sup> 2014,
- (b) 12 Yrs Violent,
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty A Guilty Plea was made. because I did not
- (b) after a plea of not guilty understand MY lawyer.
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) MY LAWYER TOLD ME NOT TO. and I did not
- (b) understand what appeal meant at that time.

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) MY LAWYER KNEW THE VEHICLE, I WAS ARRESTED  
 (b) IN WAS NOT MINE. HE DID NOT DO A GREAT JOB  
 (c) TRYING TO PROVE MY CASE. INEFFECTIVE ASSISTANT OF COUNSEL
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) MY LAWYER COULD HAVE MADE A BETTER  
 (b) ARGUMENT ABOUT THE CAR NOT BEING IN MY NAME,  
 (c) AND THE FACT THAT I DID NOT KNOW THE DRUGS WERE IN THE CAR.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A  
 (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:
- (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. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. N/A
- iv. \_\_\_\_\_

(d) the date of each such disposition:

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

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. N/A
- 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 - They have not.

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

(a) which grounds have been presented:

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

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

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

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

(a) BECAUSE I WANTED ANOTHER LAWYER, TO MOVE  
 (b) FORWARD WITH MY P.C.F APPLICATION  
 (c) \_\_\_\_\_

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

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

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. Robert Ianuario  
419 Vardry St Greenville SC 29601. (864) 255 99 88.  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. Robert Ianuario  
HE WAS MY LAWYER FROM THE THE TIME I  
 ii. WAS ARRESTED TO THE TIME I WENT TO COURT  
ON 3-12-14.  
 iii. \_\_\_\_\_

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

I don't think I should've received so much time, it  
being my first charge. I think and feel, that  
I should have received 8 or less years.

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

No.

STATE OF SOUTH CAROLINA )

County of Greenville )

VERIFICATION

I, Humberto Alonso Garcia, 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.

Humberto

SWORN to and subscribed before me this 7  
 day of July, 2019.

Virginia Robinson (L.S.)  
 Notary Public

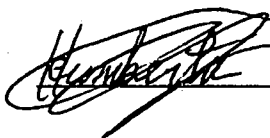
My Commission Expires: May 20, 2021

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

I, Humberto Alonso Garcia, 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.



*Applicant*

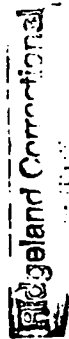
SWORN or affirmed to and subscribed before me this

7 day of July, 2014.

Virginia Robinson  
Notary Public

My Commission Expires: May 20, 2021

Humberto Garcia #359253  
Ridgeland Correctional Inst-  
P.O. Box 2039  
Ridgeland, SC 29936



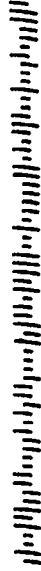
JUL 02 2014

Mailroom

2014-CP-23-04293

Paul B. Wickensimer  
Greenville County Clerk of Court  
305 East North street  
Greenville, SC 29601.

29601+2190



CHARLESTON, SC 294

09 JUL 2014

02 1M  
0008003003 JUL 08 2014  
\$ 00.480  
MAILED FROM ZIP CODE 28936

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | C.A. No. 2014-CP-23-4293     |
| COUNTY OF GREENVILLE     | ) |                              |
|                          | ) |                              |
| Humberto Alonso Garcia,  | ) |                              |
| S.C.D.C. No. 359253,     | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) | <b>RETURN</b>                |
| v.                       | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
| _____                    | ) |                              |

In response to the post-conviction relief application filed August 4, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2013 term of General Sessions for two counts of trafficking cocaine (2012-GS-23-4984, -4985). Robert E. Ianaurio, Esquire represented the Applicant.

On March 12, 2014, the Applicant pled guilty. The Honorable Lee S. Alford sentenced the Applicant to concurrent terms of 12 years on each count of trafficking cocaine, 28-100 grams. The Applicant did not appeal.

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

## II.

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

1. Ineffective assistance of counsel.
  - a. "My lawyer could have made a better argument about the car not being in my name, and the fact that I did not know the drugs were in the car."

## III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

#### IV.

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

#### V.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

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

By: Karen Ratigan  
**Attorneys for Respondent**

November 22, 2014

|                          |   |                       |
|--------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA  | ) | COURT OF COMMON PLEAS |
|                          | ) | 2014-CP-23-4293       |
| COUNTY OF GREENVILLE     | ) |                       |
|                          | ) |                       |
|                          | ) |                       |
|                          | ) |                       |
| HUMBERTO ALONSO GARCIA,  | ) |                       |
| PLAINTIFF,               | ) |                       |
|                          | ) |                       |
| vs.                      | ) | TRANSCRIPT OF RECORD  |
|                          | ) |                       |
| STATE OF SOUTH CAROLINA, | ) |                       |
| DEFENDANT.               | ) |                       |
|                          | ) |                       |

---

April 22, 2015  
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

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

R. MILLS ARIAIL, JR, ESQ.  
Attorney for the Plaintiff

KAREN C. RATIGAN, ESQ.  
Attorney for the Defendant

CHERYL A. SMITH  
Circuit Court Reporter

INDEX

(PW) - Denotes Plaintiff's Witness

(SW) - Denotes State's Witness

PAGE NO.(PW) HUMBERTO ALONSO GARCIA:

Direct Examination by Mr. Ariail 4

Cross-Examination by Ms. Ratigan 10

Plaintiff Rests 12

(SW) ROBERT E. IANUARIO:

Direct Examination by Ms. Ratigan 13

Cross-Examination by Mr. Ariail 15

State Rests 17

Ruling of the Court 17

Certificate of the Reporter 19

EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
|------------|--------------------|------------|-------------|
|------------|--------------------|------------|-------------|

|     |                                           |    |   |
|-----|-------------------------------------------|----|---|
| D-1 | 1/9/15 Letter from Humberto Alonso Garcia | 18 | 9 |
|-----|-------------------------------------------|----|---|

P R O C E E D I N G S

MS. RATIGAN: May it please the Court, Your Honor, this is the case of Humberto Garcia vs. State of South Carolina. The docket number is 2010-CP-23-4293 [sic].

Mr. Garcia was indicted for two counts of trafficking cocaine. He was represented on these charges by Mr. Ianuario. On March 12, 2014, he pled guilty before Judge Alford. He received concurrent terms of 12 years on each count of trafficking cocaine 28 to 100 grams.

Mr. Garcia did not file an appeal, however, his application is timely filed. The State is ready to proceed.

MR. ARIAIL: Yes, Your Honor. We're ready to proceed.

THE COURT: Okay.

MR. ARIAIL: If you'd like to come to the stand. We've had numerous discussions in regards to this. He would like to proceed in regards to it and put up his evidence in the case.

THE COURT: What is trafficking ---

MR. ARIAIL: 7 to 25, I think it was.

THE COURT: 7 to 25. So if he wins, he can ---

MR. ARIAIL: Yeah. One of them is 7 to 25. The other is a minimum of -- oh, he got it reduced from 100 -- is it 100 to 200? So he got one reduced. He had two charges, 100 to 200, 28 to 100, so he's looking at a mandatory minimum of 25. I've advised him of that and told him he

1 can get additional time if he goes forward with this.  
2 Despite that, he wants to move forward and proceed with it.

3 THE COURT: A good bit more additional time.

4 MR. ARIAIL: It could be 13 years.

5 THE COURT: Okay. Well, let's go.

6 WHEREUPON,

7 HUMBERTO A. GARCIA,  
8 after first having been duly sworn, testified as follows:

9 THE CLERK: State your full name for the record.

10 THE WITNESS: My full name?

11 THE CLERK: Your full name.

12 THE WITNESS: Alberto Alonso Garcia.

13 THE CLERK: Thank you. You may be seated.

14 DIRECT EXAMINATION

15 BY MR. ARIAIL:

16 Q Mr. Garcia, I know we've talked, and I think you  
17 understand what I'm discussing with you, correct?

18 A Right.

19 Q You don't need a translator, right?

20 A No.

21 Q Good. Okay. Now, we've discussed your case. And you  
22 know, through our discussions, if you're successful in your  
23 PCR, you could get additional time. You understand that?

24 A I understand.

25 Q It doesn't dismiss the charges. It just opens them

1 back up to what you were initially charged with, correct?

2 A Correct.

3 Q Okay. So you could be looking -- I think one of the  
4 charges was 100 to 200 grams, which carries a mandatory  
5 minimum of 25 years. You understand that?

6 A I understand.

7 Q Okay. And with us discussing that, you want to go  
8 forward and proceed with this, correct?

9 A Correct.

10 Q Okay. Now, I know we've had discussions in regards to  
11 your attorney's representation. Can you give me a little  
12 bit of information in regards to did you ever get out on  
13 bond on these charges?

14 A Bond these charges, you said?

15 Q Yeah. Did you get out of jail after you were  
16 arrested?

17 A Oh, no.

18 Q Okay. How many conversations did you have with your  
19 attorney in regards to this case?

20 A About three, four.

21 Q Three or four. Okay.

22 Did you understand the discovery against you, the  
23 facts, what they were alleging?

24 A Yeah. I understood that.

25 Q Okay. And this was pretty much what it involved was a

1 traffic stop where they found cocaine, correct?

2 A Correct.

3 Q Okay. And during that, did you discuss with him  
4 motions to suppress, you know, evidentiary issues, things  
5 of that nature? Did he go over that with you?

6 A Well, some of it, like motion discovery where he  
7 discussed with me, so that's why I'm here to -- to -- I  
8 wasn't satisfied that he didn't show me that about -- about  
9 all that motion discovery.

10 Q He didn't show you your discovery?

11 A He did, but he doesn't -- didn't discuss with me --  
12 discuss with me.

13 Q And when you say he didn't discuss with you, he showed  
14 it to you, but he didn't tell you what the facts are or  
15 what the evidence they had against you was?

16 A Well, he told me, yeah, about the charges and  
17 everything, yeah.

18 Q So he did do that?

19 A Yes.

20 Q Did he tell you that you were looking at a mandatory  
21 minimum of 25 years on one of the charges?

22 A Yes.

23 Q Okay. So with that discussion, did he also tell you,  
24 hey, you can file a motion to suppress or try to limit this  
25 or exclude this evidence if you want to?

1 A Could you repeat that again?

2 Q Okay. I guess what I'm -- the whole key to your case  
3 was they pulled you over, they searched your car. Did he  
4 talk to you about, hey, you might have a suppression, you  
5 might be able to, you know, exclude that search or we can  
6 file a motion, possibly? Did y'all discuss any of those  
7 search issues?

8 A No, no.

9 Q Okay. Did you discuss any of the -- did you discuss  
10 that you could be getting 25 years if you go forward and  
11 are found guilty on this?

12 A Yes, yes.

13 Q Okay. And despite all that, you decided to plead  
14 guilty, right?

15 A Yes.

16 Q Okay. So I guess what I'm asking, what the Court is  
17 trying to determine here, what are you saying that  
18 Mr. Ianuario did that was ineffective?

19 A Well, I just went through because I didn't know  
20 anything about the law, so when I got sentenced and went to  
21 prison, I found -- I met many more inmates. They got worse  
22 charges than mine, and they got less years. So that what  
23 made me try and find out what was wrong with my case. And  
24 then we got -- inmates got access to go to the law library,  
25 so I started -- I started going to the law library to find

1 the few errors that I sent to you.

2 Q Right. And I'm not going to make you read all this.  
3 This is the letter that you sent me, correct?

4 A Right.

5 Q And has your issues in it?

6 A Yes.

7 Q Okay. And things you wanted to address?

8 A Yes.

9 Q And I know we went over this in the back, and I don't  
10 think you -- I mean, there's certain things in here that  
11 you couldn't recall or didn't know to testify about. You  
12 wanted to submit this as an exhibit, correct?

13 A Yes.

14 MR. ARIAIL: Okay. Your Honor, if I could submit this  
15 as his exhibit at this time.

16 MS. RATIGAN: I would object on the grounds that it's  
17 actually a bunch of new issues in there that hadn't been  
18 alleged prior to today, so we would object to the late  
19 notice of amendment at this time.

20 THE COURT: What's the relevance of the ---

21 MR. ARIAIL: Well, when I discuss it with him, I  
22 wanted to be able to bring forth the ---

23 THE COURT: What are the new issues he's talking about  
24 that are not right -- well, all he raised was that he  
25 wanted his lawyer to do a better job talking about the car

1 not being in his name ---

2 MR. ARIAIL: And numerous other ones.

3 THE COURT: --- and the fact that he -- he claims in  
4 this application he didn't know the drugs were in the car.  
5 He was under oath at the plea where he said he told them  
6 where it was.

7 MR. ARIAIL: And I think he even provided a statement  
8 at some point in regards to that also. So ---

9 THE COURT: Yeah. Made a statement, volunteered,  
10 waived his rights. I mean, he can -- go ahead. Over the  
11 State's objection, I'll let it in.

12 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted into  
13 evidence.)

14 MR. ARIAIL: Thank you.

15 BY MR. ARIAIL:

16 Q Are there any other -- outside of this document right  
17 here, are there any other issues that you want to bring up  
18 to the Court that he was ineffective, didn't do for you,  
19 didn't take care of anything you asked him to do?

20 A Like at the last minute, I asked him to give me advice  
21 and what should I do when we were about to come here. And  
22 he just didn't know what to answer, so I just told him, "Go  
23 ahead. Let's put this in," and I just waited.

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

25 ///

1

CROSS EXAMINATION

2

BY MS. RATIGAN:

3

Q So you met with your lawyer several times at the jail?

4

A Yes.

5

Q And you talked about the State's evidence against you?

6

A Yes.

7

Q And did you tell your lawyer your version of what happened that day?

8

9

A Can you repeat that again?

10

Q Did you tell your lawyer kind of your side of the story of what happened that day when you got arrested?

11

12

A Yes, yes.

13

Q And you told your lawyer that you let the officers search your car and your home?

14

15

A Yes.

16

Q And did he tell you that was going to be damaging for your case? That was going to be bad for your case?

17

18

A Not really.

19

Q And did you and your lawyer talk about the fact that you had made some prior drug transactions with an informant?

20

21

22

A Can you repeat that again?

23

Q Did you and your lawyer talk about the fact that you had made some prior drug transactions with the informant for the State?

24

25

1 A No.

2 Q You didn't talk about that? All right.

3 Did you talk about your statement with your lawyer?

4 A Yes.

5 Q And did he tell you that was going to be harmful for  
6 your case?

7 A Yes.

8 Q So what is it -- be real clear with me. What is it  
9 you wanted him to do that he did not do for you?

10 A Well, like I said, I went to the law library and find  
11 some of those ---

12 Q Okay. But just tell me in your own words what he did  
13 not do for you that he should have done.

14 A Like I met many other inmates that they had worse  
15 charges than mine, and they got less years.

16 Q So basically, you feel like you got too much time,  
17 your sentence was too harsh?

18 A Yes.

19 Q Okay. And if your lawyer had done more work on your  
20 case, you would have gotten a better sentence; is that what  
21 you're saying?

22 A Yes.

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

24 MR. ARIAIL: No further questions.

25 THE COURT: Okay. Apparently, you were right up at

1 trial when you decided to plead guilty, so you plead off  
2 the trial docket; does that sound right?

3 PLAINTIFF GARCIA: Could you repeat that again?

4 THE COURT: Your case was set to be called for trial  
5 when you pled guilty; is that right?

6 PLAINTIFF GARCIA: That's right.

7 THE COURT: And you sat in jail for 735 days before  
8 you entered a plea; is that correct?

9 PLAINTIFF GARCIA: That's right.

10 THE COURT: And you previously had sold more than  
11 10 grams of cocaine to an undercover operative before this  
12 day; is that right?

13 PLAINTIFF GARCIA: That's right.

14 THE COURT: And then they had a search warrant to  
15 search your house at the time of this offense, right?

16 PLAINTIFF GARCIA: Right.

17 THE COURT: Okay. I think that's all. Thank you very  
18 much.

19 You've been taking some English classes.

20 PLAINTIFF GARCIA: Yes.

21 THE COURT: Your English is very good.

22 PLAINTIFF GARCIA: Thank you.

23 THE COURT: Thank you. You can go back to your seat.

24 MR. ARIAIL: That's our case, Your Honor.

25 MS. RATIGAN: We briefly call Mr. Ianuario, and I

1 realize I keep butchering his name.

2 WHEREUPON,

3 ROBERT E. IANUARIO,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Please state your full name for the  
6 record.

7 THE WITNESS: My name is Robert Eugene Ianuario.

8 DIRECT EXAMINATION

9 BY MS. RATIGAN:

10 Q Do you recall representing Mr. Garcia on these  
11 charges?

12 A Yes, ma'am.

13 Q And were you appointed or retained?

14 A I was retained.

15 Q Did you file the usual Brady and Rule 5 motions?

16 A Yes, ma'am.

17 Q To the best of your knowledge, did you receive full  
18 discovery from the State?

19 A Yes, ma'am.

20 Q Was Mr. Garcia at the detention center during the  
21 length of your representation?

22 A Yes, ma'am.

23 Q Did you go visit him there?

24 A Yes, ma'am.

25 Q How many times would you say you visited with him at

1 the detention center?

2 A Approximately a half dozen, maybe more. I sent my  
3 associate attorney, who's in the gallery if he needs to be  
4 called up here. I sent him down several times also.

5 Anytime Mr. Garcia would send a letter, I would either try  
6 to go down and see him or send my associate, Matt Canady.

7 Q And during your meetings with Mr. Garcia, did you  
8 review the discovery materials?

9 A Yes, ma'am.

10 Q Did you review his version of events?

11 A Yes, ma'am.

12 Q Did you discuss with him the fact that he consented to  
13 these searches was bad for your case?

14 A Yes, ma'am.

15 Q Based upon your discussions with Mr. Garcia and your  
16 review of discovery, were you able to formulate any kind of  
17 defense in this case?

18 A There wasn't really much to work with in it.

19 Q Did you engage in plea negotiations with the State?

20 A Yes. Several times.

21 Q Did Mr. Garcia plead guilty pursuant to an offer or  
22 did you plead without recommendation?

23 A It was the morning of trial. I had a motion, Ruggiero  
24 motion to release the identity of the informant, and in  
25 discussions in chambers, we reached an off-the-record

1 agreement. And I went back and spoke with Mr. Garcia on  
2 it, and we elected to go forward.

3 Q Forward with the plea?

4 A To go forward with the plea, yes.

5 Q Once Mr. Garcia had decided to plead guilty, did he  
6 waiver at all in his decision?

7 A He wasn't happy about it, but I believe he understood  
8 that it wasn't bad given the 25-year mandatory minimum we  
9 were looking at. I tried to make it aware in our  
10 discussions before the plea that since we were gambling  
11 with 25 years on the basis of my motion, and if that lost,  
12 we didn't have much of a chance at trial.

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

14 THE COURT: Cross?

15 CROSS EXAMINATION

16 BY MR. ARIAIL:

17 Q Mr. Ianuario, thanks. They found in the house  
18 861 grams of cocaine. Is that what they -- if you  
19 remember?

20 A It was a large quantity. I think it was over  
21 6 ounces.

22 Q And you had Joyce Monts as the solicitor on this case,  
23 correct?

24 A Correct.

25 THE COURT: That's closer to a pound and a half.

1 THE WITNESS: It was right under a K.

2 BY MR. ARIAIL:

3 Q Okay. So you got her to negotiate that down to  
4 12 years?

5 A Yes, sir.

6 Q So there was a recommendation for 12 years?

7 A I believe that's what I officially went forward on.  
8 As I said, there was a lot of last-minute discussion in  
9 chambers trying to get this worked out.

10 Q And that came off the trial docket with that?

11 A Yes, sir.

12 Q And did you have any discussions with him about  
13 suppression hearings or motions that you could file to try  
14 to exclude it as evidence?

15 A We talked about the motion for the confidential  
16 informant. They were not willing to go forward with that.  
17 But if they could produce the identity of the informant and  
18 everything was valid, then we didn't have much of a chance  
19 at trial. If they couldn't produce the informant, then we  
20 had a very good shot. But we're taking a 25-year gamble on  
21 that one motion. Given from his statements from everything  
22 else, I didn't see any way to suppress.

23 Q So the whole case hinged on the informant, whether or  
24 not they were going to be able to get the search warrant, I  
25 guess, and everything else; is that correct?

1 A They actually already had the search warrant. It  
2 wasn't a traffic stop. He was at Judge Cagle's paying a  
3 traffic ticket when they approached him in the parking lot.  
4 They asked him if that was his blue Volkswagen, and he  
5 indicated yes. They asked if there were drugs in the car.  
6 He indicated yes and then told them where they were hidden.  
7 I think they found approximately an ounce of cocaine hidden  
8 in the console.

9 Q Okay. Were there any motions to limit or to exclude  
10 evidence that you saw were viable in this case?

11 A I did not see any.

12 MR. ARIAIL: Okay. Your Honor, I have no further  
13 questions.

14 THE COURT: Just a quick calculation shows that  
15 861 grams is like a kilo less about 6 ounces, isn't it?

16 MR. IANUARIO: It was pretty close. I seem to  
17 remember Joyce said it was the largest quantity of cocaine  
18 she'd ever seen.

19 THE COURT: Joyce Monts? I thought she had more  
20 experience than that..

21 Okay. That's it. Thanks.

22 MR. IANUARIO: Thank you, Your Honor..

23 MS. RATIGAN: The State would rest, Your Honor.

24 MR. ARIAIL: Nothing further, Your Honor.

25 THE COURT: Mr. Garcia, I'm going to deny your

1 petition. You have to show that the conduct of your  
2 attorney fell below an objective standard of  
3 reasonableness. You did not show that. In fact, you were  
4 up here to go to trial, and the policy of the solicitor's  
5 office is not to deal once you're on the trial docket. And  
6 for the fact that your lawyer got a reduced charge and  
7 saved you a bunch of time, well, that's unusual. It  
8 doesn't happen very often. So you were actually very  
9 fortunate. But you haven't proven your petition, and I'm  
10 going to deny your claim. Okay. Good luck to you.

11 MS. RATIGAN: Thank you, Your Honor.

12 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for  
13 identification.)

14 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE OF REPORTER

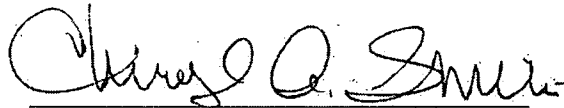
2  
3 STATE OF SOUTH CAROLINA )

4 COUNTY OF GREENVILLE )

5  
6  
7 I, CHERYL A. SMITH, Official Court Reporter for the  
8 Thirteenth Judicial Circuit of the State of South Carolina,  
9 do hereby certify that the foregoing is a true, accurate  
10 and complete Transcript of Record of the proceedings had  
11 and evidence introduced in the trial of the captioned case,  
12 relative to appeal, in the Court of Common Pleas for  
13 Greenville County, South Carolina, on the 22nd day of  
14 April, 2015.

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

17  
18 June 2, 2015

19  
20  
21 

22  
23 Cheryl A. Smith, CVR-M

24 Court Reporter

25

MR HUMBERTO ALONSO GARCIA  
DEFENDANT

53

JANUARY 09, 2015

LEGAL MAIL

MR. HUMBERTO ALONSO GARCIA - SCDC#359253  
RIDGELAND CORRECTIONAL INSTITUTION  
POST OFFICE BOX 2039  
RIDGELAND SC 29936



**RE:** HUMBERTO ALONSO GARCIA W. STATE OF SOUTH CAROLINA  
CASE No: 2014-CP-23-4293

DEAR MR R. MILLS ARIAIL, JR

Through this letter, IN SUMMARY, PLEASE UNDERSTAND THAT I HAVE BEEN WORKING DILIGENTLY GATHERING NOTES FROM THIS CASE TO SHARE WITH YOU FOR A FULL AND COMPLETE UNDERSTANDING OF MY CASE. PLEASE KEEP ME INFORMED OF THE STATUS OF MY CASE, SO WE CAN BOTH PROCESS TO SET UP A TELEPHONE CONFERENCE OR MEETING ABOUT THE ENTIRE CASE. MY PREVIOUS ATTORNEY IS FROM THE COUNTY OF GREENVILLE SOUTH CAROLINA, HIS NAME IS ROBERT E. IANAURIO, ESQUIRE. MY CURRENT APPOINTED ATTORNEY NAME IS R. MILLS ARIAIL, JR. I HAVE FILE FOR **PCR** - POST CONVICTION RELIEF APPLICATION WAS FILED AUG 4, 2014. I LOOK FORWARD TO HEAR FROM YOU IN THE NEAR FUTURE. AT THAT TIME WE CAN DISCUSS OUR STRATEGY, LEGAL ISSUES, WITNESSES WHO MAY NEED TO BE CALLED AND OTHER ISSUES THAT MAY BE OF CONCERN. I AM PROVIDING YOU WITH ANY AND ALL INFORMATION THAT I BELIEVE IS RELEVANT TO MY **PCR** HEARING SO WE BOTH CAN FULLY BE PREPARED. SINCERELY, Humberto Garcia

## ISSUES PRESENTED

THE PETITIONER INVOKES THIS COURT EQUITABLE DISCRETION TO PLEASE DETERMINE THE CONSTITUTIONALITY OF HIS CURRENT CONVICTION AND TO PLEASE CORRECT A MANIFESTED INJUSTICE. THE PETITIONER ALLEGES IN ALL SUCH CASES, AS THE CASE-IN-CHIEF, THAT THIS COURT SHOULD INVOKE THE APPLICATION FOR POST-CONVICTION RELIEF TO CORRECT SUCH A FUNDAMENTALLY FLAWED AND INJUST CONVICTION. THE PETITIONER CONTENDS THAT STATE OF SOUTH CAROLINA HAS IMPENDED HIS ABILITY TO PRESENT THE ISSUES WHICH HAD SUBSTANTIAL AND INJURIOUS EFFECTS ON HIS TRIAL BY ARBITRARY SYSTEMATICAL DENIAL OF HIS CONSTITUTIONAL RIGHTS.

## INTRODUCTION

THIS CASE - IN - CHIEF, PRESENTS UNEQUIVICAL CONSTITUTIONAL ISSUES WHICH DO SUPPORT THE ISSUE OF RELIEF. THE STATE OF SOUTH CAROLINA CONVICTED PETITIONER UNCONSTITUTIONALLY BASED ON UNFAIR PREJUDICIAL INFORMATION AND EVIDENCE PRESENTED AT PETITIONER'S GENERAL SESSIONS COURT HEARING. THE CASE PRESENTED WAS ALL CIRCUMSTANTIAL AND THE STATE INTRODUCED EVIDENCE OF DRUG TRAFFICKING. THE INTRODUCTION OF THE PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL AND ILLEGAL SEARCH AND SEIZURES WAS UNCONSTITUTIONAL OF AN ALLEGED PRIOR BAD ACT, CARRIES AN AUTOMATIC INFERENCE WHICH IS IMPROPER BEFORE A JURY OR IN FRONT OF THE GENERAL SESSIONS COURT JUDGE. MOREOVER, WHEN THIS TYPE OF EVIDENCE IS INTRODUCED, THE STATE CARRIES THE BURDEN OF PROVIDING A LIMITED INSTRUCTION.

provided information from the Defendant's previous Counsel<sup>55</sup>  
unproper measure of performance that he never provided  
within range of competence required of attorneys in  
criminal cases.

- 1.) The Defendant's Counsel did not give his client the proper hindsight about his case to prove right or wrong issues. **Therefore:** This would be necessarily grounds for post-conviction relief.
- 2.) The Defendant's Counsel did not provide his client with a Motion of Discovery from the time he had been incarcerated for 2 years in County Jail. By this standard, ineffective representation is proved by the Defendant that his Counsel's error was so flagrant that a court can conclude that it resulted from neglect or ignorance rather than from informed, professional deliberation. **U.S.C.A. Const. Amend 6, H.**
- 3.) Defendant understands that while the normal competency standard does not purport to list the things Counsel should or should not do, however, the Defendant Counsel did not confer with his client to elicit matters of defense or to ascertain that potential defenses are available or unavailable — Defendant was never given his Motion of Discovery for review.
- 4.) Defendant was deprived by his Counsel by tardy appointments.
- 5.) Ineffective assistance of Counsel was done by the Defendant's Counsel, because Counsel did not conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed.

TURN OVER... CONTINUE...

- 6.) THE DEFENDANT'S COUNSEL HAD ENOUGH TIME FOR REFLECTION AND PREPARATION TO REVIEW THE DEFENDANT'S MOTION OF DISCOVERY WITH HIM, BUT HE FAIL TO DO SO—EVEN WHEN HIS CLIENT REQUESTED HIS ASSISTANCES.
- 7.) DEFENDANT'S COUNSEL DID NOT ADEQUATELY DEFEND HIS CLIENT PROPERLY. DEFENDANT'S COUNSEL ONLY WENT THROUGH THE FORMALITIES OF MY TRIAL SENTENCING.
- 8.) ON THE CONTRARY, THE DEFENDANT'S ATTORNEY MADE NO CLAIM THAT HIS DECISION NOT TO CHALLENGE THE GENERAL SESSIONS COURT SOLICITOR AND JUDGE WOULD BE A FACTOR FOR A LIGHTER SENTENCE.
- 9.) DEFENDANT'S COUNSEL ACTIONS DIDN'T EXEMPLIFIED HIS PERFUNCTORY APPROACH TO THE [REDACTED] IMPORTANT TASK OF REPRESENTING THE DEFENDANT.
- 10.) DEFENDANT'S COUNSEL AND COURT APPOINTED INTERPRETER COULD HAVE PROVIDED THE DEFENDANT WITH BETTER AWARENESS ABOUT HIS DECISIONS AND QUESTIONS ASK OR BEING ASKED IN COURT—BY THIS NOT BEING DONE, IT MADE THE DEFENDANT VERY DISTURBED, AND HIS INABILITY TO COMMUNICATE PREVENTED HIM FROM EXPLAINING THE COMMENTS.
- 11.) DEFENDANT BELIEVED THAT THROUGH HIS ATTORNEY ADVICE ABOUT PLEADING GUILTY WAS NOT SUITABLE GENERAL STANDARD OF THE LAW. THEREFORE THE DEFENDANT'S CONSTITUTIONAL RIGHTS WAS VIOLATED—AMENDMENT 8, 9, AND 10.

CONTINUE...

- 12) Additionally Defendant's Counsel did not provide his client with his motion of Discovery, as a result of this, the Defendant's Constitutional Rights were violated — Amendment 8, 9, and 10 — because the Defendant's Motion of Discovery may have provided circumstances in proof of the Defendant's innocence. By the Defendant's Counsel not sharing this information within his knowledge of all the facts as they existed, it rebut the inferences which the circumstances in proof that would have probably set his client free of his current charges, that have support the inferences against him.
- 13) Defendant's Counsel fail to research, develop and present evidence to client and in the court of general sessions.
- Specifically, Counsel is charged with having failed
- 1) To investigate and contact witnesses who would testify as to Applicant's good character
  - 2) To present evidence showing Agents did illegal search and seizure — Amendment 4
  - 3) To fully discuss the sentencing phase with Applicant so as to render meaningful.
  - 4) To present evidence showing Agents prevented the search warrant after they search the Defendant's home and vehicle
  - 5) To present Defendant with his motion of Discovery
- TURN OVER!

6) COUNSEL FAILED TO RENDER ADEQUATE ASSISTANCE AND SIGNIFICANT DECISIONS IN THE EXERCISE OF REASONABLE PROFESSIONAL JUDGEMENT.

7) COUNSEL FAILED TO PROVIDE PROPER MEASURE OF PERFORMANCE WITHIN RANGE OF COMPETENCE REQUIRED IN CRIMINAL CASES. U.S.C.A. CONST. AMENDS. 6, 14.

**FACT:** A two-pronged TEST HAS BEEN PROVED BY THE DEFENDANT HUMBERTO ALONSO GARCIA THAT HIS PREVIOUS ATTORNEY ROBERT E. IANAURIO, ESQUIRE PERFORMANCE WAS DEFICIENT.

**THEREFORE:** IF A FAIR DECISION IS NOT MADE AT THE DEFENDANT EVIDENTIARY HEARING FOR RETRIAL IN THE COURT OF GENERAL SESSIONS, THEN THE DEFENDANT WILL NOT HESITATE TO HIRE A WELL-PAID ATTORNEY WITH CREDENTIALS TO CONTACT THE SOUTH CAROLINA BOARD TO HAVE ATTORNEY ROBERT E. IANAURIO, ESQUIRE BARED FROM PRACTICE AND FOLLOWING CHARGES BROUGHT UP AGAINST THE STATE FOR MISCONDUCT.

**FURTHERMORE:** THE DEFENDANT HERBERTO ALONSO GARCIA HAS ESTABLISH CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AND HE HAS [REDACTED] PROVED THAT COUNSEL'S REPRESENTATION FELL BELOW OBJECTIVE STANDARD OF REASONABLENESS AND THAT, BUT FOR COUNSEL'S ERRORS, THERE IS REASONABLE PROBABILITY RESULT WOULD HAVE BEEN DIFFERENT.  
U.S.C.A. CONST. AMEND. 6.

THE SOLE ISSUE IN THE DEFENDANT'S LEGAL PAPERS PRESENTED TO HIS ATTORNEY  
R. MILLS ARIAL, JR., 11 NORTH IRVINE STREET, SUITE 11  
GREENVILLE SC 29601

IS TO ADDRESS THAT THE DEFENDANT'S PREVIOUS COUNSEL  
ROBERT E. IANAURO, ESQUIRE WAS INEFFECTIVE IN REPRESENTING HIS CLIENT  
HUMBERTO ALONSO GARCIA. THE DEFENDANT ASSERTS THAT HIS PREVIOUS ATTORNEY  
<sup>DEFENDANT</sup>  
DID NOT RENDERED EFFECTIVE ASSISTANCE WELL WITHIN PROFESSIONAL NORMS FOR  
A DEFENSE ATTORNEY. THROUGH THE DEFENDANT LETTER, RESEARCH, AND PRESENT  
EVIDENCE IS ALLEGED AS A GROUND FOR RELIEF AND WILL DEFINATELY PROVE THAT  
COUNSEL'S CONDUCT SO UNDERMINED THE PROPER FUNCTIONING OF THE ADVERSARIAL  
PROCESS THAT A TRIAL COULD NOT BE RELIED ON AS HAVING PRODUCED A JUST RESULT.  
THE DEFENDANT'S COUNSEL DID NOT PROVIDE PROPER MEASURE OF PERFORMANCE  
WITHIN RANGE OF COMPETENCE REQUIRED IN CRIMINAL CASES, WHICH HE FAILED  
TO RENDER ADEQUATE ASSISTANCE AND DECISIONS IN THE EXERCISE OF REASONABLE  
PROFESSIONAL JUDGEMENT. THE DEFENDANT HAS PROVIDED ALL THE INFORMATION TO HIS  
PRESENT ATTORNEY TO PROVE IN THE COURT OF COMMON PLEAS THAT HE MUST  
BE GRANTED A NEW TRIAL IN THE COURT OF GENERAL SESSIONS. THE DEFENDANT  
HAS OVERCOME THE PRESUMPTION IN ORDER TO RECEIVE RELIEF. THE DEFENDANT'S  
COUNSEL HAD REWARDED HIM 12 YEARS BY THE GENERAL SESSIONS JUDGE BECAUSE  
OF HIS UNPROFESSIONAL ERRORS. THE DEFENDANT HAS PROVIDED BOTH REQUIREMENT  
OF THE STRICKLAND V. WASHINGTON TEST. STRICKLAND V. WASHINGTON, 466 U.S. 668,  
686, 104 S. CT 2052, 2064 (1984); BUTLER V. STATE, 286 S.C. 441, 442, 334 S.E.2d  
813, 814 (1985). CHERRY V. STATE, 300 S.C. AT 117, 386 S.E. 2d AT 625  
(QUOTING STRICKLAND, 466 U.S. AT 688, 104 S. CT. AT 2065).

THE DEFENDANT'S ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL SHOULD BE  
GRANTED AT HIS EVIDENTIARY HEARING TO FULLY RESOLVE THIS ISSUE IN THE COURT  
OF GENERAL SESSIONS.

CONTINUE ...

AS PROOF OF FILING FOR MY RECORDS, I WOULD APPRECIATE IT IF ONE OF YOUR CLERKS WOULD CLOCK THE ENCLOSED COPY OF THIS LETTER, RESEARCH AND PRESENT EVIDENCE AS A GROUND FOR RELIEF THAT WILL PROVE THAT THE DEFENDANT'S PREVIOUS COUNSEL'S CONDUCT SO UNDERMINED THE PROPER FUNCTIONING OF THE ADVERSARIAL PROCESS THAT A TRIAL COULD NOT BE RELIED ON AS HAVING PRODUCED A JUST RESULT. THANK YOU.

SINCERELY,

Humberto Alonso Garcia  
DEFENDANT

Timothy A. Lawrence  
PRINT WITNESS

[Signature]  
SIGNATURE WITNESS

Virginia Robinson  
PRINT WITNESS

Virginia Robinson  
SIGNATURE WITNESS

THIS PHOTO COPY SHALL SERVE AS THE ORIGINAL AND ANY COPIES THEREIN MADE WILL BE ACCEPTED AS A TRUE AND ORIGINAL COPY.

IF YOU HAVE ANY QUESTION CONCERNING THIS LETTER OF NOTARY PUBLIC, PLEASE DON'T HESITATE TO CONTACT ME WITH ANY CONCERNS.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 20<sup>th</sup> DAY OF January

2015

Virginia Robinson

NOTARY PUBLIC

STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 20, 2021

**SEAL**

# ILLEGAL SEARCHES AND SEIZURES

## WITHOUT PROBABLE CAUSE - AGENTS' ERRORS

61

DEFENDANT IS PRESENTING HIS ATTORNEY WITH INFORMATION THAT WOULD NOT BE SUFFICIENT TO ALLOW THE OFFICIALS TO INDEPENDENTLY DETERMINE PROBABLE CAUSE FOR SEARCHES AND SEIZURES.

- 1.) THE DEFENDANT HUMBERTO ALONSO GARCIA ARGUES THAT THE AFFIDANT PRESENTED IN THE COURT OF GENERAL SESSIONS WAS A "BARE BONES" COMPOSITION OF BOILERPLATE LANGUAGE, WITH FEW PARTICULARIZED FACTS LINKING THIS SUSPECT AND HIS RESIDENCE TO ILLEGAL DRUGS OR ANY OTHER CRIMINAL ACTIVITIES.
- 2.) DEFENDANT REQUEST THAT HIS ATTORNEY SUPPRESS EVIDENCE TAKEN FROM HIS PROPERTY DUE TO LACK OF PROBABLE CAUSE FOR THE SEARCH.
- 3.) THE DEFENDANT BELIEVE THAT THE SEARCH WARRANT THE AGENTS PRESENTED AFTER THEY HAD CONDUCT THE SEARCH OF THE CAR AND HIS HOME - IS - AS PRESENTED, THE COMBINED BOILERPLATE LANGUAGE AND MINIMAL HANDWRITTEN INFORMATION PROVIDE FEW, IF ANY PARTICULARIZED FACTS OF AN INCRIMINATING NATURE AND LITTLE MORE THAN CONCLUSORY STATEMENTS OF AFFIANTS BELIEF THAT PROBABLE CAUSE EXISTED REGARDING CRIMINAL ACTIVITY.
- 4.) "THE SECURITY OF ONE'S PRIVACY AGAINST ARBITRARY INTRUSION BY POLICE - WHICH IS AT THE CORE OF THE FOURTH AMENDMENT - IS BASIC TO FREE SOCIETY." *Wolf v. Colorado*, 338 U.S. 25, 27, 69 S.Ct. 1359, 1361, 93 L. Ed. 1782 (1949).
- 5.) VIEWED OBJECTIVELY, THE AGENTS POSSESSED SOME INFORMATION FROM A PREVIOUSLY RELIABLE INFORMANT REGARDING POSSIBLE CRIMINAL ACTIVITIES BUT - 1.) POSSESSED NO PRIOR PERSONAL KNOWLEDGE OF ANY UNLAWFUL ACTIVITIES AT THE SUSPECT RESIDENCE OR TO SEARCH THE VEHICLE HE WAS DRIVING. 2.) POSSESSED NO PRESENT PERSONAL KNOWLEDGE OF ANY CONNECTION BETWEEN THIS SUSPECT AND COCAINE POSSESSION AND TRAFFICKING COCAINE.

**FILE OVER!**

3) HAD NOT PERSONALLY SEEN OR FOUND COCAINE IN THE SUSPECT CAR HE WAS DRIVING UNTIL THEY HAD MOVED THE CAR THEMSELVES TO ANOTHER SPOT TO SEARCH IT AGAIN WITHOUT HIM BEING PRESENT. ALSO THE AGENTS DID NOT CONDUCTED ANY VISUAL RECONNAISSANCE OF THE PROPERTY TO DETERMINE WHETHER COCAINE AND MARIJUANA WAS LIKELY TO BE PRESENT ON THE PROPERTY. **UNITED STATES V. BROUSSARD**, 80 F.3d 1025, 1034 (5<sup>th</sup> CIR. 1996)

**WHEREFORE:** Accordingly, the items seized at Humberto Alonso Garcia — Residence should be suppressed during court hearing.

**THEREFORE:** The Defendant request from his attorney and the district court that a judgement of REVERSE OF GUILTY be OVERTURN, AND THIS CASE be REMANDED WITH INSTRUCTIONS TO ISSUE A WRIT OF HABEAS CORPUS discharging **HERBERTO ALONSO GARCIA** from custody UNLESS THE STATE RETRIES him WITHIN A REASONABLE TIME.

FACTS!

U.S. V. WEAVER  
CITE AS 99 F.3d 1372 (6th Cir. 1996)

4) SEARCHES AND SEIZURES — KEY 104

PROBABLE CAUSE MUST BE DRAWN BY NEUTRAL AND DETACHED MAGISTRATE INSTEAD OF BEING JUDGED BY OFFICER ENGAGED IN THE OFTEN COMPETITIVE ENTREPREISE OF FERRETING OUT CRIME. U.S.C.A. CONST. AMEND 4.

5) SEARCHES AND SEIZURES — KEY III

AFFIDAVIT PRESENTED IN SUPPORT OF ISSUANCE OF SEARCH WARRANT MUST CONTAIN ADEQUATE SUPPORTING FACTS ABOUT UNDERLYING CIRCUMSTANCES TO SHOW THAT PROBABLE CAUSE EXISTS FOR ISSUANCE OF WARRANT. U.S.C.A. CONST. AMEND 4.

7) SEARCHES AND SEIZURES — KEY III

FROM WHATEVER SOURCE, INFORMATION PRESENTED IN SUPPORT OF ISSUANCE OF SEARCH WARRANT MUST BE SUFFICIENT TO ALLOW OFFICIAL TO INDEPENDENTLY DETERMINE PROBABLE CAUSE; HIS ACTION CANNOT BE MERE RATIFICATION OF BARE CONCLUSIONS OF OTHERS. U.S.C.A. CONST. AMEND. 4.

10) SEARCHES AND SEIZURES — KEY III, 417

AN AFFIDAVIT THAT STATES SUSPICIONS, BELIEFS, OR CONCLUSIONS TO JUSTIFY ISSUANCE OF SEARCH WARRANT, WITHOUT PROVIDING SOME UNDERLYING FACTUAL CIRCUMSTANCES REGARDING VERACITY, RELIABILITY, AND BASIS OF KNOWLEDGE, IS A "BARE BONES AFFIDAVIT." U.S.C.A. CONST. AMEND 4.

TURN OVER

- 11) <sup>64</sup> SEARCHES AND SEIZURES Key 108  
12.) SEARCHES AND SEIZURES Key 111  
13.) DRUGS AND NARCOTICS Key 188 (6)  
16.) CRIMINAL LAW Key 394.4 (6)

- A.) UNITED STATES V. LEAKE, 998 F.2d 1359, 1362 (6th Cir. 1993).  
B.) ILLINOIS V. GATES, 462 U.S. 213, 236, 103 S.Ct. 2317, 2331, 76 L. Ed. 2d 875 877-78 (6th Cir. 1986), CERT. DENIED, 479 U.S. 1092, 107 S.Ct. 1305, 94 L. Ed. 2d 160 (1987).  
C.) AGUILAR V. TEXAS, 378 U.S. 108, 111, 84 S.Ct. 1509, 1512 12 L. Ed. 2d 73 (1964).  
UNITED STATES V. LEON, 468 U.S. 897, 914, 104 S.Ct. 3405, 3416, 82 L. Ed. 2d 677 (1984).  
D.) GATES, 462 U.S. At 239, 103 S.Ct. At 2333.  
E.) JOHNSON V. UNITED STATES 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L. Ed. 436 (1947).  
F.) WHITELEY V. WARDEN, 401 U.S. 560, 564, 91 S.Ct. 1031, 1034-35, 28 L. Ed. 2d 306 (1971); NATHANSON V. UNITED STATES, 290 U.S. 41, 47, 54 S.Ct. 11, 13, 78 L. Ed. 159 (1933).  
G.) WHITELEY, 401 U.S. At 564-65, 91 S.Ct. At 1034-35; UNITED STATES V. HATCHER, 473 F.2d 321, 323 (6th Cir. 1973).  
H.) UNITED STATES V. RICHARDSON, 861 F.2d 291, 294-95 (D.C. Cir. 1988), CERT. DENIED, 489 U.S. 1058, 109 S.Ct. 1325, 103 L. Ed. 2d 593 (1989).  
I.) UNITED STATES V. BARRINGTON, 806 F.2d 524 (5th Cir. 1986).  
J.) UNITED STATES V. BROWARD, 80 F.3d 1023, 1034 (5th Cir. 1996) holding PREPRINTED AFFIDAVIT RECITING GENERALIZATIONS ABOUT EVIDENCE IN DRUG DEALER'S RESIDENCE, WITHOUT MORE INFORMATION, INSUFFICIENT TO RENDER OFFICERS' RELIANCE OBJECTIVELY REASONABLE.)

## MAJOR ERRORS IN THE DEFENDANT'S COURT TRANSCRIPT

- 1) PAGE 14 #25 AND PAGE 15 #1-25, PROVES THAT THE JUDGE MADE MAJOR ERROR BY NOT ASKING THE DEFENDANT THAT IF HIS ATTORNEY ADVISED HIM OF THAT FACT, THAT HE HAD 10 DAYS FROM [REDACTED] TODAY'S DATE WITHIN TO FILE A NOTICE OF INTENT TO APPEAL.
- 2) THROUGH THE ENTIRE DEFENDANT'S GENERAL SESSIONS COURT PROCEEDING, THE DEFENDANT'S ATTORNEY NEVER ONCE, REJECT, CORRECT, OR INTERJECT ANY OF THE QUESTIONS THAT WAS ASKED FROM THE JUDGE OR MANEUVERED BY THE SOLICITOR ABOUT HIS CLIENT. — THE FAILURE OF COUNSEL TO OBJECT RESULTED IN A WAIVER OF THE RIGHT TO COLLATERAL RELIEF.
- 3) THE AGENTS PROVIDED NO PROOF ON RECORD THAT THE DEFENDANT LEGALLY GAVE THEM AUTHORIZATION TO SEARCH THE CAR OR HIS HOME.
- 4) THE AGENTS EXECUTED THE SEARCH WARRANT THAT THEY ALREADY HAD IN HAND AT THE DEFENDANT'S HOME AFTER THEY HAD CONDUCTED THEIR SEARCH OF THE DEFENDANT'S HOME AND THE CAR. — PAGE 14 #1-15 POINTS OUT THIS FACT!
- 5) PAGES 12, #1-25 AND PAGES 13 #1-25, PAGE 14 #1-25 — CLEARLY POINTS OUT THAT THE AGENTS CONDUCT ILLEGAL SEARCH AND SEIZURE BECAUSE THE AGENTS WERE ALREADY CONDUCTING THE SEARCH OF THE CAR AND CONFIRM SENDING OTHER AGENTS TO THE DEFENDANT'S HOME FOR FURTHER SEARCH WITHOUT ISSUING A SEARCH WARRANT.

6) QUESTION? "WHO DROVE THE DEFENDANT'S CAR TO THE OTHER LOCATION? YES! IT WAS A AGENT THAT WAS CONDUCTING THE SEARCH OF THE VEHICLE BUT NEVER FOUND ANY DRUGS IN THE CAR UNTIL THE CAR WAS MOVED. — THEREFORE, THIS EVIDENCE CANNOT BE USE AGAINST THE DEFENDANT IN COURT, — THE DEFENDANT REQUESTS THAT HIS ATTORNEY TO SURPRESS THE EVIDENCE NOT TO BE USE IN COURT PERIOD — "IT'S THE LAW!"

7) THE DEFENDANT'S ATTORNEY NEVER ONCE DIRECT — CROSS — REDIRECT — OR RE CROSS THE SOLICITOR ■ OR THE JUDGE IN THE DEFENSE CASE.

## SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 09/05/14

C0511

GARCIA, HUMBERTO ALONSO FBI # 160115VB0 SID# SC01394168 SCDC # 359253

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... RIDGELAND CORR INST

SECURITY/CUST.: 2 MINIMUM IN

CURR INCARC SENT...: 12 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #....:

DORM.....: CA0005B

RACE.....: O SEX...: M

PROJ MAXOUT DATE: 05/16/2022

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: WARDKEEPER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: WARD KEEPER WARD #4

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 40 DATE OF BIRTH...: [REDACTED]/74

## PREVIOUS NUMBERS:

\*\* NO PREVIOUS NUMBERS \*\*

| CURRENT OFFENSES       | SENTENCE<br>YRS MOS DYS COUNTY | SENTENCE<br>START V/NV CATEGORY |
|------------------------|--------------------------------|---------------------------------|
| TRAFFICKING IN COCAINE | 12 0 0 GREENVILLE              | 3/ 7/2012 V 4                   |

PRIOR COMMITMENTS OVER 90 DAYS:

\*MISSING PRIORS DATA\*

DETAINERS (HOLD, WANTED, NOTIFY):

CODE NOT IN TABLE

WANTED

PRESIDING JUDGE

CATEG: 4

\*NO DETAINERS\*

## ESCAPES:

\*NO ESCAPE HISTORY\*

## CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

## ASSAULTIVE DISCIPLINARIES:

\*NO ASSAULTIVE DISCIPLINARY HISTORY\*

## NON-ASSAULTIVE DISCIPLINARIES:

\*NO NON-ASSAULTIVE DISCIPLINARY HISTORY\*

## HISTORY OF MOVEMENTS:

4/28/14 RIDGELAND

INCARCERATED

ADMINISTRATIVE

3/17/14 KIRKLAND

INCARCERATED

R&amp;E PROCESSING

3/17/14 PERRY

INCARCERATED

NEW ADMISSION

## HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION      | START DATE | END DATE | TERMINATION REASON      | JOB LVL |
|----------------------|------------|----------|-------------------------|---------|
| WARDKEEPER           | 07/15/14   | 0/ 0/ 0  |                         | YF5     |
| SENIOR GROUNDSKEEPER | 05/23/14   | 7/14/14  | INMATE REQUEST          | YF5     |
| SENIOR GROUNDSKEEPER | 05/06/14   | 5/22/14  | MI ELIGIBLE FOR LEVEL 2 | YF5     |
| WARDKEEPER           | 05/01/14   | 5/ 5/14  | INMATE REQUEST          | YF5     |

## HISTORY OF EARNED EDUCATION CREDITS:

| EEC DESCRIPTION | START DATE | END DATE | TERMINATION REASON |
|-----------------|------------|----------|--------------------|
|-----------------|------------|----------|--------------------|

\*NO SCHOOL ASSIGNMENTS\*

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

68

11:56:30 Friday, September 05, 2014

CMTI330D  
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM  
RELEASE DATE SCREEN

09/05/14  
C051132

SCDC# > 359253

LOC: RIDGELAND

GARCIA, HUMBERTO ALONSO

SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY...: N

SEXUAL PREDATOR...: NOT APP

DNA STATUS.....: COMPLETED

GPS REQUIREMENT...: N

PREA DECISION.....

CURRENT SENTENCE: 012-00-000

CONSECUTIVE SENTENCE ...: N

012-00-000

CURRENT SENT START DATE: 03/07/2012

PROJECTED COMPLETION DATES

MAXOUT DATE .....: 05/16/2022

CURRENT EWC ..: 2 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED .....: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ...: 000321

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS .....: 000000

CATEGORY 4 OR 5 OFFENSE

TOTAL EXTRA EARNED CREDITS ..: 000

SUPERVISED REENTRY DATE...: 00/00/00

TOTAL SERVICE TIME EARNED ...: 000898

ISS.....

PRESS PF5 FOR DATE HISTORY ...

PFKEYS: 5:HISTORY OF DATE CHANGES

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Humberto Alonso Garcia,  
S.C.D.C. No. 359253, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2014-CP-23-4293

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2015 APR 7 PM 2:57

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 4, 2014. The Respondent made its return on November 22, 2014. An evidentiary hearing was held on April 22, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Raigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Robert E. Ianaurio, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

#### PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 2013 term of the Greenville County Grand Jury for two counts of trafficking cocaine (2012-GS-23-4984, -4985). He was represented by Robert E. Ianaurio, Esquire.

On March 12, 2014, the Applicant pled guilty. The Honorable Lee S. Alford sentenced

1  
*Lee*

the Applicant to concurrent terms of 12 years on each count of trafficking cocaine, 28-100 grams. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. "My lawyer could have made a better argument about the car not being in my name, and the fact that I did not know the drugs were in the car."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and heard the testimony and arguments presented at the PCR hearing. This Court further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the

applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he and plea counsel reviewed the State's evidence and his version of events. The Applicant stated they reviewed the statement he gave to police and the fact that he consented to searches of his vehicle and residence. The Applicant stated plea counsel did not discuss potential search and seizure issues with him. The Applicant stated he would have received a lesser sentence if plea counsel did more work on his case.

Plea counsel testified he filed discovery motions, received those materials, and reviewed them. Plea counsel testified he had at least six meetings with the Applicant at the jail, and that his associate also had meetings with the Applicant. Plea counsel testified he and the Applicant reviewed his version of events and that it was harmful to the case that the searches were undertaken with the Applicant's consent. Plea counsel testified he did not believe there was a viable argument to be made to suppress the evidence. Plea counsel testified the Applicant pled guilty the morning of trial and that, while there was a pending motion to reveal the identity of the confidential informant, if the informant was produced at trial, there was no chance of winning. Plea counsel testified he spoke with the Applicant and the Applicant decided to plead guilty.

This Court notes the Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.11; p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.7-10).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not discuss potential search and seizure issues. Plea counsel testified he had several meetings with the Applicant and discussed the case. Plea counsel testified they specifically discussed both the Applicant's statement and the fact that he consented to the searches of his vehicle and residence. Plea counsel testified there was no viable argument to be made to suppress the evidence. This Court finds plea counsel's testimony is credible. This Court further finds the Applicant has failed to articulate what Fourth Amendment challenge should have been made in this case.

Regardless, this Court finds that, given the undisputed facts in this case, the Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have done more work on his case. This Court finds this allegation must be denied because the Applicant failed to articulate what further investigation or arguments plea counsel could have made in this case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). While the Applicant argued that additional work on his case would have yielded a lesser sentence, this Court notes it is the judge who determines sentencing, not the parties. See In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) ("A trial judge has broad discretion in sentencing within statutory limits.").

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.

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

#### All Other Allegations

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

#### CONCLUSION

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

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

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this: 6 day of May, 2015.



Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

 South Carolina.

DOCKET NO. 2012-GS-23-  
JLK 007925

The State of South Carolina  
County of Greenville

COURT OF GENERAL SESSIONS  
September 2013  
TERM 2012

THE STATE

vs.

HUMBERTO ALONSO GARCIA

WITNESSES

Jason Wells *[Signature]*  
SLED

3/7/2012

ARREST WARRANT NUMBER  
M993496

ACTION OF GRAND JURY  
**TRUE BILL**  
*[Signature]*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for  
TRAFFICKING COCAINE  
VIOLATION §44-53-0370

Foreperson of Petit Jury  
Date:

RECEIVED

JUL 02 2012

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA    )  
                                          )  
COUNTY OF GREENVILLE    )

INDICTMENT FOR  
TRAFFICKING COCAINE

At a Court of General Sessions, convened on

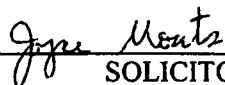
SEP 24 2013

the Grand Jurors of Greenville

County present upon their oath:

That HUMBERTO ALONSO GARCIA did in Greenville County, on or about the 7th day of March 2012, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 400 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

000984

DOCKET NO. 2012-GS-23-JLK

The State of South Carolina  
County of Greenville

COURT OF GENERAL SESSIONS  
September 2012  
TERM 2012

THE STATE

vs.

HUMBERTO ALONSO GARCIA

WITNESSES

Jason Wells

SLED

3/7/2012

ARREST WARRANT NUMBER  
M993497

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

2359

TRAFFICKING COCAINE

VIOLATION §44-53-0370

Foreperson of Petit Jury  
Date:

RECEIVED

JUL 02 2012

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA    )  
                                          )  
COUNTY OF GREENVILLE    )

INDICTMENT FOR  
TRAFFICKING COCAINE

At a Court of General Sessions, convened on

SEP 24 2013

the Grand Jurors of Greenville

County present upon their oath:

That HUMBERTO ALONSO GARCIA did in Greenville County, on or about the 7th day of March 2012, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR