

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

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OCT 16 2015

S.C. Supreme Court

CHARLES J. WOODRUFF,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000809

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE OF SOUTH CAROLINA,

4 Plaintiff,

5 Case No.

6 -against- 2012-GS-42-5566

7

8 CHARLES J. WOODRUFF,

9 Defendant.

10 -----x

11 February 12, 2013

12 Spartanburg, S.C.

13

14 B E F O R E:

15 HONORABLE BENJAMIN H. CULBERTSON

16

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

18 SCOTT SPIVEY, Esquire

19 Attorney for the State

20

21 JAMES CHEEK, Esquire

22 Attorney for the Defendant

23

24 Aileen Butler

25 Official Court Reporter

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E X H I B I T S

NO.

DESCRIPTION

I.D.

EVD.

No exhibits marked.

1 MR. SPIVEY: All right. Thank you Your
2 Honor, Mr. Woodruff is here on numerous charges.
3 I provided the Court with a chart that will help
4 and I will proceed reading off that chart.

5 He is Indicted on 2012-GS-42-684. That is
6 distribution of crack cocaine 3rd offense. Your
7 Honor, he is pleading to distribution of crack
8 cocaine 2nd as condition of the plea.

9 Indictment 2012-GS-42-689, possession with
10 intent to dispute crack cocaine 3rd offense. He
11 is pleading to lesser included offense of
12 possession with intent to distribute crack cocaine
13 2nd offense.

14 Indictment 2012-GS-42-5530, for distribution
15 of crack cocaine 3rd offense. He is pleading to
16 the lesser included offense of distribution of
17 crack cocaine 2nd offense as a condition of this
18 plea.

19 Indictment 2012-GS-42-5566 for distribution
20 of crack cocaine 3rd offense. Your Honor he is
21 pleading distribution to crack cocaine 2nd
22 offense as a condition of the plea.

23 Indictment 2012-GS-42-5567 for distribution
24 of crack cocaine within a half mile of the
25 school. He is pleading to that charge as

1 indicted.

2 Indictment 2012-GS-42-5532 for trafficking
3 in crack cocaine, 10 to 28 grams, 3rd offense.
4 Your Honor, he is pleading to the lesser included
5 offense of trafficking in 10 to 28 crack cocaine,
6 2nd offense.

7 Your Honor, he is also pleading to that
8 charge and the remaining charges related to that
9 particular charge under Alford.

10 Your Honor, Indictment 2012-GS-42-5532A,
11 possession of a weapon during the commission of a
12 violent crime. Your Honor, he is also pleading
13 to go 2012-GS-42-5564 with intent to district
14 crack cocaine within a half mile of a school.
15 And finally the last charge he is pleading to,
16 2012-GS-42-5533 possession with intent to
17 distribute marijuana 1st. Your Honor, he is
18 pleading to the lesser included offense of
19 possession of marijuana.

20 Your Honor, there is no recommendation. You
21 can see we dismissed a possession of marijuana
22 within a half mile of the school charge and two
23 other distribution of crack cocaine, 3rd charges
24 as condition of this plea.

25 THE COURT: All right, y'all bear with me.

1 This is going to take a while.

2 All right. On the charge of trafficking
3 cocaine crack cocaine base or crack cocaine, 2nd
4 offense and distribution of crack cocaine near
5 proximity of a school where he is entering an
6 Alford plea. What are the concession being made
7 by the State?

8
9 MR. SPIVEY: Yes, Your Honor. Everything
10 has been essentially reduced one level with the
11 exception of a few charges. But he is getting
12 the benefit in the sense that he would be facing
13 25 years under the trafficking crack cocaine
14 charge. He is now facing five to thirty on most
15 of the --

16 THE COURT: So the trafficking was a 3rd
17 offense?

18 MR. SPIVEY: Yes, Your Honor.

19 THE COURT: All right. All right. And on
20 the distribution near the proximity of a school?

21 MR. SPIVEY: Your Honor, technically he
22 is not -- I guess I looked at that as one
23 transaction so that he is receiving the benefit
24 in reduction of time on everything. He is
25 technically not receiving a benefit on that

1 particular charge.

2 THE COURT: But he could be facing how many
3 charges?

4 MR. SPIVEY: Your Honor, we are
5 dismissing -- we reduced the possession with
6 intent to distribute marijuana to possession.
7 Dismissed the possession with intent to
8 distribute marijuana within a half mile.

9 The possession of a weapon during a violent
10 crime is either five years consecutive or
11 concurrent. Whatever you decide judge.

12 THE COURT: I don't is a possession of a
13 weapon indictment here, or a sentencing sheet or
14 Indictment or anything here.

15 MR. SPIVEY: Your Honor, its actually
16 on the trafficking Indictment. It is count two
17 and so those should be together.

18 THE COURT: It is not listed on this CDR
19 code.

20 MR. SPIVEY: I think there is a
21 separate --

22 THE COURT: All right. It is separate.
23 I didn't see that.

24 MR. SPIVEY: I apologize.

25 THE COURT: Is there anything else that has

1 a separate sentencing sheet?

2 MR. SPIVEY: No, sir, Your Honor.

3 THE COURT: One second. Is that an Alford
4 plea as well?

5 MR. SPIVEY: I believe that is correct,
6 Your Honor.

7 MR. CHEEK: Correct, Your Honor.

8 THE COURT: All right. Mr. Cheek, you
9 represent Charles James Woodruff on three counts
10 of distribution of crack cocaine, 2nd offense,
11 one count of trafficking crack, 2nd offense,
12 possession of marijuana, 1st offense, possession
13 to distribute crack cocaine, within a
14 proximity of a school, distribution of crack
15 cocaine within the proximity of a school,
16 possession with intent to distribute crack
17 cocaine, 2nd offense, and possession of weapon
18 during the commission of a violent crime?

19 MR. CHEEK: Yes, sir, Your Honor.

20 THE COURT: Have you gone over these charges
21 with your client?

22 MR. CHEEK: Yes, sir, Your Honor. Your
23 Honor, the trial attorney in this matter would
24 have been Miss Beverly Jones with the public
25 defenders office and she would have been present

1 today except she had a death in her family and
2 Mr. Woodruff is aware of all of that. She and I
3 have been work with Mr. Woodruff on these matters
4 together and we'd ask the Court to take note I
5 will be moving forward with the plea today. So
6 yes, at this point I do represent him on all of
7 those charges, Your Honor.

8 THE COURT: All right. Have you discussed
9 with Mr. Woodruff the nature of these charges,
10 his rights as a defendant and the consequences of
11 being convicted of these crimes?

12 MR. CHEEK: Yes, I have, Your Honor.

13 THE COURT: In your opinion does your
14 client understand the charges against him, his
15 rights as a defendant and the consequences of
16 being convicted of these crimes?

17 MR. CHEEK: Yes, sir, I think he does
18 understand, Your Honor.

19 THE COURT: Does he wish to plead guilty or
20 not guilty?

21 MR. CHEEK: He is pleading guilty on all of
22 the charges, Your Honor. Some of them are guilty
23 under Alford versus North Carolina.

24 THE COURT: Okay. Which ones is he pleading
25 guilty under Alford? Trafficking and crack

1 cocaine 2nd offense, distribution of crack
2 cocaine within proximity of a school and
3 possession of weapon during the commission of a
4 violent crime; is that correct.

5 MR. CHEEK: Yes, Your Honor, those are
6 under Alford versus North Carolina. Guilty
7 under Alford.

8 THE COURT: All right. Do you agree with
9 his decision to plead guilty to those decisions?

10 MR. CHEEK: I do, Your Honor.

11 THE COURT: Based upon the information you
12 have if this case proceeded to trial do you feel
13 that the State could prove your client's guilt
14 beyond a reasonable doubt?

15 MR. CHEEK: On all of the charges, yes, Your
16 Honor.

17 THE COURT: Has your client received a
18 competency evaluation?

19 MR. CHEEK: No, sir, Your Honor.

20 THE COURT: Do you feel that he needs a
21 competency evaluation?

22 MR. CHEEK: I do not feel that that there is
23 a necessity for a competency evaluation on Mr.
24 Woodruff.

25 THE COURT: All right.

1 Sir, your name is Charles James Woodruff?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Mr. Woodruff, you
4 have been charged and indicted with possession
5 with intent to dispute cocaine base, distribution
6 of cocaine base, distribution of cocaine base
7 within one half mile of a school, distribution of
8 cocaine base, possession with intent to
9 distribute cocaine base within one half mile of a
10 school, possession with intent to distribute
11 marijuana, trafficking and cocaine base,
12 possession of a firearm during the commission of
13 a violent crime and distribution of cocaine base.
14 Now some of these are third offenses, but all of
15 these Indictments cover lesser included offenses,
16 which are covered under your guilty plea and
17 according to your attorney you wish to plead
18 guilty to distribution of crack cocaine, 2nd
19 offense, trafficking of crack cocaine 2nd
20 offense, possession of marijuana 1st offense,
21 possession with intent to distribute crack
22 cocaine within the proximity of a school,
23 distribution of crack cocaine within the
24 proximity of a school and possession with intent
25 to distribute crack cocaine, 2nd offense and

1 possession of a weapon during the commission of a
2 violent crime, is that correct.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Before I can accept
5 your guilty plea I got to go over some questions
6 with you and the purpose of my questioning is to
7 be sure you understand the charge against you --
8 charges against you, to be sure that understand
9 your rights as defendant, to be sure that
10 you understand the consequences of pleading
11 guilty and I must be sure that you are pleading
12 guilty voluntarily.

13 Now, during the past 72 hours have you taken
14 any medication, consumed any alcohol or drugs or
15 been under any influence that would he affect
16 your ability to know why you are here?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you understand why you are
19 here today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is there anything about this
22 hearing that you want to ask your lawyer or ask
23 me before we proceed?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Now, even though you

1 have been indicted by the Grand Jury under the
2 Constitution of the United States you are
3 presumed innocent of all these crimes and you
4 have the right to have your guilt or innocence
5 determined by a jury trial of your peers.
6 The State bears the burden of proving your guilt
7 beyond a reasonable doubt. You do not have to
8 prove your innocence and you can not be compelled
9 to testify against yourself. You also have the
10 right to confront and cross examine anybody who
11 testifies against you. If you choose you can
12 present a defense to these charges, but when you
13 plead guilty you give up all those rights. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you want to give up those
17 rights and plead guilty to these charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Now, for
20 distribution of crack cocaine, 2nd offense, you
21 got three of those charges that I understand you
22 are pleading guilty to; is that correct.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. So for each one
25 of those I could send you to prison for 30 days

1 [sic] and fine you \$50,000. For the trafficking
2 in crack, 2nd offense I can send you to prison
3 for 30 years and fine you \$15,000. For
4 possession of marijuana I could send you to jail
5 for six months and fine you \$1,000. For
6 possession with intent to distribute crack
7 cocaine within the proximity of a school I can
8 send you to prison for ten years and fine you
9 \$10,000. For distribution crack cocaine within
10 the proximity of a school I could send you to
11 prison for ten years and fine you \$10,000. For
12 possession with intent to distribute crack
13 cocaine, 2nd offense, I could send you to prison
14 for 30 years and fine you \$50,000 and for
15 possession of a weapon during the commission of a
16 violent crime I could send you to prison for five
17 years.

18 So, if I impose the maximum sentence for
19 each of these and I order that they run
20 consecutive, lets see, you are looking at 175
21 yeas in jail and \$321,000 in fines. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right.

25 Now, under the distribution of crack

1 cocaine, 2nd offense, trafficking and crack
2 cocaine, 2nd offense, possession with intent to
3 distribute crack cocaine, 2nd offense and
4 possession of a weapon during the commission of a
5 violent crime, all of those carry mandatory
6 minimum sentence of five years. Which means that
7 the absolutely minimum sentence that can be
8 imposed for those are five years in prison. Do
9 you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you also understand that for
12 possession of weapon during the commission of a
13 violent crime, you will not be eligible for
14 parole, do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that for three
17 distribution of crack cocaine, 2nd offense, with
18 trafficking cocaine, 2nd offense, for possession
19 with intent to distribute crack within the
20 proximity of a school, for distribution of crack
21 within the proximity of a school and for
22 possession with intent to distribute crack
23 cocaine, 2nd offense, all of those are classified
24 as serious crimes and what that means is if you
25 are ever convicted of three serious crimes the

1 sentence for that third serious crime conviction
2 can be enhanced to life imprisonment without the
3 possibility of parole and the State will use this
4 guilty plea against you to show that you have
5 seven serious crime convictions. Which means if
6 you ever get convicted of a serious crime again
7 you will go to prison for the rest of your life
8 without the possibility of parole. Do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Now, I understand
12 that you are entering an Alford plea or a plea
13 pursuant to the Supreme Court case of Alford
14 versus North Carolina for the trafficking and
15 crack cocaine, 2nd offense, for the distribution
16 of crack within the proximity of a school and
17 with the possession of a weapon during the
18 commission of a violent crime and what that
19 means is you are admitting to these crimes not
20 because you committed the crime but because you
21 are accepting an offer from the State and rather
22 than facing trial on all of the indictments
23 against you and all of the charges against you
24 you are accepting that they are dismissing some
25 charges. That they are reducing some charges

1 from 3rd offense to 2nd offense and pleading
2 guilty to these charges. Is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand that there is
5 no legal distinction between an Alford plea
6 and admission of guilt. Under both you are going
7 to have same the record. You are subject to the
8 same sentence. There a the same mandatory
9 minimum sentence that must be imposed. There
10 is no legal distinction between the two guilty
11 pleas. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Do you understand
14 that these drug possession charges also carry
15 an enhanced sentence. Which means that if you
16 are ever convicted of drug possession charges
17 again the sentence you could face for those
18 subsequent convictions will be enhanced from the
19 possible sentences that you now face with the 2nd
20 offense distribution charges and 1st offense
21 marijuana possession charge. Do you understand
22 that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you understand that
25 trafficking in crack cocaine is classified as

1 a violent crime, which means that if you are ever
2 convicted of another violent crime then that 2nd
3 violent crime conviction you will not be eligible
4 for parole and you will not be eligible for
5 probation and the State will use this guilty plea
6 against you to show a violent crime conviction.
7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Knowing all of that do you wish
10 to plead guilty or not guilty to four counts of
11 distribution of crack cocaine, 2nd offense?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You want to plead guilty or not
14 guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Do you wish to plead guilty or
17 not guilty to trafficking in crack cocaine, 2nd
18 offense?

19 THE DEFENDANT: Guilty.

20 THE COURT: Do you wish to plead guilty or
21 not guilty to possession of marijuana, 1st
22 offense?

23 THE DEFENDANT: Guilty.

24 THE COURT: Do you wish to plead guilty or
25 not guilty to possession with intent to

1 distribute crack cocaine within the proximity of
2 a school?

3 THE DEFENDANT: I thought I was pleading to
4 three to distributions.

5 THE COURT: You are pleading to -- yeah,
6 three distributions of crack cocaine. I am
7 sorry, not four. You are pleading to three
8 distributions of crack cocaine.

9 THE DEFENDANT: Yes, si.

10 THE COURT: All right. Are you pleading
11 guilty to possession with intent -- well, let's
12 start all over.

13 Do you wish to plead guilty or not guilty to
14 three counts of distribution of crack cocaine,
15 2nd offense?

16 THE COURT: Yes, sir.

17 THE COURT: You wish to plead guilty or not
18 guilty.

19 THE DEFENDANT: Guilty.

20 THE COURT: Do you wish to plead guilty or
21 not guilty to one count of trafficking in crack
22 cocaine, 2nd offense?

23 THE DEFENDANT: Guilty.

24 THE COURT: Do you wish to plead guilty or
25 not guilty to possession of marijuana, 1st

1 offense?

2 THE DEFENDANT: Guilty.

3 THE COURT: Do you wish to be plead guilty
4 or not guilty to possession with intent to
5 distribute crack cocaine within the proximity of
6 a school?

7 THE DEFENDANT: Guilty.

8 THE COURT: Do you wish to plead guilty or
9 not guilty to distribution of crack cocaine
10 within the proximity of a school?

11 THE DEFENDANT: Guilty.

12 THE COURT: Do you wish to plead guilty
13 or not guilty to possession with intent to
14 distribute crack cocaine, 2nd offense?

15 THE DEFENDANT: Guilty.

16 THE COURT: Do you wish to plead guilty or
17 not guilty to possession of a weapon during the
18 commission of a violent crime?

19 THE DEFENDANT: Guilty.

20 THE COURT: Has anybody promised you
21 anything or threatened you in any way to get you
22 to plead guilty to these charges?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you pleading guilty
25 voluntarily?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you satisfied with your
3 lawyer?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you pleading guilty to these
6 crimes because you guilty of these crimes?

7 Well, let me back up. Are you pleading
8 guilty to the three counts of distribution of
9 crack cocaine, 2nd offense, possession of
10 marijuana 1st offense, possession with intent to
11 distribute crack cocaine within the proximity of
12 a school and possession with intent to distribute
13 crack cocaine, 2nd offense, because you committed
14 those crimes?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you pleading guilty to
17 trafficking in crack cocaine, 2nd offense,
18 distribution of crack cocaine within the
19 proximity of a school and possession of a weapon
20 during the commission of a violent crime because
21 you want to accept the concessions made by the
22 State and plead guilty to those charges rather
23 than facing charges for some other 3rd offenses
24 and other Indictments?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Is he on probation?

2 PROBATION OFFICER: Yes, Your Honor, he is
3 on probation.

4 THE COURT: All right. What is he on
5 probation for?

6 PROBATION OFFICER: For distribution of
7 crack cocaine, 2nd offense.

8 THE COURT: And what is his sentence on
9 that?

10 PROBATION OFFICER: Your Honor, his sentence
11 was seven years provided upon the service of 504
12 days and the balance was suspended 36 months
13 probation.

14 THE COURT: All right. Mr. Woodruff,
15 I understand you are on probation now. Is that
16 correct.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. And you understand
19 by pleading guilty to these charges that will
20 probably constitute a violation of your probation
21 for which a suspended sentence of seven years can
22 be imposed and that seven years could run in
23 addition and consecutive to any sentence that I
24 impose on any of these other charges. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. So that would have -- I
3 can't remember what the maximum sentence -- what
4 did I say one 170 something years.

5 So, you could actually go to jail for 182
6 years. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Knowing all of that do you still
9 wish to plead guilty to these charges?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Do you all got a
12 citation?

13 PROBATION OFFICER: Yes, Your Honor.

14 THE COURT: All right, if you would serve
15 him with that please.

16 PROBATION OFFICER: Yes, sir.

17 (Whereupon, the defendant was handed a
18 citation.)

19 THE COURT: All right. Mr. Cheek, do you
20 also represent Mr. Woodruff on his violation of
21 probation hearing?

22 MR. CHEEKS: I do, Your Honor.

23 THE COURT: And have you and your client
24 received a copy of the warrant and have you had
25 an opportunity to go over that warrant with your

1 client?

2 MR. CHEEK: Yes, sir, Your Honor.

3 THE COURT: And does your client admit or
4 deny that he has willfully violated the terms of
5 his probation?

6 MR. CHEEK: He admits willful violation of
7 the terms of probation.

8 THE COURT: All right. All right. Before
9 we proceed, I need to you listen to the
10 solicitor. He is going to go over each one of
11 these Indictments and state what you did in each
12 one of these cases. Okay.

13 THE DEFENDANT: Yes.

14 THE COURT: All right, sir, go ahead.

15 MR. Spivey: Thank you, Your Honor. As to
16 Indictment 2012-GS-42-684 on April 12, 2011,
17 Spartanburg County Sheriff's Office Investigators
18 used an informant to purchase crack cocaine from
19 the defendant at [REDACTED] in Spartanburg.

20 Your Honor, that informant was searched
21 before and after the buy. No other illegal
22 contraband was found. Your Honor, the informant
23 was provided with audio and video recording
24 equipment and also with sheriff's office recorded
25 funds in the amount of \$40. The informant

1 met the defendant and purchased .61 grams of
2 cocaine.

3 Your Honor, on Indictment 12-685,
4 distribution of crack cocaine, on May 23, 2011,
5 Spartanburg County Sheriff's Office Investigators
6 directed an informant to purchase crack cocaine
7 from the defendant at 810 -- excuse me, Your
8 Honor. Excuse me, Your Honor, I am reading the
9 one that is being dismissed.

10 THE COURT: The ones he is pleading
11 guilty to. Let's start all over. Go down with
12 the ones that he is pleading guilty to so that he
13 will know whether or not those are the facts that
14 he is pleading guilty to.

15 MR. SPIVEY: Yes, Your Honor.

16 Your Honor, on April 12, 2011, Spartanburg
17 County Sheriff's Office Investigators directed
18 an informant to purchase crack cocaine from the
19 defendant at [REDACTED] in Spartanburg which is
20 the County of Spartanburg. Your Honor, the
21 informant was searched prior to the buy and after
22 the buy and no other illegal contraband was
23 found. Your Honor, the informant was provided
24 with audio and video recording equipment and also
25 recorded funds in the amount of \$40. The

1 informant then met the defendant and purchased
2 .61 grams of crack cocaine.

3 Your Honor, as to Indictment 2012-GS-42-689
4 possession with intent to distribute crack
5 cocaine, on June 8, 2011, Spartanburg Sheriff's
6 Investigators began conducting surveillance at
7 820 and room [REDACTED] [REDACTED] [REDACTED] in reference
8 to locating a wanted subject, Charles Woodruff.

9 Your Honor, the Defendant left room 238. He
10 was detained. He was Mirandized and he admitted
11 to having a small amount of marijuana in the
12 room. The defendant was arrested and transported
13 to the detention facility. The arresting officer
14 observed the defendant throw a bag containing
15 what appeared to be crack cocaine out of the back
16 of his shorts. Your Honor, that substance was
17 tested and tested positive for crack cocaine. In
18 weighed 9.97 grams.

19 Your Honor, as to it Indictment 2012-GS-42-
20 5530, on September 5, 2012, investigators used
21 a confidential informant to purchase crack
22 cocaine from the defendant at [REDACTED] [REDACTED] [REDACTED]
23 in Arcadia, South Carolina, which is the County
24 Spartanburg. Your Honor, that informant was
25 searched before and after the buy and no other

1 contraband was found. The informant was provided
2 with audio and video recording equipment and
3 Sheriff's office recorded funds. Your Honor, the
4 informant met the defendant and purchased .1 gram
5 of crack cocaine on that day.

6 Your Honor, as to Indictment 2012-5566 for
7 distribution of crack cocaine 3rd, on October 2,
8 2012, investigator directed an informant to
9 purchase crack cocaine from the defendant at [REDACTED]
10 [REDACTED] here in Spartanburg, South Carolina.
11 Your Honor, that informant was searched for
12 illegal contraband before and after the buy and
13 no other contraband was found. He was also
14 provided with audio and video recording
15 equipment and with Spartanburg Public Safety
16 Department recorded funds in the amount of \$20.
17 Your Honor, the informant met the defendant at
18 that location and purchased .4 grams of crack
19 cocaine. That location is .434 miles away from
20 Jesse S. Bobo Elementary School which serves for
21 the basis for the distribution within a half mile
22 of the school. Your Honor, they used that last
23 control buy to obtain a search warrant and on
24 October 12, 2012, city investigator executed that
25 search warrant at [REDACTED] [REDACTED] [REDACTED], Spartanburg,

1 South Carolina. Your Honor, investigator learned
2 that the defendant was staying in a bedroom
3 upstairs. In that bedroom closet investigators
4 found two firearms. Investigators also found
5 marijuana in the bedroom dresser, two marijuana
6 blunts on top of the dresser and another small
7 amount of marijuana on the nightstand beside
8 a marijuana grinder. Total amount of marijuana
9 was 6.16 grams. They also found 9mm ammunition
10 in the nightstand and a set of digital scales.
11 Your Honor, there was a surveillance system set
12 up with monitors in the bedroom the defendant was
13 in.

14 Your Honor, investigators also found \$1,627
15 in the bedroom. The defendant and a co-defendant
16 female claimed joint ownership of that cash.
17 Your Honor, that cash was ceased.

18 Your Honor, in the kitchen cabinet
19 investigators found 13.25 grams of crack cocaine
20 beside a razor blade and a set of digital scales.
21 Your Honor, that location is within a half mile
22 of Jesse S. Bobo Elementary school.

23 Your Honor, the other people present in the
24 home at the time were Miss Geneva Shiffie,
25 Michael Shiffie and I believe her name is MaryJo

1 Williams. Your Honor. There are charges pending
2 against them. Due to this plea they will be
3 dismissed at the end of this. I think because
4 they are there the reason for the Alford plea is
5 a constructive possession case and I think there
6 was some concern about that, Your Honor,

7 THE COURT: All right. Well, now, you
8 didn't read out all of the Indictments then to
9 support ---

10 MR. SPIVEY: Yes, Your Honor. That last
11 set of facts, the October 12th search warrants
12 facts, those facts support Indictment
13 2012-GS-42-5532 and 5532A. Also support
14 Indictment 2012-GS-42-5564 and 5533.

15 THE COURT: All right. So the possession of
16 a weapon during the commission of a violent crime
17 you searched his house and found a gun in there?

18 MR. SPIVEY: Yes, Your Honor.

19 THE COURT: And the violent crime would be
20 the fact that you found all of the crack cocaine
21 in there that supported a trafficking charge?

22 MR. BARNETT: Yes, Your Honor. So the
23 possession of both the weapon and the cocaine --
24 crack cocaine in this instance are -- is
25 essentially what is leading to those two charges.

1 THE COURT: All right. I got you.

2 Mr. Woodruff, do you understand the
3 allegations against you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that what happened in these
6 these cases?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Mr. Cheek, anything
9 in mitigation as to the guilty plea or the
10 violation of probation?

11 MR. CHEEK: Your Honor, we respectfully ask
12 the Court to take into consideration that Mr.
13 Woodruff has had employment throughout this time.
14 He was working for a janitorial service. He was
15 also living with Miss Shiffie. She was employed
16 at this time at Wofford College in the
17 housekeeping department. Had very good
18 employment there.

19 He has taken responsibility through these
20 pleas, Your Honor, for all of the matters
21 involving the drugs as well as the gun. Because
22 of the situation being that he could have offered
23 some defense at trial but instead is pleading
24 to these charges, Your Honor. We ask the Court
25 to consider particularly the gun charge which the

1 Court could run consecutive the Court to
2 consider concurrent on all of the charges instead
3 of running them consecutive. We respectfully ask
4 the Court to consider concurrent sentencing and
5 consider the minimum sentence which allowed by
6 law which is five years Your Honor, on all these
7 charges. Your Honor, he is lobbied very strongly
8 for that range. There have been some other
9 offers made during the course of our negotiating
10 and representing Mr. Woodruff as well as Mr.
11 Maxum (phonetics) who was representing him but was
12 removed from representation at the request of Mr.
13 Woodruff and our office then undertook
14 representation on all the charges Your Honor.
15 Just asking the Court to rap up everything at one
16 time and ask the Court to consider again
17 concurrent sentencing on all of the charges and
18 consider the sentence of five years which is
19 minimum mandatory.

20 He understands the length of time he would
21 have to serve on this charges. He has served a
22 total of 250 days on all of the charges and we
23 ask the Court to give him credit for 250 days
24 towards sentencing on all the charges.

25 He has present in the courtroom his sister

1 and other family members. We ask the Court to
2 consider his sister Miss Rickshondra Woodruff to
3 address the Court at the appropriate time.

4 My client would also ask the Court for mercy
5 and leniency in sentencing and ask the Court to
6 give him concurrent sentencing and as well as to
7 run concurrent sentence with the probation
8 violation.

9 Your Honor, he has brought pictures of his
10 three children. Asking the Court to consider
11 that he has three children. Those children are
12 all in school. He is providing for those
13 children.

14 THE COURT: All right. Mr. Woodruff,
15 anything you want to say or does anyone want to
16 speak on your behalf? All right, come forward
17 please. Your name, ma'am.

18 MS. WOODRUFF: Rickshondra Woodruff.

19 THE COURT: Can you spell your first name.

20 MS. WOODRUFF: R-i-c-k-s-h-o-n-d-a.

21 THE COURT: All right, Miss Woodruff, what
22 would you like to say.

23 MS. WOODRUFF: Well, we had a rough life
24 coming up and we just made kids and we always
25 said when we make our kids we want the best for

1 them and he got kids. He got five kids and I
2 have three. Three boys. And my kids are his
3 kids and his kids are my kids. So a total of
4 eight kids and we just want the best for our
5 kids. And he is a good person. He is a good
6 person at heart. He has been taking care of me,
7 the whole family, his kids, my kids. When I had
8 my wreck he was there for me. We go to church.
9 He take the kids on field trips when they make
10 good grades. I just -- we just need him at home
11 so he can help with these children. He is a good
12 father. He is a good father. He ain't up for no
13 child support. He is a good father.

14 THE COURT: All right.

15 MS. WOODRUFF: He is a great father, sir. I
16 didn't mean good father. Like my kids are his
17 kids and I am his sister.

18 THE COURT: All right.

19 MS. WOODRUFF: Our parents are gone and like
20 I said we just want the best for our kids. He
21 made his mistakes and hopefully when he gets out
22 he will do right and let everything go and focus
23 on our kids which he was doing anyway. He got
24 all the kids in football. The girls are
25 cheerleaders. All his -- all our kids are

1 straight A students. He discipline them. They
2 have good grades. I just want -- we just need him
3 at home. I mean whatever it takes for us to -- I
4 mean for him just to come home. Help out. He
5 got a good job on the line, and we just need him
6 at home. We need him at home.

7 THE COURT: All right. Thank you, ma'am.

8 MS. WOODRUFF: Thank you.

9 THE COURT: Mr. Woodruff, anything you want
10 to say?

11 THE DEFENDANT: Yes, sir. I screwed up a
12 lot by getting involved with all of this, but I
13 wasn't doing it for no wrong reasons. I was just
14 trying to support my family. I got -- everything
15 ended up on me and I feel like if I ever if the
16 problem-- water turned off and I know it ain't
17 no excuse. Once this is over I ain't messing
18 with no drugs. I am going to do some work and do
19 whatever I got to do to support my family, but it
20 won't be no breaking the law. I know if I get
21 caught again I will never get out of prison. And
22 the most worst thing about me being away from my
23 kids because I love my kids to death and like
24 they love me. I be with my kids ever day and now
25 since I ever been in here and thinking about it

1 and it ain't even worth it. Ain't none of it
2 worth it cause at the end of day I don't got
3 nothing. I ain't got nothing. The only thing I
4 got is time to look forward to is cause of making
5 stupid mistakes. I know I am smarter and better.
6 I am in good health and I can work and I can do
7 the right thing. If you just have mercy on me,
8 if not for me then my kids and let me come home
9 one day. Let me get all this behind me and I
10 will never get in no more trouble again.

11 THE COURT: All right, sir. Thank you.
12 All right. Any prior record?

13 MR. SPIVEY: Yes, Your Honor; 1998
14 manufacturing and distribution and possession
15 with intent, 2001 possession of crack, 2002
16 criminal domestic violence, 2003 criminal
17 domestic violence, 2nd offense, 2003 ABHAN, 2008
18 distribution of crack cocaine, 2nd offense which
19 he was currently on probation for. And Your
20 Honor the State does have something more to add
21 for sentencing at the appropriate time.

22 THE COURT: All right, what have you got to
23 add?

24 MR. SPIVEY: Yesterday the officers were
25 prepared to come and address the Court. They are

1 not able to do so today. This was a difficult
2 case for us all to work out and agree. We have
3 been working since I believe September on a
4 resolution. Troubling for the State was the
5 fact that he was on probation for distribution of
6 crack cocaine, 2nd offense, at the time this
7 occurred. I believe he plead to that early in
8 2011 and you can see these charges go back to
9 April 2011. They continued on after he made bond
10 after his first arrest. He was arrested on the
11 first four charges in or around June of 2011 and
12 after that he just essentially continued to sell
13 crack cocaine.

14 Your Honor, we did negotiate with the
15 defense attorneys to come up with a range where
16 he could look at five to thirty sentence with the
17 understanding they could come in and ask for five
18 and we on behalf of the State and the police may
19 ask for something else. Having said that we told
20 them essentially what we were going to ask for
21 and that would be in the 15 to 20 range.

22 Your Honor, I talked with him last night. I
23 think the State feels like a 15 year sentence --

24 THE COURT: But you all said you were not
25 making any recommendation; is that correct?

1 MR. SPIVEY: Your Honor, we made a
2 recommendation as to the sentencing range
3 with the understanding that we could come in and
4 ask for a specific number of years and the
5 defense attorney and I have been I think all
6 along we have negotiated with that in mind.

7 THE COURT: Okay. Is that correct, Mr.
8 Cheeks?

9 MR. CHEEKS: Yes, sir, Your Honor. There
10 are some charges that are being dismissed and we
11 would not want the Court to think that those
12 charges are being dismissed are as a condition of
13 that plea. There was a real problem with
14 implication of those charges and ask the Court to
15 take into consideration. There was an
16 identification problem on those charges, but Mr.
17 Woodruff really lobbied for this range because
18 he was hoping the Court would consider the
19 minimum sentence, Your Honor.

20 THE COURT: All right.

21 Mr. Woodruff, I would accept your guilty
22 plea. I find it has been made knowingly,
23 willingly and voluntarily after being fully
24 advised of your rights as a defendant and the
25 nature of the charge against you and the

1 consequences of your guilty plea. I also find
2 that there is a factual basis to support the
3 charges against you. Likewise I find that the
4 have willfully violated the terms of your
5 probation by engaging in unlawful conduct which
6 you are pleading guilty to here today.

7 On the three charges of distribution of
8 crack, 2nd offense, the sentence of the Court is
9 that you be confined to State Department of
10 Corrections for 15 years or pay a fine of \$50,000
11 for each charge.

12 On trafficking in crack cocaine, 2nd
13 offense, the sentence of the Court is that you be
14 confined to the State Department of Corrections
15 for 15 years or pay a fine of \$50,000.

16 On the possession of marijuana, 1st offense,
17 sentence of the Court is that you be confined to
18 the county detention for 30 days or pay a fine of
19 \$1,000.

20 On the possession with intent to distribute
21 crack cocaine within the proximity of a school
22 and the distribution of crack cocaine within the
23 proximity of school, for each one of those you
24 are to receive a sentence of ten years in the
25 State Department of Corrections or pay a fine

1 of \$10,000.

2 On the possession with intent to
3 distribute crack cocaine, 2nd offense, sentence
4 is that you be committed to the Department of
5 Corrections for 15 years or pay a fine of
6 \$50,000.

7 On the possession of a weapon during the
8 commission of a violent crime the sentence of
9 the Court is that you be committed to the State
10 Department of Corrections for five years.

11 On your violation of probation I am going
12 revoke in full for the remainder of the seven
13 years that is to be served.

14 Also, all sentences will run currently. You
15 will be given credit for time served thus far.
16 All right.

17 MR. SPIVEY: Thank you, Your Honor.

18 * * *

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Spartanburg County, South Carolina, on the 12th day of February, 2012.

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

May 14, 2013

Aileen Butler

FORM 5

STATE OF SOUTH CAROLINA

County of SpartanburgCharles J. Woodruff #296287

Full name and prison number (if any) of Applicant

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-42-1659

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 Broad River Correctional Institution, 4460 Broad River Rd., Columbia, SC. 29210
2. Name and location of Court which imposed sentence Spartanburg County, 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) 2012-GS-42-05566 possession with intent to distribute
 - (b) Applicant was sentence to (8) additional charges all ran concurrent with the above captioned indictment

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SPARTANBURG COUNTY

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NOT CLOCKED IN ERROR

2013-CP-42-1639

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2-12-2013 (15) fifteen years
- (b) same as above, all additional charges were ran concurrent
- (c) with the above captioned (15) fifteen years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. n/a
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. n/a
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. n/a
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. n/a
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) ~~*****~~ Counsel did not file an appeal
- (b) _____

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2013-CP-42-1639

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Involuntary guilty plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) counsel rendered erroneous advice.
- (b) Counsel said I would get over 100 years if I did not plea
- (c) Counsel failed to file a motion for reconsideration
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____
- iv. _____

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 SPARTANBURG COUNTY
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2013-CP-42-1659

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

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?

first filing for post conviction relief

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

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2013-CP-42-1639

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) first filing for post conviction relief
 (b) _____
 (c) _____

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

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

Spartanburg County Bar

ii. n/a

iii. James Cheeks, Esquire

Spartanburg County Bar

(b) the proceedings at which each such attorney represented you:

i. plea and sentencing

ii. _____

iii. _____

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2013-CP-42-1659

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

re-open the time to file motion for reconsideration or
vacate sentences and convictions and remand for new trial

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

no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Charles Woodruff, 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.

Charles Woodruff

SWORN and subscribed before me this 25th
 day of March, 2013
Susan H. Frye (L.S.)
 Notary Public

My Commission Expires: _____

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 SPARTANBURG COUNTY
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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

2013-CP-42-1639

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

I, Charles J. Woodruff, 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.

Charles Woodruff
Applicant

SWORN or affirmed and subscribed before me this
25th day of March 2013
Susan H. Frye
Notary Public

My Commission Expires: _____

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SPARTANBURG COUNTY
2013 APR -8 AM 10:30
M. HOPE BLACKLEY

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CLERK OF COURT
SPARTANBURG COUNTY
VOID
2013 MAR 28 AM 10:12
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Charles J. Woodruff, #296287,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

2013-CP-42-1659

RETURN

The Respondent, making its Return to the application for post-conviction relief filed April 8, 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. The Applicant was true bill indicted at the December 2012 term of the Spartanburg County Grand Jury for Distribution of Cocaine Base (2012-GS-42-5566). James Cheek, Esquire, represented the Applicant. On February 12, 2013, Applicant pled guilty without negotiations or recommendations. The Honorable Benjamin H Culbertson sentenced Applicant to fifteen years for the lesser included offense of Distribution of Cocaine Base-Second Offense. The Applicant did not appeal his sentence of conviction.

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

II.

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

1. Ineffective Assistance of Counsel:
 - a. "Counsel rendered erroneous advice."
 - b. "Counsel failed to file a motion for reconsideration."
2. Involuntary guilty plea:
 - a. "Counsel said I would get over 100 years if I did not plead."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a post-conviction relief applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing Strickland*.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Respondent submits that 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, 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 alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover,

supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richard-son v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

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

VI.

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

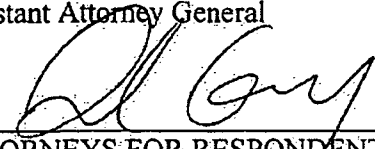
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

_____, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

2013-CP-42-1659

CHARLES J. WOODRUFF, #296287,)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Ms. Leah B. Moody
Law Office of Leah B. Moody, LLC
PO Box 1015
Rock Hill, SC 29730

DATED this 14th day of March, 2014.



Caroline Kaiser, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 CHARLES J. WOODRUFF,)
 5 Applicant,)
 6 vs.)
 7 THE STATE OF SOUTH CAROLINA,)
 8 RESPONDENT.)

TRANSCRIPT
 OF
 RECORD
 2013-CP-42-1659

9
 10 January 14th, 2015
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

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 17 ESQ.
 18 Attorney for the Applicant

19 SUZANNE H. WHITE
 20 ASSISTANT ATTORNEY GENERAL
 21 Attorney for the Respondent

22
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 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

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P R O C E E D I N G S

THE COURT: This is Carl J. Woodruff versus the State, 2013-1659, application for post-conviction relief.

On February 12th of 2013 the Applicant pled guilty straight up without negotiation before Judge Culbertson on the charge of distribution of cocaine base, Indictment 2012-5566. At that time Judge Culbertson sentence him to 15 years for the lesser included offense of distribution of cocaine base second offense. The conviction was not appealed.

He is alleged ineffective assistance of counsel, counsel with a blanket allegation of erroneous advice, and failure to make a motion for reconsideration, and indicating that his plea was involuntary.

Ms. Moody, are you ready to proceed?

MS. MOODY: Yes, ma'am, I am.

THE COURT: Have you explained to your client that if he gets the relief that he's seeking that he could receive a greater penalty than that which he was sentenced to by Judge Culbertson as the charges would go back to a distribution of cocaine base instead of the lesser included of distribution of cocaine base second offense?

MS. MOODY: Yes, ma'am, I have.

THE COURT: And what is the range of penalty for that?

1 Isn't it 30 years?

2 MS. MOODY: Yes, ma'am.

3 THE COURT: Okay. And knowing that he still wishes to
4 go forward?

5 MS. MOODY: Yes, ma'am.

6 THE COURT: Okay. Let's proceed.

7 MS. MOODY: Your Honor, and while he's proceeding to
8 the stand, there were a number of charges that were
9 dismissed---

10 THE COURT: Uh-huh. (Affirmative).

11 MS. MOODY: ---and we further discussed that as well.

12 THE COURT: He knows that those will come back?

13 MS. MOODY: Yes, ma'am.

14 THE COURT: Are any of them strikes?

15 MS. MOODY: The way they are charged they're all
16 charged as third offenses.

17 THE COURT: Would those be strikes?

18 MS. MOODY: I believe so.

19 THE COURT: Are they cocaine base?

20 MS. MOODY: I'm gonna see if any of them are.

21 MS. WHITE: I think it was two charges of distribution
22 of crack third offense and there was a possession of
23 marijuana within proximity charge.

24 MS. MOODY: Right.

25 But there were some charges that are dismissed and what

Charles Woodruff - Direct examination
by Ms. Moody

1 I'm trying to relay is that he had several that were
2 distribution of cracks, they were serious --

3 THE COURT: Uh-huh. (Affirmative).

4 MS. MOODY: -- and they would end up being nine charges
5 that would be -- in terms of the whole picture, it would be
6 nine charges that are considered serious.

7 THE COURT: And, sir, you understand that if you get
8 the relief you're requesting that all of those charges would
9 come back on the table and the State could serve you with a
10 life without parole notice?

11 THE APPLICANT: Yes, ma'am.

12 THE COURT: Okay. And knowing that you still wish to
13 go forward?

14 THE APPLICANT: Yes, ma'am.

15 THE COURT: Okay. You may take -- raise your
16 right-hand.

17 CHARLES WOODRUFF, being first duly
18 sworn, testified as follows:

19 THE COURT: Put your right-hand down and you may take
20 your seat.

21 (Witness complies.)

22 THE COURT: State your full name for the record
23 spelling your last name for the court reporter.

24 THE WITNESS: Charles Woodruff. W-O-O-D-R-U-F-F.

25 THE COURT: You may proceed.

Charles Woodruff - Direct examination
by Ms. Moody

1 DIRECT EXAMINATION

2 BY MS. MOODY:

3 Q Mr. Woodruff, could you please tell the Court where
4 you're currently incarcerated?

5 A Broad River.

6 Q Okay. And you're there on and -- on which charges?
7 What are your charges that you're serving time on?

8 A Distribution second offense---

9 Q And that---

10 A ---PWID and trafficking and the gun added with a
11 violent crime.

12 Q Okay. And of those charges, what's your total
13 sentence?

14 A How many charges I got?

15 Q No.

16 How many -- what's your time?

17 I'm sorry.

18 Your total.

19 A Fifteen years.

20 Q Fifteen years.

21 And you pled to these charges before Judge Culbertson?

22 A Yes, ma'am.

23 Q And who was your attorney at that time for the plea?

24 A James Cheeks.

25 Q Okay. And prior to Mr. Cheeks did you have another

Charles Woodruff - Direct examination
by Ms. Moody

1 attorney?

2 A Yes, ma'am.

3 Q Okay. And who was that attorney?

4 A Beverly Jones.

5 Q Okay. And when you filed your application, you filed
6 your application for relief as it relates to Mr. Cheeks
7 representation?

8 A Yes, ma'am.

9 Q Okay. And is there any reason why you did not file
10 against Ms. Jones?

11 A Cause she -- I, I didn't go in the courtroom with her.

12 Q Okay. But did -- can you explain to the Court what
13 exactly did Ms. Jones do for you in terms of your cases?

14 Did you ever meet with Ms. Jones?

15 A Yes, ma'am.

16 Q Did you ever talk about your cases with Ms. Jones?

17 A Yes, ma'am.

18 Q And what specifically did you talk about on your cases?

19 A You talking about the -- what we talked about was the
20 time, what I was looking at, how much time I was looking at
21 if I ain't, if I ain't take the plea.

22 Q So at any point did you-all discuss going to trial?

23 A Yeah, I discussed going to trial.

24 Q So you discussed it with Ms. Jones, right?

25 A Yes, ma'am.

Charles Woodruff - Direct examination
by Ms. Moody

1 Q Okay. So what -- to what extent did you-all discuss
2 going to trial?

3 A That I, I couldn't go to trial if I -- I couldn't take
4 a plea to some of the charges. I couldn't take the plea to
5 some of the charges and go to trial for the other charges.
6 I had to -- it was all -- I had to plead to all of them at
7 one time or something like that.

8 Q Okay. And from your, from -- what did that mean to you
9 in terms of you had to plead to them all at one time?

10 A Well, said -- well, I just had to plead to them. I
11 mean I ain't have to plead to them, but if I wouldn't of
12 plead to them, I would of had to go to trial on them.

13 Q Is that because it would of affected what you -- your
14 exposure on the next set of charges?

15 A Yes, ma'am.

16 Q All right. So like if you pled to some of the serious
17 charges and you got tried on some of the serious charges,
18 you'd be -- you could be noticed for life without parole?

19 A Yes, ma'am.

20 Q Okay.

21 A It be like different, different strikes.

22 Q Okay. Did -- at any point did y'all talk about any one
23 specific case to take to trial?

24 A Yeah, the, the trafficking.

25 Q Okay. And why is that?

Charles Woodruff - Direct examination
by Ms. Moody

1 A Because I was, I was -- that wasn't even my house that
2 they had found the drugs in, you know. But we had talked
3 about going to trial about it, but we mentioned that we -- I
4 could of took it to trial, and if I took it trial I would of
5 had a good chance on it, you know.

6 Q Okay. So now that's when you talked to Ms. Jones?

7 A Yes, ma'am.

8 Q Now, did you talk to Ms. Jones -- did you talk to
9 Mr. Cheeks before you talked to Ms. Jones at any point or
10 did you only talk to him after you talked to Ms. Jones?

11 A I talked to Mr. Cheeks too. I talked to him first.

12 Q Okay. So you talked to him before you talked to Ms.
13 Jones?

14 A Yes, ma'am.

15 Q Okay.

16 A I mean Mr. Cheeks was already representing me on some
17 of them charges.

18 Q Okay. So then after you -- when you spoke with Ms.
19 Jones regarding whether you were gonna go to trial on any of
20 those charges, did you have an offer from Ms. Jones?

21 Did she communicate an offer from the State?

22 A Yes, she said 12 years.

23 Q Okay. And the charges you had with Mr. Cheeks, did you
24 have an offer on those cases?

25 A It was all in one.

Charles Woodruff - Direct examination
by Ms. Moody

1 Q Okay. So all of the cases -- if you pled to all of the
2 charges, then you would be -- the State would recommend 12
3 years or they would negotiate -- or it would of been a
4 negotiated 12 years?

5 A It would of been a negotiated 12 years if I would of
6 took it.

7 Q Okay. So you were gonna absolutely get 12 years?

8 A Yeah, that my understanding.

9 Q Okay. And then ultimately you didn't accept the 12
10 years, correct?

11 A Because, under the advice of Ms. Jones, that if I
12 take -- if I couldn't go in there and the judge could of
13 gave me less than 12 years, he could of gave me a suspended
14 charge -- suspended, suspended time.

15 Q And what do you mean by suspended time?

16 A He could of gave me -- she say -- what she say, if the
17 judge wanted to he could of gave me 12 years suspended to
18 five years probation or five years down the road or he can
19 give me 17 years and suspend it to seven years and -- well,
20 12 years, five years suspended to -- I mean 12 years
21 suspended to five years probation or whatever he wanted to
22 do.

23 Q So if, so if you didn't accept the 12 year negotiated
24 sentence, you could get -- there was a possibility you were
25 gonna get -- you could get less than 12 years?

Charles Woodruff - Direct examination
by Ms. Moody

1 A Yes, ma'am.

2 Q Okay. Did, at any point, did she explain to you you
3 could get over 12 years if you pled straight up?

4 A She, she said that it's a possibility that can happen
5 too, but she said that nine times ten the judge went, went
6 over the 12 because see, the solicitor told me, Mr. Cheeks,
7 that he felt like 12 -- when he offered the 12, he said that
8 15 years would of been too much for the drugs that I -- for
9 the amount of drugs that I had got caught with.

10 Q Okay. So---

11 A He said he felt like that.

12 Q So when you talked to -- when you're referring to
13 Mr. Cheeks, this is after you turned down the 12 years?

14 A This is all about the same time. All this happened
15 within the same weeks.

16 Q Okay. Well help me understand that.

17 A Uh-huh. (Affirmative).

18 Q So before you pled, this conversation took case -- took
19 place before you pled, but after you had received the 12
20 year offer?

21 A The conversation took place at the same time when he
22 was offering me the 12 years.

23 Q Okay. And so, at that time, you were talking with
24 Mr. Cheeks?

25 A Yes, ma'am.

Charles Woodruff - Direct examination
by Ms. Moody

1 Q Okay. So when you discussed your case with Mr. Cheeks,
2 and you were getting ready to go before Judge Culbertson,
3 what was your understanding of your offer on that day?

4 A That, that I could get the 12 years -- they, they
5 offered me 12 years, and if they wanted to -- if the judge
6 wanted to, with the gun charge, he could of run that five
7 years consecutive or he can run it concurrent. It be all on
8 the judge.

9 Q Okay. So on the day of your plea, what was the
10 understanding of your---

11 A Oh, well---

12 Q ---offer from the State?

13 A Was my understanding was no recommendation. That was
14 my understanding.

15 Q Okay.

16 A That we was gonna leave it up to the judge and make the
17 decision from five to thirty years.

18 Q Okay. And was that just based on a certain set of
19 charges?

20 A That was on all my charges.

21 Q Well, you didn't plead to all the charges.

22 A Except the ones -- the charges I didn't plead to was
23 because they said it wasn't me on the film. They didn't
24 drop no charges really. They---

25 Q Okay.

Charles Woodruff - Direct examination
by Ms. Moody

1 A Yeah.

2 Q So the -- all the charges that you had, and some of
3 them were dismissed, they dismissed those prior to you
4 getting ready to plead on that day?

5 A They dismissed them before I pleaded on that day.

6 Q So the answer is yes?

7 A Yes. Yes, ma'am.

8 Q So then when you went to plead on the day before Judge
9 Culbertson, what you were going -- in an open plea or a
10 straight up plea, correct?

11 A Yes, ma'am.

12 Q Okay. And was there -- what was your understanding as
13 to what the State would say to the Court on that day?

14 A That the State didn't have no recommendations. That
15 was my understanding.

16 Q Okay. But what happened on that day during your
17 sentencing?

18 A Well, when, when I -- when they started off, the State
19 said it was no recommendation, and they, they spoke and my
20 cousin spoke. I spoke. Mr. Cheek spoke. Then the
21 solicitor, when the judge fixing to do -- when the judge
22 fixing to give me the time, the solicitors jumped up and
23 that's when he made a recommendation of 15 to 20 years.

24 Q Okay. And when you say the recommendation, do you --
25 and begging the Court's indulgence.

Charles Woodruff - Direct examination
by Ms. Moody

1 THE COURT: Uh-huh. (Affirmative).

2 (Pause.)

3 Q Do you recall what the State said to the Court?

4 A The State -- I think he asked the judge could, could he
5 get -- he had one more request that he wanted to make.
6 Something like -- I can't really remember everything --
7 what, what he actually said. But I know -- I knew -- I
8 remember the part where he said that him and the DEA or
9 narcotics or something had sat down and talked, and they,
10 and they came up with a range, they came up with a range of
11 15 to 20 years that they, that they think would be
12 reasonable for me to -- for me to receive due to the fact
13 that I was -- I had caught drug charges and was out on bond
14 and things like that. That's what I remember.

15 Q Okay. And when you -- did you know that the State was
16 gonna say anything like that before you went before the
17 judge?

18 A No, I ain't know that the solicitor was gonna say
19 nothing.

20 Q Okay. So who -- what did you know going into the plea
21 with regard to any range they wanted?

22 A No, they told me that the, that the narcotics was
23 gonna, gonna ask for, was gonna ask the judge for the 15 to
24 20 years.

25 Q Okay.

Charles Woodruff - Direct examination
by Ms. Moody

1 A But the solicitors told me that they felt like that was
2 too much time from -- for the amount of drugs that I was --
3 that I had. That's why they offered me -- that's why the
4 solicitor said the 12 years. That's why I ain't think that,
5 you know.

6 Q So, that -- that's based on the conversation that you
7 had with Mr. Cheeks and then the solicitor and yourself?

8 A Yes, ma'am.

9 Q Okay. And who told you that the narcotic agent was
10 gonna make that request of the Court?

11 A Mr. Cheeks told me that.

12 Q Okay. And when -- from -- so from your understanding,
13 you didn't have a problem with the narcotics officer saying
14 that to the Court?

15 A No, I have no problem with narcotics officer saying it
16 to the Court because they said -- well, Cheeks tell me that
17 the narcotics -- that the judge don't usually go with what
18 the narcotics ask for nor -- I mean that's, that's what he
19 tell me. So I'm thinking as long as the solicitor ain't
20 recommend no 15 to 20 years. I figured the solicitor was
21 gonna come in there and recommend 15 to 20 years I would of
22 took the 12 years.

23 Q So when the solicitor started -- well, your
24 understanding, and this is just one more way to ask this,
25 when the solicitor spoke up in Court, you felt like whatever

Charles Woodruff - Direct examination
by Ms. Moody

1 came out of the solicitor's mouth was what the Court was
2 gonna listen to it with regard---

3 A Yes, ma'am.

4 Q ---to a sentence?

5 A Yes, ma'am.

6 Q Okay. And so going into that, did you understand that
7 the solicitor's just gonna stand silent, completely silence
8 as to any kind of sentencing?

9 A That was my understanding when the solicitor say he
10 gonna let me make a -- I mean let the judge make a decision
11 from five to thirty years. I ain't -- I'm thinking the
12 solicitor's gonna -- even gonna bring up the 15 to 20 years.

13 Q Okay. So---

14 A Cause we never -- they never told me that the solicitor
15 was asking for 15 to 20 years. They told me that the
16 narcotics was gonna ask for 15 to 20 years, and --.

17 Q So that didn't bother you then?

18 A That didn't bother me especially for the fact that I
19 know that the narcotics wasn't even in the building.

20 Q Okay. So for the date of the plea, you knew that they
21 weren't in the building?

22 A Yeah. Yeah, I knew that.

23 Q Okay. And so when the solicitor spoke up and said the
24 range was 15 to 20 years, what happened after that?

25 Did you tell -- say anything to Mr. Cheeks about that?

Charles Woodruff - Direct examination
by Ms. Moody

1 A No, I -- cause I thought I -- I ain't even -- when,
2 when they said it I was kind of shocked cause I ain't even
3 know what to say, but I -- but knowing that Mr. Cheeks know
4 the law, I was thinking he would say something, but he ain't
5 say nothing. And as soon as they said it, I mean it was
6 like it was over with. I mean once they said it, within
7 minutes I was just receiving the 15 years.

8 Q Okay.

9 A So there really wasn't any time to say nothing.

10 Q So that part of the -- so in your application you filed
11 that you -- after you received erroneous advice as to your
12 plea?

13 A Yes, ma'am.

14 Q Okay. And the erroneous advice is that---

15 A If I would of took an open plea that the judge would --
16 that the -- if I would of took a plea, the judge -- how to
17 put it?

18 If I would of took an open plea that the judge would
19 of -- they don't think that the -- they deal feel that the
20 judge would of gave me no more, no more than five to ten
21 years basically because -- all right. Let me. How to put
22 it?

23 The understanding I got was if I take the open plea
24 that it's gonna be up to the judge from five to thirty
25 years. With the drugs that they had caught me with that,

Charles Woodruff - Direct examination
by Ms. Moody

1 that they don't feel like I would of gotten no more than
2 what the judge recommended would of been from five to ten,
3 and they been a suspended sentence if I would of got some
4 time, you know, if -- but if I knew that the State was gonna
5 recommend 15 to, 15 to 20 years, I would of took the 12
6 years.

7 That's, that's, that's why I feel like erroneous advice
8 came in is that -- cause if they would of told me that, they
9 was gonna go in there and ask for 15 to 20 years, why would
10 I -- I would of been crazy not to take the 15 -- 12 years if
11 you gonna offer me, if you gonna offer me 15, if you gonna
12 recommend 15 to 20 years.

13 Q So---

14 A It's---

15 Q In essence, you felt like Mr. Cheeks would have advised
16 you which one was the better?

17 A Which one was the best and I asked that.

18 Q Okay. And so when you went in there and he didn't
19 object to the State making, or the solicitor I should say,
20 making a recommendation, you felt like he should have?

21 A Yes, ma'am.

22 Q Okay. And specifically on page -- I'd ask the Court to
23 turn to Page 35.

24 THE COURT: You may proceed.

25 MS. MOODY: Your Honor, may I approach the witness?

Charles Woodruff - Direct examination
by Ms. Moody

1 THE COURT: Uh-huh. (Affirmative).

2 Q Can you -- do you recognize this document?

3 A Yes, ma'am.

4 Q Okay. What is it?

5 A This is what was said.

6 Q It's part of your transcript?

7 A Yes, ma'am.

8 Q Okay. And do you -- the statement that the solicitor
9 made in Court, can you read from Line 14 into the record
10 what exactly he said?

11 A What he said.

12 Your Honor, we did negotiate with the defense attorney
13 to come up with a range where he could look at five to
14 thirty year sentence with the understanding they could come
15 in and ask for a five and we could, on behalf of the state
16 and the police, may ask for something else. Having said
17 that, we told them exactly what we were going to ask for and
18 that would be 15 to 20 year range.

19 That's it?

20 That's what you want me to read?

21 Q That's it.

22 So that's what you considered to be a recommendation
23 from the State?

24 A Yes, ma'am.

25 Q Okay. And did Mr. Cheeks ask for a five year sentence?

Charles Woodruff - Direct examination
by Ms. Moody

1 A Yes, ma'am.

2 Q Okay. And so you felt somehow that the State basically
3 reneged on their position of an open plea?

4 A Yes, ma'am.

5 Q Okay. And at any point in time did, other than
6 standing in the Court, did you discuss this with Mr. Cheeks
7 after you pled?

8 A Did I discuss---

9 Q Did you discuss with him the fact that they made a
10 recommendation after you pled?

11 A No, cause after I pled it -- talking about after I got
12 sentenced?

13 Q Yes.

14 A Mr. Cheeks was gone after I got sentenced.

15 Q Okay. And so you feel that you were prejudiced in some
16 kind of way?

17 A Yeah, I feel like I was prejudiced in some saying -- in
18 the type of way for if I knew they was gonna recommend 15 to
19 20 years I would of took the 12 year plea, and on -- after
20 that, not due to the fact that after that I asked for
21 Mr. Cheeks to put in for me a reconsideration, and I wrote
22 the courthouse to let them know to let him know that I was
23 putting in for a reconsideration, which I never got an
24 answer back from nobody and it was never put in.

25 Q Okay. Now -- so originally you were offered the 12

Charles Woodruff - Direct examination
by Ms. Moody

1 years.

2 A Uh-huh. (Affirmative).

3 Q Okay. And then you got 15 years.

4 Do you recall having a discussion with me about the
5 difference between the 12 and the 15?

6 A Yes, ma'am.

7 Q Okay. But you -- can you please tell the Court why you
8 felt you needed to go forward with this in stating that it
9 was a prejudice -- it was prejudiced to you?

10 A Because I ain't get no reconsideration I asked him to
11 put in for me. That's one reason why I feel like I was
12 prejudiced. Another reason I feel like I was prejudiced
13 cause they got -- they offered -- I mean they recommended 15
14 to 20 years, and they -- if I knew that I would of took the
15 12 years. If he would of told me that they was gonna go in
16 there and offer me -- recommend 15 to 20 years, I would of
17 took the 12 years. That's why I feel like I'm prejudiced
18 at.

19 Q Okay. And the 12 -- the difference between the 12 and
20 the 15 is three years, correct?

21 A Yes, ma'am.

22 Q Okay. But you feel strongly that that's time that you
23 wouldn't of been in jail?

24 A Yes, ma'am.

25 Q And that it -- basically can you tell the Court how

Charles Woodruff - Direct examination
by Ms. Moody

1 strongly you feel about that?

2 A I feel real strongly about that.

3 Q why?

4 A why do I feel strongly about that?

5 Q Put that on the record.

6 A Because I was cause -- because they caused -- if I was
7 offered 12 years, and you gonna recommend 15 to 20 years on
8 me, and that's a three years difference that I can be at
9 home with my family or be with my kids or doing positive
10 things in my life, yeah, I feel real strongly about that
11 cause it's three years that I can't get back in my life that
12 I'm gonna have to do in prison because of that.

13 Q Okay. And so you never got your motion to reconsider?

14 A It was never filed.

15 Q I believe---

16 A Because I wrote the courthouse to find out. It was
17 never filed.

18 Q And then at -- preceding your plea, I believe also in
19 your application you stated that you were advised that you
20 could get approximately a hundred years?

21 A 182 years.

22 Q Okay. The judge talked about that too.

23 A Yes, ma'am.

24 Q Okay. But you also put it in your application, your
25 counsel said you would get over a hundred years if you did

Charles Woodruff - Direct examination
by MS. Moody

1 not plead and that's one of your issues that you had with
2 your representation?

3 A Yes, ma'am.

4 Q Is there anything else that you would have the Court
5 know about your plea?

6 A No. No, ma'am.

7 Q Okay. And what relief are you seeking from the Court
8 today?

9 A The relief that I'm asking for is if I, if I can get my
10 12 years that was offered to me back on the table. If not
11 that, at least re-clock the time for the reconsideration and
12 let the judge make a decision if, if he feel like that he
13 want to give me less time than what I got or not.

14 Q Okay. Thank you. No further questions.

15 Could you please answer any questions the State may
16 have?

17 THE COURT: You may proceed.

18 MS. WHITE: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. WHITE:

21 Q Just briefly, Mr. Woodruff.

22 You testified that you acknowledged that you turned
23 down the 12 year offer with the understanding that you were
24 going in with a five to thirty year range?

25 A Yes, ma'am.

Charles Woodruff - Cross-examination
by Ms. White

1 Q Okay. You also were advised by the judge that, if he
2 decided to sentence you consecutively, he could give you up
3 to 175 years?

4 A Yes, ma'am, but part of the plea was it was gonna --
5 everything was gonna be ran in as one.

6 Q Right.

7 But I'm saying that, at, at the time of the plea, your
8 understanding was that was it was concurrent, but the judge
9 told you that, because you were pleading straight up, he
10 could, he could do it consecutively if he wanted and that
11 would be 175 years?

12 A Yes, ma'am.

13 Q And you agreed and said you wanted to proceed with the
14 plea?

15 A Yes, ma'am.

16 Q Okay. And, in fact, he advised you of the sentence for
17 each of the charges you were pleading to, and you proceeded,
18 and said you were pleading freely and voluntarily, that no
19 one had promised you anything or threatened you or anything?

20 A Yes, ma'am.

21 Q All right. And, in fact, you acknowledge today that
22 you were aware that the Narcotics Division, at least you had
23 been told by Mr. Cheeks, wanted to ask for a 15 to 20 year
24 range --

25 A Yes, ma'am.

Charles Woodruff - Cross-examination
by Ms. White

1 Q -- when they went in there?

2 So knowing all that, you still proceeded with and pled
3 on your own accord knowing that that might be an option and
4 that you might receive anytime -- any, anywhere from five to
5 thirty?

6 A Yes, ma'am.

7 Q Okay. And you're just unhappy now because you got the
8 15 instead of the 12 that you had been offered and turned
9 down?

10 A I'm unhappy because I ain't even -- because Mr. Cheeks
11 didn't put in for a reconsideration unless I asked him to,
12 and if he's my lawyer, and if I asked him to do that, that's
13 what he suppose to do.

14 Q Okay.

15 A Right?

16 Q All right. Thank you.

17 That's all I have, Your Honor.

18 THE COURT: Any redirect?

19 MS. MOODY: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. MOODY:

22 Q Mr. Woodruff, when you answered the State's question as
23 to you pled straight up, did you not testify earlier that
24 you heard from the solicitor and Mr. Cheeks that you would
25 get something lower because of the amount of drugs?

Charles Woodruff - Redirect examination
by Ms. Moody

1 A Yes, ma'am.

2 MS. MOODY: No further questions.

3 THE COURT: Any -- sir, you may step down.

4 Any further witnesses from the Applicant?

5 MS. MOODY: Yes, ma'am.

6 I'd call Ms. Jones, Beverly Jones to the stand.

7 THE COURT: Please raise your right-hand and be sworn.

8 BEVERLY JONES, being first duly
9 sworn, testified as follows:

10 THE COURT: Ma'am, if you'd have a seat for me and
11 state your full name for the record spelling your last name
12 for the court reporter.

13 THE WITNESS: My name is Beverly Jones. Excuse me.
14 J-O-N-E-S.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MS. MOODY:

18 Q Ms. Jones, do you recall ever representing Mr. Charles
19 Woodruff?

20 A Yes, I do.

21 Q Okay. And can you explain to the Court the extent of
22 your representation?

23 A Yes. Mr. Woodruff's case, cases were assigned to me
24 some time between mid October of '12, 2012, and November. I
25 actually learned personally of him I think it was maybe the

Beverly Jones - Direct examination
by Ms. Moody

1 1st of November. It was a Thursday. I got a phone call and
2 an email from the assistant solicitor, Scott Spivey, that
3 was handling the cases on Mr. Woodruff.

4 At that time Mr. Woodruff was represented by a private
5 attorney, Max Singleton, here in Spartanburg, but he -- on
6 some older charges. A group of I believe six charges from
7 2011, and he had been rearrested in October of 2012 for, I
8 believe, eight new charges. By the time I learned about him
9 Mr. Cheek, who is an attorney in the Public Defender's
10 Office with me, had already had contact, as I learned, for a
11 couple of weeks from -- with Mr. Woodruff on the new
12 charges.

13 Now, the way our office is set up, Mr. Cheek manages
14 and handles wonderfully the jail clients for our office.
15 Although each trial public defender is assigned jail cases,
16 if they can be resolved by plea prior to the trial, trial
17 stage, Mr. Cheek generally handles them. But there is an
18 underlying trial attorney assigned.

19 Q Okay.

20 A Go ahead.

21 Q Okay. So as the -- so you would of been coming in as
22 the trial attorney on the new cases from October 2012?

23 A Correct.

24 Q Okay. And at some point did all the charges come under
25 the Public Defender's Office?

Beverly Jones - Direct examination
by Ms. Moody

1 A Well, eventually, yes. But let me back up.

2 In November I was contacted by the assistant solicitor
3 and asked to come over for a meeting with Mr. Woodruff, who
4 was actually in the jail room here right around the corner
5 with Mr. Cheek and Mr. Spivey. Apparently there was, and at
6 times, Mr. Singleton, the private attorney, there was an all
7 inclusive offer that had been made to Mr. Woodruff I
8 believe.

9 Now, Mr. Cheek is much more versed on this than I am,
10 but---

11 Q Okay.

12 A And he was on -- Mr. Woodruff, as I understood it, was
13 on the verge of rejecting the offer that would of handled
14 the entirety of the charges.

15 Q Okay. So now I want to isolate it to like when you had
16 your set of charges, the eight new charges.

17 So he was on the verge of rejecting the whole package
18 of the plea offer?

19 A Correct.

20 Q Okay. And what was the offer at that time, the
21 whole -- for the whole package?

22 Do you recall?

23 A Well, the emails that I have in the file indicate there
24 was an offer that made reference to the offer to Mr.
25 Singleton as his old cases as seconds, five to twenty

Beverly Jones - Direct examination
by Ms. Moody

1 charges, twenty years.

2 Now, ultimately, if I may allow, be allowed to finish,
3 within a couple of weeks of that date Mr. Singleton was
4 relieved from the case, and, by December 1st, I believe I, I
5 had been, I had notified Judge Cole that, upon relief of Mr.
6 Singleton, the Public Defender's Office would take all of
7 them. So at some point in November there was a, a joint
8 representation between our office and Mr. Singleton of
9 Mr. Woodruff.

10 Q Okay.

11 A Go ahead.

12 Q So now when that -- okay. At that point when you-all
13 talked about the overall plea offer, did you have -- you
14 had -- you just said that the charges for Mr. Singleton were
15 pleading them down to a second offense for five to twenty.

16 Was there any other offers that were made as to the
17 whole package before Mr. Singleton was relieved.

18 A I, I -- my records don't indicate that at that point.

19 Q Okay.

20 A The problem was Mr. Singleton -- communication with him
21 was spotty at best. He was having some difficulty in his
22 practice, and so it was, it was difficult to coordinate all
23 of it I think, and Mr. Cheek, out of concern for
24 Mr. Woodruff, was trying to just grab it all and deal with
25 it all. So he could probably speak to that better than I

Beverly Jones - Direct examination
by Ms. Moody

1 could. But ultimately Mr. Woodruff's bond was revoked
2 during that time period and he was left in jail and we
3 assumed representation of all of them.

4 Q Okay. Now, what, if any, conversation did you have
5 with Mr. Woodruff without Mr. Cheeks?

6 Was there any conversation?

7 A Oh, I don't know that I had much without Mr. Cheeks.
8 As I remember it, it was kind of -- I was called in and I'll
9 be happy to share the email, but it was basically he's on
10 the verge of rejecting an offer for seconds. I'm gonna put
11 him on the docket for December 1st or 10th or whatever
12 it was, some very short time later, for thirds and he's
13 looking at 30 years. Please come over and, you know, I want
14 you to be aware of this. Please come over and, you know,
15 speak to Mr. Cheeks, speak to Mr. Woodruff, and see what you
16 can do. I, I was just kind of being informed.

17 So I came in, at that point, and he still rejected the
18 offer.

19 Q Okay. Now, when he rejected the offer, was there -- do
20 you recall a 12 year offer?

21 A No.

22 Q And did you ever discuss a 12 year offer with him?

23 A I don't -- no, I don't recollect a 12 year offer at
24 all. I heard the first about that today from Mr. Cheek. My
25 notes don't reflect that. So that must of transpired when

Beverly Jones - Direct examination
by Ms. Moody

1 Mr. Woodruff talked -- in a conversation he had with
2 Mr. Cheek.

3 Q Okay. Okay. After that conversation and you-all took
4 over the entire set of cases, did you have any meetings with
5 Mr. Woodruff at all?

6 A I did, yes, and my notes reflect the week before he
7 ultimately pled I met with him on two different days, and my
8 notes show, at that point, make no reference to 12 years.

9 Q Do they make---

10 A They indicate second on the distributions. The
11 trafficking would be a second, five to thirty. I went
12 through, because it was one of the charges had a 20 or 20
13 plus exposure, it would be no parole, violent, the serious,
14 and all that, and I even have a note offered equals no
15 contest, and I listed Hayes and Culbertson, which I believe
16 would of been the judges next week, and have Judge
17 Culbertson underlined as though that was the choice that
18 Mr. Woodruff had reflected to me, and that is, in fact, who
19 the plea judge was.

20 In hindsight, I believe that was because the case that
21 Mr. Woodruff was on probation for and had seven years of
22 exposure left was a Judge Hayes case from 2010, and he
23 probably didn't want to go back over there cause he thought
24 he would recognize him.

25 Q Okay.

Beverly Jones - Direct examination
by Ms. Moody

1 A But I also have notes from the following day where I
2 specifically listed the date of offense and the charge that
3 he would plead to on the 4/12/11 distribution second, the
4 6/8/11 PWID second, the 9/13/12 distribution second, the
5 10/2/12 distribution within a half mile, and then the four
6 10/12/12 events arising from the trafficking and have noted
7 beside them all of them would have to be no contest. Then,
8 at the bottom, I have some various biographical information
9 I got about family, his kids, and some work he'd done at
10 DOC.

11 Q Okay. So is it your testimony today that you didn't
12 convey any other offer to him other than the being able to
13 plead to seconds on the distributions and the trafficking---

14 A Yeah---

15 Q ---and the judge?

16 A That's what my notes reflect. Now, it's my
17 understanding, and, of course, I'll let Mr. Cheeks get into
18 this, they had subsequent conversations. It's part of the
19 problem with Mr. Woodruff's case was he wouldn't stick with
20 a lawyer, and---

21 Q Well, wait a minute. Let me ask you this much.

22 A Go ahead.

23 Q When you say that he wouldn't stick to the lawyer, he
24 had one lawyer and then he got new lawyers, a new lawyer.

25 A Correct.

Beverly Jones - Direct examination
by Ms. Moody

1 Q And that was cause -- obviously because of a screening,
2 he was entitled to a public defender, correct?

3 A That is correct.

4 Q Okay. And then the only other lawyer that he had
5 outside of you and Mr. Cheeks would of been Mr. Singleton,
6 correct?

7 A No, actually in the 2011 cases he started out with
8 public defenders. He had Roger Poole and went out late in
9 that game and that's when he got Mr. Singleton.

10 Q Okay. So that's what you mean by he wouldn't stick
11 by--

12 A Yeah.

13 Q Okay.

14 A And there'd be a conversation with me and then he would
15 have a conversation with Mr. Cheek, and I think that's where
16 some of this I know this offer and he knows this offer comes
17 into play.

18 Q Okay. So at the time that you talked to him on those
19 two occasions, the only offers that you conveyed to him was
20 the two, excuse me, the seconds on the distribution, the
21 seconds on the trafficking, no contest plea in front of
22 Judge Culbertson, correct?

23 A Correct.

24 Q Okay. And were -- after that, were there any other
25 conversations that you had with him?

Beverly Jones - Direct examination
by Ms. Moody

1 A Not, not that my notes reflect, no.

2 Q Okay. All right. And, at that time, did you make
3 those -- you conveyed that information to him, was it --
4 you-all were going forward -- he was gonna go forward with a
5 plea?

6 A Correct.

7 Q And would you have handled that plea or would
8 Mr. Cheeks?

9 A I would of handled it, but, as it turned out, I did
10 not.

11 Q Okay. You would of handled it, but for a death in your
12 family?

13 A Probably, yes. But it, it also appears, and Mr. Cheek
14 will tell you this, that subsequent to these conversations,
15 Mr. Woodruff was still talking to him, and they had further
16 development, and once Mr. Cheek and I had conferred Monday
17 morning about how much they had been talking after I
18 finished, I probably -- I, I, in all likelihood, would of
19 deferred to Mr. Cheek anyway because he would of had the
20 most current conversation with Mr. Woodruff and with the
21 solicitor.

22 Q And the reason why they had that much conversation is
23 because---

24 A Mr. Cheek's in the jail and---

25 Q Right.

Beverly Jones - Direct examination
by Ms. Moody

1 A ---anytime he goes in a pod, if somebody is, to see
2 anybody, if somebody in there has some conversation they
3 want to have, then they grab him and they continue to talk.

4 MS. MOODY: Okay. No further questions for this
5 witness. Thank you.

6 THE COURT: Any questions for the witness?

7 MS. WHITE: Nothing, Your Honor.

8 THE COURT: Ma'am, you may step down.

9 Anything further from the Applicant?

10 MS. MOODY: No, ma'am.

11 THE COURT: State may proceed.

12 MS. WHITE: we'll call James Cheek.

13 THE COURT: Mr. Cheek, if you would come to the stand
14 and be sworn.

15 JAMES CHEEK, being first duly sworn,
16 testified as follows:

17 THE COURT: Sir, if you would have a seat for me and
18 state your full name for the record spelling your last name
19 for the court reporter.

20 THE WITNESS: My name is James Cheek. C-H-E-E-K.

21 THE COURT: You may proceed.

22 MS. WHITE: Thank you, Your Honor.

23 THE COURT: You welcome.

24 DIRECT EXAMINATION

25 BY MS. WHITE:

James Cheek - Direct examination
by Ms. White

1 Q Mr. Cheek, you've heard a lot of the testimony here
2 today.

3 Were you the one that talked to Mr. Woodruff about a
4 possible 12 year offer?

5 A I was.

6 Q And what was your conversation -- do you recall the
7 conversation or what led up to that offer at that point?

8 A I had interviewed Mr. Woodruff at the jail and gone and
9 talked with the prosecutor, Mr. Spivey. We had gone over
10 some of the problems arising with another attorney being
11 involved in the case and being out of communication with the
12 Solicitor's Office. We talked about the point where there
13 was a motion or a consent order entered before the Court and
14 Mr. Singleton was granted the relief to be allowed to be
15 removed from representation of Mr. Woodruff.

16 while all of this was going on, I did have the
17 opportunity to look through some of the discovery on some of
18 Mr. Singleton's cases, and because I had actually talked and
19 met with Mr. Woodruff and knew Mr. Woodruff, I knew his
20 physical presentation, and, therefore, once Mr. Singleton
21 was removed from the, from the cases, I had a conversation
22 with Mr. Spivey and, at that time, I asserted that there was
23 gonna be a problem at trial on those charges because
24 Mr. Woodruff was not the person on the video, and I thought
25 that was a good strategy to do that because that led to some

James Cheek - Direct examination
by Ms. White

1 other conversations between myself and Mr. Spivey and back
2 and forth with Mr. Woodruff after I revealed that
3 information because I can understand Mr. Singleton wanting
4 to wait until trial to deal with the ID issue.

5 But once we had all these new charges that had arisen,
6 our office was representing Mr. Woodruff. I thought it best
7 to go ahead and try to immediately pare everything down and
8 then look at what was gonna be left and then to try to deal
9 with those charges. Although Mr. Woodruff had a number of
10 prior convictions, Mr. Spivey agreed that we would move
11 forward with negotiating and talking about these on a level
12 of second offenses, five to thirty.

13 Contemporaneous with that, we talked, went through
14 everything. I will tell you that Mr. Spivey was -- hands
15 were tied to some extent with the offer. The, the narcotic
16 division wanted 15 to 20 years throughout. That's all they
17 wanted was 15 to 20. Mr. Spivey and I reached a strategy
18 that we would offer a plea of 12 years to Mr. Woodruff.

19 Mr. Woodruff made it very clear he did not want that.
20 I explained to Mr. Woodruff that, at the hearing upon
21 entering the plea, the State would remain silent, the State
22 meaning the solicitor's office, would stand and remain
23 silent on the sentencing explaining to the Court they had
24 already agreed to a reduction in the charges, and it's
25 typically their position, that once they agree to a

James Cheek - Direct examination
by Ms. White

1 reduction in the charges, they don't make a recommendation,
2 recommendation to sentencing, and that would give my client
3 the benefit of five to thirty years, State remain silent on
4 the sentencing as far as their recommendation is concerned,
5 and that the narcotic's agents would appear asking for the
6 15 to 20.

7 That I suspected the Court, in hearing that, would know
8 that the State, meaning the Solicitor's Office, was not
9 taking a position on it, and they would leave it entirely in
10 the hands of the narcotic's agents and that they could be
11 expected that they would come in and ask for whatever they
12 wanted to ask for, and the Solicitor's Office would not be
13 necessarily undergirding that, but just standing silent on
14 it. That would give us an opportunity to ask for the
15 minimum sentencing in the case.

16 Again Mr. Spivey offered the 12 years to Mr. Woodruff
17 on the day prior to the hearing. Mr. Woodruff rejected the
18 12 year offer. That night I was at the jail attending to
19 other business and interviewing. Mr. Woodruff got my
20 attention. He said I'll go back. I said the offer is off
21 the table. We can ask Mr. Spivey again in the morning, but
22 you rejected the offer and he told you, in the conversation
23 with us together, that he was not gonna make the offer back
24 to you for the 12 years.

25 Mr. Woodruff said, man, I don't care, take me back over

James Cheek - Direct examination
by MS. White

1 there, I can't stand this, I want to get this over with. I
2 went to booking. I wrote his name in on the transport list
3 for the next day. We brought him back over. That would
4 enure to his benefit because we're still looking at five to
5 thirty. The State was gonna go ahead, at that time, allow
6 him to go ahead and plead to the five to thirty because,
7 when we left the day before, he was looking at third
8 offenses again and he was looking to go to trial on the
9 third offenses.

10 He wisely thought about that from the time he left the
11 courthouse until the time he got back over to the jail, and
12 once he saw me at the jail that night he got my attention.
13 I spoke with him, and, as I said, I set him up for
14 transport. We brought him back to the courthouse the next
15 day.

16 At that time Mr. Spivey agreed let's go forward with
17 the plea to five to thirty open plea. The Solicitor's
18 Office making -- standing silent on the issue of
19 recommendation of sentencing, and awaiting for the narcotics
20 people to come back for the plea. They were not able to
21 come back. So Mr. Spivey put on the record that the State
22 was not making a recommendation, but that had the officers
23 from narcotics been present, they would have asked for 15 to
24 20 year range of sentencing with the understanding that the
25 only, the only negotiation we had was five to 30, and

James Cheek - Direct examination
by Ms. White

1 Mr. Spivey said that -- I said -- essentially, I guess, as
2 an officer of the Court, that he had to make the Court aware
3 of what the narcotic agents would have asked for had they
4 been given a chance to be there because they had every right
5 to be there.

6 But because he went ahead and made the same offer of
7 the five to thirty second offenses, that -- and we wanted to
8 move forward with it and resolve it, that we were not gonna
9 wait for the narcotic agents, but Mr. Spivey would make the
10 Court aware of what they would of said had they been present
11 and that is what happened.

12 Q Okay. In, in your meetings with him, and giving him
13 all of this information, you felt comfortable that he had
14 voluntarily turned down the 12 year and knew he was going
15 into an open plea of five to thirty?

16 A When Mr. -- yeah, I do. When Mr. Woodruff left the
17 courthouse the previous day, when he left that jail room, he
18 knew he would be going to trial for 25 to 30 years. He also
19 knew that he had a charge, a proximity charge and these were
20 third offenses, and that he went to trial, he was going to
21 be looking at life without the possibility of parole after
22 Mr. Spivey tried him the first time and got him a
23 conviction, and Mr. Spivey made it very clear to him that,
24 after I get the first conviction on you, I'm coming back for
25 life notice and my client thought about that, and he made a

James Cheek - Direct examination
by Ms. White

1 very intelligent decision that he would go forward with the
2 plea the next day if I could get him back over there to the
3 courthouse, get him transferred back over here, and get Mr.
4 Spivey to agree to let him go ahead and plead to the five to
5 thirty range, which is what I did.

6 Q Okay. That's all I have. Thank you.

7 THE COURT: Any questions for the witness?

8 MS. MOODY: Yes, ma'am. Thank you.

9 May it please the Court, Your Honor?

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MS. MOODY:

13 Q Mr. Cheek, you indicated, with all of the cases, that
14 you understood his physical presentation and so it wasn't
15 him on the video?

16 A Oh, no, no, no, no, no, no, no. That's not what I
17 said.

18 Q Okay. Well please explain.

19 A There were, there were some cases that were not Mr.
20 Woodruff. There were others that was definitely Mr.
21 Woodruff.

22 Q Now, I understand that, but the ones that were not him,
23 that's how you were able to get the solicitor to consider
24 resolving these charges?

25 A No, hu huh. (Negative).

James Cheek - Cross-examination
by Ms. Moody

1 We were gonna resolve the charges anyway, and I put on
2 the record that -- cause I wanted the Court to understand --
3 that the State was not dismissing some charges because they
4 were doing that in order to encourage the plea. Those cases
5 were best be dismissed anyway, that we were moving forward
6 entering the plea based upon -- we were taking care of all
7 the remaining charges all at one time and not subject my
8 client to any further chance that the State would bring a
9 life notice against him.

10 Q Okay. So I'm just trying to make sure I understood.

11 There were some charges that they wouldn't of been able
12 to get a conviction on because it wasn't him on those
13 videos?

14 A I agree.

15 Q Okay. And then the other charges, they were him on the
16 video?

17 A Yes.

18 Q And those are the charges he actually pled to?

19 A Yes.

20 Q Okay. All right. So you were the first person who
21 gave him information about 12 years?

22 A Yes.

23 Q Okay. And were there any other terms to that plea?

24 Was it negotiated?

25 Was it recommended?

James Cheek - Cross-examination
by Ms. Moody

1 You know, just 12 years was the offer?

2 A Well, initially it was a 12 year recommendation, and
3 Mr. Woodruff was uncomfortable with that. So I brought
4 Mr. Spivey into the jail room and we talked with Mr.
5 Woodruff, and we agreed that would be a negotiated 12 years
6 and Mr. Woodruff still turned that down.

7 Q Okay. So the 12 year offer was -- it, it ultimately
8 became a 12 negotiated where he would go before the judge
9 and the judge could either accept it or he could step back
10 and the judge wasn't gonna accept the 12 years?

11 A That's right.

12 Q Okay. And on the day that he rejected that offer, was
13 that the day---

14 A Prior to. That would of been probably February the
15 11th I guess because I think the plea was entered on
16 February the 12th.

17 Q Okay. So when you-all talked about that, he rejected
18 that offer, and then you came back again on that same day
19 and talked about a five to thirty open plea or I guess
20 straight up?

21 A The next day.

22 Q Okay. So on February the 11th, 2012, he had a
23 negotiated 12 years on the table?

24 A Yes.

25 Q And he turned that down?

James Cheek - Cross-examination
by Ms. Moody

1 A Turned it down.

2 Q And then on 5/12 -- I mean, excuse me, 2/12/13 he was
3 offered five to thirty on all seconds?

4 A Yes.

5 Q And then -- so the next day would of been the 13th of
6 February.

7 He accepted or he decided to go forward?

8 A I think it was the 12th. I'm sorry. I'm looking at
9 the transcript here and the transcript is saying
10 February 12th, 2013. I'm assuming that's the day---

11 Q The plea took place.

12 A ---that the plea actually took, took place.

13 Q Okay.

14 A There would of been nothing on the 13th.

15 Q All right. And you would agree which that February the
16 12th was a Tuesday?

17 A If you got a calendar that says that. I promise you my
18 mind won't incorporate all of that.

19 Q Okay.

20 A If you have a calendar that says that February the
21 12th, 2013, was a Tuesday, that meant that we had the
22 conversation on a Monday.

23 Q Okay. So let's go back.

24 The, the 12 years negotiated came to him on that
25 Monday or it came to him on that Sunday?

James Cheek - Cross-examination
by Ms. Moody

1 A I don't recall.

2 Q Okay. So you're saying that the -- all these offers
3 that he was entertaining, the 12 years negotiated would of
4 been on a different day from the five to thirty before he
5 walked away from that one?

6 A Well, he was looking at five to thirty range of
7 sentencing. That was the State's concession --

8 Q Okay.

9 A -- as opposed to even pleading on a third, they agreed
10 to let him plead on a second cause initially they didn't
11 want to let him plead to anything other than third, which
12 was 25 years, and I knew that was not gonna work. So my
13 efforts were toward getting it down to seconds, which is
14 five to thirty --

15 Q Okay.

16 A -- and that was back and forth all, all along.

17 Q Okay. Is it possible that the negotiated plea and then
18 the 5/30, five to thirty open plea came on the same day?

19 A Yeah, it would have been on the same day.

20 Q Okay.

21 A We were, we were back and forth and first it was five
22 to thirty. We talked about the 12 as a recommendation, and
23 then I went and got -- he didn't want -- he didn't want a
24 recommendation. He wanted it negotiated. So I went and
25 found the solicitor again, came back, and asked about the

James Cheek - Cross-examination
by Ms. Moody

1 solicitor with me and we negotiated the 12.

2 Q Okay.

3 A And as we did that he still didn't want it. He said he
4 wanted it. Did not want the recommendation of 12. He
5 wanted it to be negotiated 12. I went and got the
6 solicitor. We came back.

7 The solicitor had a conversation with him, agreed to
8 negotiate the 12, and then he decided he didn't want it. I
9 think he thought whatever, but that was the end of the
10 negotiations at that point in time, and the solicitor told
11 him that he could not do anything other than the 12
12 negotiated because the -- that was contrary to what the
13 instructions were that narcotics had given him, and that he
14 was looking at problems with answering to his supervisors
15 and his boss because he was going less than what the
16 narcotics people wanted.

17 But that because I was lobbying as strongly and
18 strenuously as I was for Mr. Woodruff, that he would take a
19 chance on explaining to his boss later why he did what he
20 did.

21 Q Okay. And so, on the day that he actually pled in
22 front of Judge Culbertson, the only reason or the reason
23 that you relayed to the Court here today is the reason why
24 he spoke about his -- the narcotic's request for 15 to 20
25 was because narcotics was not there that day?

James Cheek - Cross-examination
by Ms. Moody

1 A That's right. Narcotics was there the day before.

2 They were waiting.

3 Q To make that plea to the Court?

4 A And they went along with the -- they went along with
5 the 12 years. They didn't want to go to 12 years.

6 Q Okay.

7 A They went along with the 12 years that day, and with
8 Mr. Woodruff, contrary to his request, turned it down. They
9 were furious. They were gonna go to trial. It's gonna be
10 25 to 30. It's gonna be strikes coming up. It was gonna be
11 life notices served. He was looking at life without the
12 possibility of parole. He knew that when he left -- he and
13 I had a conversation. He -- the solicitor had a
14 conversation. The solicitor made it very clear to him he
15 was through. He was getting ready to go to trial.

16 Q Okay. Now, after that plea took place, did you ever
17 receive any communication from Mr. Woodruff about filing a
18 motion for reconsideration?

19 A I don't recall getting one, but if I had gotten it I
20 wouldn't have filed it. It would of been -- it would of
21 been against my client's best interest. I was not gonna do
22 it because what would of happened is, when we had the
23 reconsideration hearing, every narcotic agent in the county
24 would of been there for that hearing to impress the judge
25 what -- they would have been asking for 30 years.

James Cheek - Cross-examination
by Ms. Moody

1 Q So---

2 A And we're talking about a man who had charges pending,
3 made bond, continued to sell drugs, and came back into
4 custody, and was made an offer of a negotiated 12 years,
5 which he turned down.

6 What were we gonna be coming back on a negotiation
7 reconsideration for?

8 No, he had been looking at 30 years, and, with his
9 record, and with his handling of the situation, the State,
10 at that time, would of come in and joined in the request of
11 the narcotic agents and they would of been asking for 25 or
12 30 years, and I recall saying specifically to Mr. Woodruff,
13 at the time that I went back in, you say you love your
14 children. This is your chance to get back home and be there
15 in time for graduation with your children. That's what I
16 told him.

17 Q All right. So you didn't file the motion for
18 reconsideration?

19 A I did not file one because he never asked me to do it.
20 If he did it -- if he sent me something in writing, I don't
21 recall it.

22 Q Oh.

23 A I don't recall it. I did not file a motion for
24 reconsideration and I would not have. I wouldn't have done
25 it.

James Cheek - Cross-examination
by Ms. Moody

1 Q Okay. All right. So -- no further questions for this
2 witness. Thank you.

3 THE COURT: Any redirect?

4 MS. WHITE: Nothing, Your Honor.

5 THE COURT: Sir, you may step down.

6 Any further testimony from the State?

7 MS. WHITE: No, Your Honor. The State has no
8 witnesses.

9 THE COURT: Any rebuttal testimony from the defense --
10 the Applicant?

11 MS. MOODY: No, Your Honor.

12 THE COURT: Any argument?

13 MS. MOODY: No, ma'am.

14 THE COURT: From the State, any argument?

15 MS. WHITE: Nothing, Your Honor.

16 THE COURT: Considering the breadth of the record in
17 this case, and I only referenced one of his criminal charges
18 at the time, because that is the only charge that he filed
19 an application for post-conviction relief, which was related
20 to this application, but on 2/12 of '13 he pled guilty, and
21 the record will reflect this, to distribution of cocaine
22 base second, distribution of crack cocaine near a school
23 proximity, possession of marijuana, possession of a weapon
24 during the commission of a violent crime, PWID cocaine base
25 near a school, trafficking in crack 10 grams or more, but

1 less than 25 grams, distribution of cocaine base second,
2 PWID cocaine base second, and he also had a probation
3 revocation on a distribution of crack cocaine, which is
4 2009-2403. He had some other charges from -- and also a
5 distribution of cocaine base second. He had some other
6 charges from 2010, which he pled guilty to, which were
7 assault and battery of a high and aggravated nature, PWID
8 marijuana second, distribution of crack cocaine second.

9 I have reviewed all the records in this case including
10 the transcript of the record from the guilty plea on
11 February 12th of 2013. Considering the applicable
12 Strickland standards, I find the Applicant has failed to
13 meet his burden of proof regarding any relief in this case.

14 I find credible, in its entirety, the testimony of Ms.
15 Jones and Mr. Cheek regarding their representation of the
16 Applicant. What I find most persuasive is the
17 contemporaneous record of this case along with Mr. Cheek's
18 testimony regarding the extensive efforts to which he
19 exerted in working this matter out for his client in light
20 of the fact that he was facing potential, potential of a
21 life without possibility -- life without possibility of
22 parole sentence in this case.

23 It is a -- clear from the transcript that he understood
24 the charges he was facing as well as the range of penalty,
25 and that is found at Pages 10 and 11, Page 11, Lines 18

1 through 20, and the entirety of Page 10, Pages 12, 13, 14,
2 and 15, Lines 1 through 10, and Page 22, Lines 2 through 7
3 and 8 through 10.

4 He indicated that he was not under the influence of any
5 drugs or alcohol which would of impaired his ability to
6 understand where he was or what he was doing, Page 11, Lines
7 13 through 17, and that he had no questions for his attorney
8 at Page 11, Lines 21 through 24, and he understood his
9 Constitutional rights and presumption of innocence at Page
10 12, Lines 1 through 18, and that he was giving up those
11 rights.

12 He understood the nature of an Alford plea, which was
13 at Pages 15, Lines 11 through 25, and Page 16, Lines 1
14 through 12.

15 He understood the enhancement of penalties and the
16 classification of the offenses for which he was pleading at
17 Page 16, Lines 13 through 23, and -- well, actually Page 16,
18 Lines 13 through 25, and Page 17, Lines 1 through 8.

19 He pled guilty to all of the offenses at Page 17, 18 --
20 at Page 17 starting at Line 9 through 25 and Pages 18 and
21 19.

22 That his plea was free and voluntary in its nature.
23 Page 19, Lines 24 through 25, and Page 20, Line 1.

24 That there were no promise or threats to him at that,
25 Page 19, Lines 20 through 23, and that he was satisfied with

1 his attorney's representation, Page 20, Line 2 through 4.

2 He allocuted to the facts of the offenses at Page 23,
3 Lines 15 through 25, Pages 24, 25, 26, 27, 28, and Page 29,
4 Lines 1 through 7.

5 He had an extensive record, which was published for
6 purposes of sentencing at Page 23, Lines 13 through 21, and
7 the Court appeared to observe that he continued to commit
8 offenses while out on bond or at least that observation was
9 made for the record at Page 35.

10 It is very clear in this transcript -- part of this
11 transcript corroborates Mr. Cheeks -- Mr. Cheek, Mr. Cheek's
12 recollection of events where the State indicated, at Page
13 35, Lines 14 through 23, that the only negotiation with the
14 State was as to a plea range and a reduction of the charges,
15 that the State, in fact, did not take a position, but that
16 he was going to articulate for the officers their position
17 because they were not present, and as to what their
18 recommended sentence range was, which was at Page 36, Lines
19 1 through 20.

20 It is clear from the record and I find credible that
21 the Applicant in this case was offered a negotiated plea. I
22 find Mr. Cheek's testimony credible that he went to
23 extensive efforts to get Mr. Spivey to agree to the
24 negotiated plea even to the extent of him agreeing to take
25 any repercussions from his office, and bringing him to the

1 jail to explain that to his client, getting law enforcement
2 onboard, and then once that was accomplished, that he
3 rejected the plea flying, flying in the face of all that had
4 been accomplished, which completely enured to his benefit in
5 light of the extent of the charges he was facing; and the
6 penalty, the significant penalty that he was facing.

7 I find credible Mr. Cheek's testimony that, after
8 reflection, his client changed his mind, and that he entered
9 then into another set of negotiations with the State
10 regarding range of penalty and what ultimately transpired in
11 the plea.

12 I also find that Mr. Cheek did all that he could on
13 behalf of Mr. Woodruff, that he was zealous in his advocacy
14 for him, that he, at all times, communicated any offers that
15 were made by the State including any -- making him a part of
16 that negotiation process, and I find credible that his
17 client did not ask for a motion for reconsideration. But
18 the burden is not whether he just failed to file a motion,
19 but whether there would of been some success on that motion
20 and the record is devoid of any information regarding that
21 or that there would have been any likelihood of success,
22 and, quite frankly, with the range of penalty he was facing,
23 as well as his extensive record, it was really quite
24 generous that Judge Culbertson gave him the lower end of a
25 range of 15 years regarding the nature of the charges he was

1 facing, the sheer number of them, and the fact that he was
2 on probation at the time that he committed these additional
3 offenses, and continued to commit crimes while he was out on
4 bond, and while I can not speak for Judge Culbertson, and
5 would not make any attempts to, there is no indication that
6 he would have reconsidered the sentence.

7 However, I do find credible Mr. Cheek's testimony that
8 after he went to the extent of negotiating this deal,
9 getting the solicitor onboard and law enforcement, that it
10 is not outside the realm of possibility and it is completely
11 likely that they were furious and that they took on an
12 entirely different posture regarding the trial and
13 disposition of these charges, and I do find credible, as it
14 has been my experience, that if he was, in fact, granted a
15 hearing on the motion for reconsideration, that they would
16 of all shown up and they would of been adamant in their
17 position and they would have been asking for an increase in
18 sentence, which could have happened, as long as -- the Court
19 always has the ability to change a sentence.

20 A sentence can not be increased as punishment for
21 seeking or availing oneself to the process, but it certainly
22 could of been increased under these circumstances, and I
23 think, under those circumstances, I find credible
24 Mr. Cheek's testimony that, if his client had asked for it,
25 that he would not have done it because he felt that it did

1 not enure to his benefit and that it was not in his best
2 interest, and, as a lawyer, he has a good faith
3 responsibility to do what he thinks is in his client's best
4 interest, but, again, the record is completely devoid of any
5 indication that a motion for reconsideration would of made
6 any appreciable difference in the outcome of sentence in
7 this case, and frankly, under the record that I've read,
8 it's a very generous sentence, and in light of what I've
9 seen in my experience, he probably would of gotten more like
10 a 25 range when it regarded the disposition of all of these
11 charges in light of his prior criminal history.

12 Based on what's been presented to the Court, the relief
13 is denied.

14 The AG is directed to provide the Court with a proposed
15 order within 20 days of today making any findings of fact
16 and conclusions of law consistent with the record.

17 If you would email that to Ms. Moody at the same time
18 that you provide it to the Court, and it is my hope that,
19 within five days of receipt, that an order will be issued.

20 Thank you.

21 MS. WHITE: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 MS. MOODY: Thank you, Your Honor.

24 THE COURT: Thank you, Ms. Moody.

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* * *END OF REQUESTED TRANSCRIPT OF RECORD* *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 14th day of January, 2015.

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

May 13th, 2015

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Charles J. Woodruff, #296287,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-1659

ORDER OF DISMISSAL

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Plea Counsel:

Date of Hearing:

Court Reporter:

Hon. Deadra L. Jefferson

Leah B. Moody, Esquire

Suzanne H. White, Esquire

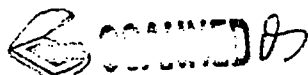
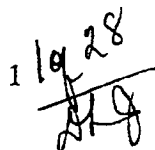
James A. Cheek, Esquire

January 14, 2015

Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 8, 2013. The Respondent made its Return on or about March 14, 2014. An evidentiary hearing into the matter was convened on January 14, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. James A. Cheek, Esquire, (Counsel) and Beverly Jones, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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CLERK OF COURT
SPARTANBURG COUNTY

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. The Applicant was true bill indicted at the December 2012 term of the Spartanburg County Grand Jury for Distribution of Crack Cocaine-Third Offense¹ (2012-GS-42-5566). James Cheek, Esquire, represented the Applicant. On February 12, 2013, the Applicant pled guilty without negotiations or recommendations to the lesser-included charge of Distribution of Crack Cocaine-Second Offense.² The Honorable Benjamin H Culbertson sentenced the Applicant to fifteen (15) years' imprisonment or a fine of fifty thousand dollars (\$50,000.00).³ The Applicant did not appeal his sentence or conviction.

Although the Applicant challenges only his conviction on Indictment Number 2012-GS-42-5566 for Distribution of Crack Cocaine-Second Offense, he pled guilty on the same day to eight (8) other charges, each sentence was to run concurrent with the fifteen (15) year sentence

¹ Distribution of Crack Cocaine-Third Offense is a serious felony and "for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten [(10)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [(\$50,000.00)], or both." S.C. CODE ANN. § 44-53-375(B)(3) (2012); S.C. CODE ANN. § 17-25-45 (C)(2)(a) (2012). "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted." S.C. CODE ANN. § 44-53-375 (2012).

² Distribution of Crack Cocaine-Second Offense is a serious felony and "for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than five [(5)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [(\$50,000.00)], or both." S.C. CODE ANN. § 44-53-375(B)(2) (2012); S.C. CODE ANN. § 17-25-45 (C)(2)(a) (2012). "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits." S.C. CODE ANN. § 44-53-375 (2012).

³ The sentence sheet should read "and" instead of "or" and appears to be the result of a scrivener's error as the fine is mandatory and was imposed by the plea court at the time of sentencing as reflected on the sentencing sheet.

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on Distribution of Crack Cocaine-Second Offense. The plea court also revoked the Applicant's probation and imposed the remainder of his seven (7) year active sentence and terminated probation (Tr. 38:11-13). The Applicant pled guilty to: 2012-GS-42-0684, Distribution of Crack Cocaine-Second Offense, which was originally indicted as Distribution of Crack Cocaine-Third Offense;⁴ 2012-GS-42-0689, Possession with Intent to Distribute Crack Cocaine-Second Offense, which was originally indicted as Possession with Intent to Distribute Crack Cocaine-Third Offense;⁵ 2012-GS-42-5530, Distribution of Crack Cocaine-Second Offense, which was originally indicted as Distribution of Crack Cocaine-Third Offense;⁶ 2012-GS-42-5567, Distribution of Crack Cocaine Within Half Mile of a School;⁷ 2012-GS-42-5532, (Alford plea) Trafficking in Crack Cocaine-10-28 Grams, Second Offense, which was originally indicted as Trafficking in Crack Cocaine-10-28 Grams, Third Offense;⁸ 2012-GS-42-5532A,

⁴ See notes 1 & 2, *supra*.

⁵ Possession with Intent to Distribute Crack Cocaine-Second Offense is a serious felony and "for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than five [(5)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [(\$50,000.00)], or both." S.C. CODE ANN. § 44-53-375(B)(2) (2012); S.C. CODE ANN. § 17-25-45 (C)(2)(a) (2012). "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits." S.C. CODE ANN. § 44-53-375 (2012). Possession with Intent to Distribute Crack Cocaine-Third Offense is a serious felony and "for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten [(10)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [(\$50,000.00)], or both." S.C. CODE ANN. § 44-53-375(B)(3) (2012); S.C. CODE ANN. § 17-25-45 (C)(2)(a) (2012). "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted." S.C. CODE ANN. § 44-53-375 (2012).

⁶ See notes 1 & 2, *supra*.

⁷ Distribution of Crack Cocaine-Proximity is a serious felony punishable by imprisonment not more than ten [(10)] years or a fine of not more than ten thousand dollars (\$10,000.00), or both. S.C. CODE ANN. § 44-53-445 (2012). S.C. CODE ANN. § 17-25-45 (C)(2)(b) (2012).

⁸ Trafficking in Crack Cocaine-10-28 Grams, Third Offense is a violent, serious felony punishable by "a mandatory minimum term of imprisonment of not less than twenty-five [(25)] years nor more than thirty [(30)] years, no part of

Possession of a Weapon During the Commission of a Violent Crime;⁹ 2012-GS-42-5564, Possession with Intent to Distribute Crack Cocaine Within Half Mile of a School;¹⁰ and 2012-GS-42-5533, Possession of Marijuana, which was originally indicted as Possession of Marijuana-First Offense.¹¹ Additionally, the State dismissed two (2) Distribution of Crack Cocaine-Third Offense charges and Possession with Intent to Distribute Marijuana Within Half Mile of a School as a condition of the plea.

ALLEGATIONS

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

which may be suspended nor probation granted, and a fine of fifty thousand dollars [(\$50,000.00)]." S.C. CODE ANN. § 44-53-370(e)(2)(a)(3) (2012); S.C. CODE ANN. § 17-25-45 (C)(2)(b) (2012); S.C. CODE ANN. § 16-1-60 (2012). Trafficking in Crack Cocaine-10-28 Grams, Second Offense is a violent, serious felony punishable by "a term of imprisonment of not less than five [(5)] years nor more than thirty [(30)] years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars [(\$50,000.00)]."

⁹ The offense of Possession of a Firearm During the Commission of a Violent Crime provides:

(A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five [(5)] years, in addition to the punishment provided for the principal crime. This five-year [(5)] sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

(B) Service of the five-year [(5)] sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year [(5)] sentence to run consecutively or concurrently.

(C) Except as provided in this subsection, the person sentenced under this section is not eligible during this five-year [(5)] period for parole, work release, or extended work release. The five [(5)] years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three [(3)] years of release from imprisonment.

S.C. CODE ANN. § 16-23-490 (2011).

¹⁰ Possession with Intent to Distribute Crack Cocaine-Proximity is a serious felony punishable by imprisonment not more than ten (10) years or a fine of not more than ten thousand dollars (\$10,000.00), or both. S.C. CODE ANN. § 44-53-445 (2012). S.C. CODE ANN. § 17-25-45 (C)(2)(b) (2012).

¹¹ Possession of Marijuana-First Offense is a misdemeanor punishable by six (6) months' imprisonment or a one thousand dollar (\$1,000.00) fine, or both. S.C. CODE ANN. § 44-53-370(d)(2) (2012). Simple Possession of

1. Ineffective Assistance of Counsel:
 - a. "Counsel rendered erroneous advice."
 - b. "Counsel failed to file a motion for reconsideration."
2. Involuntary guilty plea:
 - a. "Counsel said I would get over 100 years if I did not plead."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her 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).

Summary of the Testimony

The Applicant testified that he had previously met with Beverly Jones, Esquire and Counsel, James Cheek, Esquire, but only Counsel represented him at his plea. The Applicant testified that he spoke with Counsel about the charges and exposure he faced if he did not accept the plea offer. The Applicant testified that he discussed the possibility of proceeding to trial on the trafficking charge, but decided against that because of the possibility that based on the "three strikes" law, he could face life in prison without possibility of parole. The Applicant alleged the State would dismiss the charges because he was not the assailant captured on the video.

The Applicant testified that Beverly Jones conveyed and he understood that he would receive a negotiated sentence of twelve (12) years on all cases if he accepted the plea. He likewise testified that was his understanding of the offer during Counsel's representation. The

Marijuana is a misdemeanor punishable by thirty (30) days' imprisonment or a minimum one hundred dollar (\$100.00) or maximum two hundred dollar (\$200.00) fine. S.C. CODE ANN. § 44-53-370(d)(4) (2012).

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Applicant also testified that he was expecting the sentencing court to suspend his active sentence, but that his sentence on Possession of a Firearm During the Commission of a Violent Crime could be run consecutively or concurrently. The Applicant testified that based on his understanding that the Assistant Solicitor would recommend twelve (12) years; he would have taken the twelve (12) year offer. He further testified that if he took an "open plea," the judge would determine his sentence within the penalty range of five (5) to fifteen (15) years. The Applicant then clarified that his understanding was without the drug charges that he alleged would be dismissed based on the State's lack of video evidence, his exposure would have been ten (10) years and he would have received a suspended sentence.

However, the Applicant admitted that he pled straight up on all charges with a penalty range of five (5) to thirty (30) years and with no recommendation. The Applicant asserted that the State instead recommended a fifteen (15) to twenty (20) year sentence. The Applicant testified that he was aware that the narcotics officers intended to ask for fifteen (15) to twenty (20) years at the plea based upon what Counsel had shared with him, but he believed the Assistant Solicitor would not make a recommendation. The Applicant alleged he was unaware of the sentencing procedure. The Applicant testified that he felt the State reneged on its promise of a straight up plea without a sentencing recommendation and thus he was prejudiced. However, on cross examination, the Applicant admitted he understood the colloquy, the penalty ranges, and the Solicitor's argument on sentencing.

The Applicant testified that he never said anything to Counsel after hearing the recommendation, but he wanted Counsel to file a motion for reconsideration. The Applicant prayed for the following relief: either his initial twelve (12) year plea deal, reopen the time to file motion for reconsideration or vacate sentences and convictions and remand for a new trial.

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Beverly Jones, Esquire testified that she recalled representing the Applicant on cases assigned between October 2012 and November 2012. Jones testified that the Applicant was formerly represented by Max Singleton, private counsel, on six (6) old charges from 2011. She further testified that Counsel was handling the Applicant's instant case. Jones testified that when she first spoke with the Applicant, the Applicant had already met with Counsel and discussed all of the charges. Jones testified that she understood that the plea offer was all-inclusive and for all outstanding charges, including several in which the Applicant was represented originally by a private attorney. At that time, the offer would be for second offense charges and a penalty range of five (5) to twenty (20) years. She testified that Applicant's bond was revoked at that time, so he was in the jail. She further testified that the Applicant rejected that initial offer and then his private counsel was relieved because of problems with his practice and problems communicating with Counsel. At that point, Jones testified, the Applicant's case was transferred to the Office of the Public Defender. Jones testified that a twelve (12) year offer was never extended during her representation and her notes did not reflect a twelve (12) year offer. She further testified the only offer she was aware of was a reduction of the third offenses to second offenses thus reducing the applicable penalty range. She opined that the offer must have been extended to Counsel.

Jones testified that she met with the Applicant twice the week before his plea to summarize the charges against the Applicant and his probationary case as well as discuss the possibility of entering a no contest plea. Jones opined that part of the Applicant's problem was that he could not "stick" with a lawyer and could have lost potential offers among attorneys. Jones testified that she had no further conversations with the Applicant, but that Counsel and the Applicant met thereafter. Finally, she testified that she deferred to Counsel regarding the facts of

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the Applicant's plea because he had the most current conversations with the Applicant and handled the Applicant's plea while she was out of the office for a death in the family.

Counsel testified that he interviewed the Applicant at the jail and spoke with the Assistant Solicitor on Applicant's behalf regarding his pending cases. Counsel testified that he also reviewed the discovery materials for all pending cases and had reviewed the problems with the Applicant's case with another attorney—Singleton—who was out of communication with the Solicitor's office. Counsel clarified that the parties executed a consent order relieving private counsel. Counsel testified that based on the discovery, he performed research and his strategy was to use the Applicant's physical appearance to distinguish his identity from the perpetrator captured in the videos. He further testified that the strategy to prove that the Applicant was not the person on the video was the catalyst to negotiation on all of his new charges and the ability to deal with them all at one time. Then, Counsel testified, he would deduce which charges could not be "paired down" and attempt negotiations with the Solicitor.

The Solicitor's office ultimately agreed to reduce the charges to second offenses so that the penalty range would be between five (5) and thirty (30) years, but their hands were tied somewhat because the narcotics officers planned to be present at the plea and request a sentence of fifteen (15) to twenty (20) years. Counsel further testified that the officers were "steadfast" in their request. Counsel explained to the Applicant that the Solicitor would remain silent during the sentencing proceeding because the State had already agreed to a reduction in the charges and a straight up plea to a five (5) to fifteen (15) year range. He testified that based on his experience, the State would not normally ask for a specific sentence and that the Defense could then argue for the mandatory minimum sentence. Counsel testified that the narcotics officers would then ask for a specific sentencing range. Counsel elaborated that if the narcotics officers were not present

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at the hearing, as an officer of the court, the Solicitor was obligated to divulge the narcotics officers' wishes.

Counsel testified that the Solicitor's office extend a twelve (12) year negotiated plea offer to Counsel twice, which the Applicant clearly and adamantly rejected. Counsel testified that the Applicant rejected the twelve (12) year offer twice. Counsel testified that the day before the Applicant's plea on February 11, 2013 and the final time the Assistant Solicitor extended the twelve (12) year offer, Counsel invited the Solicitor to discuss the offer with the Applicant and the Applicant still declined the State's offer. The Solicitor was clear that once the Applicant rejected the twelve (12) year offer the day before the plea, the State would be extending no further offers. Counsel testified that ultimately the Applicant knew that if the straight up plea arrangement to second offenses was revoked, the Applicant would be facing all third offenses with a minimum sentence of twenty-five (25) to thirty (30) years and the potential of life imprisonment without possibility of parole. The day before the Applicant's plea, the Solicitor again made clear to Counsel that the State would seek life imprisonment without possibility of parole. The night before the plea, Counsel testified, when he visited the Applicant at the jail, the Applicant asked for the twelve (12) year offer back. Counsel informed the Applicant that the twelve (12) year offer was "off the table," to which the Applicant responded that he wanted to get his plea "over with." Counsel was unable to convince the Solicitor to re-extend the offer a third time the morning of the Applicant's plea. Counsel then arranged for the Applicant's transport the next morning so that the Applicant could plead to the second offenses straight up. Counsel opined that the Applicant made the wise decision to plead to the second offenses straight up with the penalty range of five (5) to thirty (30) years in order to avoid life imprisonment without possibility of parole and that the arrangement inured to his benefit.

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Counsel elaborated that the State allowed the reduction in charges from third offenses to second offenses but that the Assistant Solicitor did not want to negotiate and wanted to try each charge as third offenses. The Applicant wanted a negotiated plea and would not agree to the recommendation or reduction in offense level. Counsel testified that after all of his effort and negotiations and even convincing the Solicitor speak with the Applicant personally, the Applicant still rejected the twelve (12) year negotiated plea. The Assistant Solicitor explained to the Applicant that he was taking the risk that law enforcement and his boss would be angry at him for entering into a negotiated plea of twelve (12) years on the Applicant's case. Counsel explained that the narcotics agents were present the day before the Applicant's plea and reluctantly agreed to the twelve (12) year negotiated plea. When the Applicant rejected the plea, they were "furious" and wanted the State to seek life imprisonment without possibility of parole at trial. He further testified that after all of this back and forth the Assistant Solicitor was "through" and had no further interest in negotiating and was ready to go to trial.

The Applicant ultimately proceeded with a straight up plea with the reduction in charges and although the State made no recommendation on sentencing, the State conveyed the narcotics officers' request for a fifteen (15) to twenty (20) year sentence. Counsel testified that he did not recall the Applicant request he file a motion for reconsideration. Counsel further testified that even if the Applicant would have requested a motion for reconsideration, he would not have filed one because it would not have been in the Applicant's best interest. He testified that he predicted that all the narcotics agents would most certainly attend any hearing and, considering the Applicant's behaviour the State would be "on board," with the agents requesting a more stringent sentence around twenty-five (25) to thirty (30) years. He further testified that he told the Applicant that the sentence he received would give him the chance to see his children "grow up."

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Ineffective Assistance of Counsel

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

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

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a

probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

The Applicant alleges he received ineffective assistance of counsel. This Court finds the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations. This Court finds Counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant’s evidentiary hearing. Counsel conferred with the Applicant and discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant’s version of the facts, the penalty ranges associated with the charged offenses, and the potential time the Applicant could serve incarcerated. The record reflects that Counsel effectively explained the charges, their associated penalty ranges, and the consequences of pleading guilty. The record is completely devoid of any evidence that Counsel failed to fully explain all of the State’s plea offers. The record further reflects that the Applicant’s plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant’s claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant’s attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev’d on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543

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(4th Cir. 1977)). This Court further finds Counsel thoroughly conferred with the Applicant and provided more than competent representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Regarding Applicant's allegation that Counsel was ineffective for providing erroneous sentencing advice and failing to file a motion for reconsideration on his behalf, this Court finds that the Applicant has failed to meet his burden of proof. Counsel's testimony that not only was a motion for reconsideration never requested, but that it would not have been in the Applicant's best interest, was credible. The testimony of Counsel was credible that the Applicant on several occasions adamantly rejected a negotiated twelve (12) year plea offer. This Court finds that Counsel did all he could on Applicant's behalf, conveyed all plea offers, and zealously advocated for Applicant. As noted in the plea transcript, the Applicant faced a potential of 175 years and over \$300,000 in fines if he plead to the charges as indicted. This Court can find no deficiency on Counsel's behalf and no evidence that the Applicant would have proceeded to trial, but for, any advice from Counsel. Therefore, this claim is denied and dismissed.

Failure to Advise of Penalty and Sentencing Consequences

The Applicant alleges Counsel was ineffective for providing him erroneous advice and failing to inform the Applicant of the penalty ranges associated with his charges, the potential sentences he was facing, the terms of the plea offer, and the consequences of entering his plea. Additionally, the Applicant challenges his sentence because he argues Counsel represented that his plea would be "open" and not subject to any recommendations and negotiations. This Court finds this allegation is wholly without merit. This Court finds credible Counsel's testimony that he informed the Applicant of the following: the elements of the charged offenses; the penalty ranges of the offenses; the potential sentences associated with his charges; and his LWOP

eligibility. Further, this Court finds that Counsel actively involved the Applicant during crucial plea negotiations. This Court finds credible Counsel's testimony that he explained all potential contingencies of each plea agreement scenario.

This Court finds Counsel was not deficient in this regard and his performance did not affect the outcome of the Applicant's proceeding. See Randall v. State, 356 S.C. 639, 641–42, 591 S.E.2d 608, 609–610 (2004) (citing Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002)) (failure to advise of collateral consequences of parole eligibility before the applicant proceeds to trial not ineffective assistance of counsel); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), *overruled on other grounds*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (counsel is not ineffective for failing to advise a defendant regarding parole eligibility in connection with his guilty plea because it is a collateral consequence of sentencing); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997) (unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea); Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence).

"A defendant must be advised of a mandatory punishment for the offense to which he is pleading." State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Despite counsel's alleged failure to advise his or her client regarding the mandatory minimum sentences, the trial judge cures any misconception by properly advising the defendant of the penalty ranges at the plea hearing. Knox, 340 S.C. at 86, 530 S.E.2d at 889 (citing Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998)). Cf. Smith v. State, 329 S.C. 280, 284–85, 494 S.E.2d 626, 628–29 (1997) (enumerating collateral consequences of burglary conviction and holding that guilty plea not rendered invalid for counsel's failure to advise of each consequence associated with violent

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crimes). This Court finds that any alleged deficiencies in the Applicant's personal understanding of the ramifications of his plea were cured by both the Solicitor's and law enforcement's statements as well as the plea court's summary of the plea arrangement during the colloquy. Specifically, the Solicitor stated that the Applicant's plea was without recommendation, but that the Applicant was getting the benefit of a possible five (5) to thirty (30) year sentencing range, instead of the mandatory minimum twenty-five (25) years associated with Trafficking in Crack Cocaine—Third Offense (Tr. 5:9–11). Thereafter, the State argued for a fifteen (15) to twenty (20) year sentence and the Defense argued for the minimum (5) year sentence (Tr. 35:14–36:20). The transcript of the guilty plea confirms that the Applicant understood all penalty ranges, the potential consequences of his plea, and the posture of the plea arrangement.

This Court finds that the Applicant's assertion that he was unaware of sentencing procedure is without merit. The Applicant's criminal history is extensive at best—including a 1998 Manufacturing, Distribution, and Possession with Intent charge, a 2001 Possession of Crack Charge, a 2002 Criminal Domestic Violence charge, a 2003 Criminal Domestic Violence—Second Offense charge, a 2003 ABHAN charge, and a 2008 Distribution of Crack Cocaine—Second Offense, for which the Applicant was on probation during the commission of the instant offenses, while he was out on bond, and during his guilty plea (Tr. 34:13–19; 35:9–13)—and indicates that he was aware of the criminal justice system and sentencing process.

The Applicant's assertion that Counsel represented that he would be pleading straight up when in fact the Solicitor made a recommendation as to sentencing is without merit.¹² Counsel's

¹² The Applicant made similar assertions that he had the option of obtaining a potential suspended sentence and that the State would dismiss charges. Upon review of the record, the State did dismiss a number of charges as a concession to the Applicant's straight up plea. The Applicant failed to articulate any grounds supporting his assertion. Further, in his Application for PCR, the Applicant asserts that Counsel erroneously informed him that he would serve a one hundred (100) year sentence in order to induce his guilty plea. In fact, the Applicant's exposure

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credible testimony and the contemporaneous record of the proceedings reveal that Counsel, the Solicitor, and law enforcement negotiated a straight up plea without negotiations or recommendations to lesser-included offenses and a penalty range of five (5) to thirty (30) years. According to the terms of the plea arrangement, the Solicitor would allow law enforcement to speak on behalf of the community and ask the plea court to impose a sentence in the range of fifteen (15) to twenty (20) years. Likewise, the Defense could argue for the mandatory minimum of five (5) years. The parties merely presented arguments to the sentencing court and left the final calculation of penalty entirely at the discretion of the plea court. The parties did not enter into any recommendations or negotiations. Further, Counsel and the Solicitor painstakingly explained the arrangement to the Applicant prior to and during the plea. Thus, the Applicant's assertion that he erroneously pled to a recommended sentence and not an "open plea" is without merit.

Thus, this Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

Failure to File Motion for Reconsideration

The Applicant asserts that Counsel was ineffective for failing to file a motion to reconsider the Applicant's sentence.

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear

was LWOP, if he rejected the offers and plea arrangement and proceeded to trial and up to one hundred eighty-two

on the proper sentence for the particular defendant, given the crime committed.” Hicks, 377 S.C. at 325, 659 S.E.2d at 500.

The Applicant offers no corroborating evidence in support of his assertion that he requested Counsel file a motion for reconsideration and appeal of his guilty plea. Additionally, this Court finds that based on Counsel’s credible testimony and a review of the transcript, there is no evidence or indication that had Counsel filed a motion for reconsideration, he would have been successful.

Moreover, Counsel articulated a valid strategy supporting his contention that a motion to reconsider would actually work against the Applicant’s best interest. Counsel testified that he feared that based on the history of plea negotiations, the Applicant’s behavior and failure to cooperate, and the Solicitor’s and law enforcement’s vehement plea for a stringent sentence of incarceration, the Applicant may have received a lengthier sentence before the plea judge on rehearing. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” Strickland, 466 U.S. at 693, 104 S. Ct. at 2067. Where counsel articulates a valid strategic reason for his action or inaction, based on an objective standard of reasonableness, counsel’s performance should not be found ineffective. See Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 779. Accordingly, this Court finds that Counsel was not deficient in this regard.

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999):

(182) years’ imprisonment if the plea court ran his sentences consecutively (Tr. 12:19–13:23; 21:18–22:10).

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

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, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing.

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Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). “Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.”

Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea.” Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). “Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat.” Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

Moreover,

a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors

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indicate that the Defendant had notice of the charges to which he chose to plead guilty.

State v. Smalls, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. This Court finds the contemporaneous recording of the plea and testimony to be most persuasive and compelling. At the commencement of the Applicant's plea hearing, the Solicitor published the charges and indictments for the record, including the plea arrangement and reduction in charges, the Alford pleas—Trafficking in Crack Cocaine—10-28 Grams Second Offense, Distribution of Crack Cocaine—Proximity, and Possession of a Firearm During the Commission of a Violent Crime—and the dismissed charges (Tr. 3:5–4:24). The Solicitor stated that the Applicant's plea was without recommendation, but that the Applicant was getting the benefit of a possible five (5) to thirty (30) year sentencing range, instead of the mandatory minimum twenty-five (25) years associated with Trafficking in Crack Cocaine—Third Offense (Tr. 5:9–11). Thereafter, the State argued for a fifteen (15) to twenty (20) year sentence and the Defense argued for the minimum (5) year sentence (Tr. 35:14–36:20). The State published the Applicant's prior record, which consists of a 1998 Manufacturing, Distribution, and Possession with Intent charge, a 2001 Possession of Crack Charge, a 2002 Criminal Domestic Violence charge, a 2003 Criminal Domestic Violence—Second Offense charge, a 2003 ABHAN charge, and a 2008 Distribution of Crack Cocaine—Second Offense, for which the Applicant was on probation during the commission of the instant offenses, while he was out on bond, and during his guilty plea (Tr. 34:13–19; 35:9–13). The Applicant affirmed that he was pleading guilty to the charged offenses according to the Solicitor's publication of the plea arrangement and in consideration of the plea colloquy (Tr. 10:3–11:3; 17:9–19:19; 20:5–25; 22:8–10). The Applicant understood and admitted the facts of the charged offenses (29:2–7).

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The Applicant agreed that he understood the possible penalty ranges and agreed that he was pleading guilty to the offenses with the understanding that should the court run his sentences consecutively, he would be facing over one hundred seventy-five (175) years in jail and three hundred twenty one thousand dollars (\$321,000.00) in fines (Tr. 12:19-13:23).¹³ The Applicant affirmed that he understood the mandatory minimum sentences associated with the charged offenses; that he was not eligible for parole on the Possession of a Weapon During the Commission of a Violent Crime charge; that the Distribution of Crack Cocaine-Second Offense, Trafficking Crack Cocaine-Second Offense, Possession with Intent to Distribute Crack-Proximity, Distribution of Crack-Proximity, and Possession with Intent to Distribute Crack Cocaine-Second Offense charges were considered serious offenses and thus he was subject to the "three strikes" law and life imprisonment without possibility of parole (Tr. 13:25-15:10). The Applicant told the court that he understood he was receiving a concession on behalf of the State to enter Alford pleas and that Alford pleas are legally indistinguishable from guilty pleas and admissions of guilt (Tr. 15:11-16:12). The Applicant indicated that he understood drug enhancements and the enhanced sentences associated with multiple drug possession charges (Tr. 15:13-23). The Applicant also told the court he understood that Trafficking in Crack Cocaine is a violent crime and that multiple violent crime convictions may impact his probation and parole eligibility (Tr. 16:24-17:8).

The Applicant told the Court that he had not consumed any alcohol, drugs, medication, or other intoxicants that would affect his ability to understand why he was pleading guilty and

¹³ Although the plea court accidentally misspoke when enumerating the penalty range for Distribution of Crack Cocaine-Second Offense, stating that the maximum penalty was thirty (30) days instead of thirty (30) years (Tr. 11:24-13:1), he later clarified that Distribution of Crack Cocaine-Second Offense carries a mandatory minimum sentence of five (5) years' imprisonment. S.C. CODE ANN. § 44-53-375(B)(2) (2012). Therefore, there was no reason for the Applicant to believe that a felony offense carrying a mandatory minimum five (5) year term of imprisonment carried a maximum term of imprisonment of thirty (30) days.

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asserted that he had no further questions for his attorney (Tr. 11:13-24). The plea court advised the Applicant of his constitutional rights, which he thereafter waived (Tr. 11:25-12:18). The Applicant affirmed that he was pleading voluntarily, free from threats and promises (19:20-20:1). The Applicant also stated that he was satisfied with his lawyer's services (Tr. 20:2-4)

Further, the Applicant was on probation at the time of his plea for Distribution of Crack Cocaine-Second Offense and was sentenced to seven (7) years' imprisonment provided upon the service of five hundred four (504) days time served and thirty-six (36) months' probation (Tr. 21:1-17). The Applicant acknowledged that by entering his guilty plea, he was probably violating his probation and his active sentence could be imposed in full and run consecutively to his sentence on the instant offenses for a total of one hundred eighty two (182) years' imprisonment (Tr. 21:18-22:10). The Applicant accepted service of his probation warrant, indicated that he had an opportunity to review the citation and violation report with his attorney, and admitted that he willfully violated the terms of his probation (Tr. 22:14-23:7).

This Court finds that the Applicant pled freely and voluntarily. Therefore, this claim is denied and dismissed.

Remedy Provided by Davie v. State

The Applicant asserts that he is entitled to his twelve (12) year negotiated plea and a belated motion to reconsider. The Applicant requests this Court impose the remedy provided by Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) and Bell v. State, 410 S.C. 436, 765 S.E.2d 4 (Ct. App. 2014). Pursuant to the professional standards espoused by the American Bar Association and the South Carolina Rules of Professional Responsibility, "counsel is required to fully communicate [a plea offer] with the client so that the client can make an informed decision regarding any proposals by the State." Davie, 381 S.C. at 609, 675 S.E.2d at 420. Once the PCR

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court determines that counsel was ineffective for failing to adequately communicate a plea deal to his or her client, "the question becomes whether [the applicant] was prejudiced by this deficient performance." *Id.* The PCR court uses a case-by-case approach in "assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer. *Id.* at 613, 675 S.E.2d at 422. "The second prong of the ineffective assistance inquiry—prejudice—is shown by demonstrating through *objective* evidence . . . [the existence of] a reasonable probability that, but for counsel's advice, [the defendant] would have accepted the plea. Mere statements by the PCR petitioner that he would have accepted the plea agreement but for counsel's incompetence are insufficient to show prejudice because they are self-serving and inherently unreliable." *Judge v. State*, 321 S.C. 554, 562, 471 S.E.2d 146, 150 (1996). "[D]epending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice." *Davie*, 381 S.C. at 613, 675 S.E.2d at 422. Where the applicant does not express a desire to proceed to trial, the remedy for counsel's failure to communicate a plea offer is remand for a new sentencing hearing, not specific performance of the purported offer. *See id.* at 615–616, 675 S.E.2d at 423–24.¹⁴

This Court finds Counsel's testimony credible and the Applicant's testimony that he did not understand the terms of his plea without merit. Counsel effectively communicated the State's offers to the Applicant and therefore he was not inefficient. Moreover, not only did Counsel himself effectively communicate the terms of the twelve (12) year negotiated plea offer to the Applicant twice, but on the eve of his plea hearing, Counsel implored the Solicitor himself to

¹⁴ The *Davie* court further held: "Given that we cannot compel the State to reinstate or the circuit court judge to accept the original, fifteen-year plea offer, we remand the case for a new sentencing hearing with the limitation that Petitioner's sentence should not exceed the original sentence of twenty-seven years' imprisonment." *Davie*, 381 S.C. at 616, 675 S.E.2d at 424.

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explain the terms of the offer directly to the Applicant. The Applicant adamantly rejected the negotiated plea twice. Having determined Counsel adequately explained the terms of the offer to the Applicant, this Court need not reach the question of whether the Applicant suffered actual prejudice by Counsel's alleged failures.

Nevertheless, the underlying facts of the Applicant's case are distinguishable from Davie and Bell. In Davie, the court found that the applicant was prejudiced by counsel's failure to communicate the State's offer based on plea counsel's admission that he failed to communicate the offer to the applicant; the admission by both plea counsel and the applicant that had the offer been communicated to the applicant, he would have accepted the agreement; and based on the fact that had the applicant accepted the offer, he would have received a significantly lower sentence than the 27 year sentence actually imposed. See Davie, 381 S.C. at 614, 675 S.E.2d at 423. The facts of Bell are substantially similar to Davie, although, in Bell, the applicant's "trial counsel testified Bell's file contained a note indicating the solicitor made an offer of ten years imprisonment" and "Bell testified he did not know anything about a plea offer until his sentencing." Bell, 410 S.C. at 442, 765 S.E.2d at 7. However, the Solicitor and Bell's counsel disagreed as to whether the State ever tendered an offer. Id.

Here, credibly Counsel testified the Applicant was aware of the negotiated plea offer, its expiration date, and all contingencies and consequences of the Applicant's rejection of the deal. Moreover, by the Applicant's own admission at the hearing, he testified to understanding the basic terms of the twelve (12) year offer as communicated by both Jones and Counsel. Finally, on the eve of trial, the Applicant chose to take advantage of the State's concession that they would waive seeking life imprisonment without possibility of parole, seek convictions on second offenses instead of third offenses, and allow the Applicant to plead under Alford. Although the

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Applicant could have received as little as five (5) years imprisonment based on the straight up plea arrangement with no negotiations and recommendations, the sentencing court still could have imposed the maximum penalty allowable of thirty (30). Ultimately, the fifteen (15) year sentence imposed by the plea court was substantially more generous than the Applicant's possible exposure to life imprisonment without possibility of parole if he was found guilty at trial. Moreover, the Applicant never testified that had he been presented with the initial deal, he would have accepted it; he simply asked this Court to give him his deal "back." This Court finds compelling Counsel's ability to obtain any kind of agreement whatsoever on behalf of the Applicant once he had rejected prior negotiations, jeopardized the Solicitor's relationship with his boss and law enforcement, and infuriated the narcotics agents assigned to his case. This Court further finds that hindsight is not an adequate legal basis for vacating a sentence. Accordingly, this Court finds that the Applicant failed to show actual prejudice as required pursuant to Davie and Strickland. This Court finds the Applicant has failed to meet his burden of proof and therefore declines to remand the Applicant's case for resentencing.

This Court notes that Davie and its progeny does not stand for the proposition that upon Counsel's prejudicial failure to communicate a plea offer, a PCR applicant is entitled to a belated, direct appeal. As this Court has found *supra*, the Applicant is not entitled to a belated, direct appeal, pursuant to established precedent.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

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CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct did not fall below an objective standard of reasonableness. This Court finds that the Applicant failed to meet his burden of proof to support his claims. Therefore, they are denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id.

Although the Applicant testified that he was prejudiced by Counsel's erroneous advice and ineffective assistance, he merely claimed that if he would have known he was pleading to a "recommended" sentence, he would have accepted his previous negotiated plea offer. The Applicant has failed to meet his burden of proving prejudice in connection with an involuntary guilty plea. Roscoe, 345 S.C. at 21, 546 S.E.2d at 419 (citing Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991); Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (applicant failed to show any "evidence supporting a finding that the defendant's plea was induced such that, but for the erroneous advice, the defendant

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would not have pled guilty but would have insisted on going to trial”); see also Roscoe, 345 S.C. at 20 n.6, 546 S.E.2d at 419 n.6 (citing Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997); Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)) (“Although we have consistently held a defendant must have a full understanding of the consequences of his plea and of the charges against him, . . . the defendant must also demonstrate prejudice to be entitled to relief on PCR.”).

Accordingly, The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed. 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.

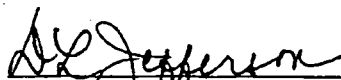
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 454, 409 S.E.2d 395, 396 (1991), 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. The Applicant's 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.

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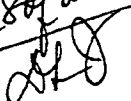
AND IT IS SO ORDERED this 1st day of April, 2015.



Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

2015 APR -6 AM 11:59
CLERK OF COURT

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DOCKET NO. 51576

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 11 2017

TERM

THE STATE
vs.

CHARLES JAMES WOODRUFF

Indictment for

DISTRIBUTION OF COCAINE BASE
SC Code: 44-53-375

WITNESSES

SPTG DENTISTRY PUBLIC SAFETY

2. RES

(CARD FOLDED)

~~Confidential~~

ALL CHECKED WARRANTS

5. CHECKED SIGNATURE

ARREST WARRANT NUMBER

NON-SPECIFIC VIOLATION COPY

2012A4210200745

ACTION OF GRAND JURY

Expedited
Two Bill
 Expedited on June 23, 2012

Date:

VERDICT

Foreperson of Petit Jury
Date:

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U.S. DEPT. OF JUSTICE

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on DEC 9 2012 the
Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF COCAINE BASE

That Charles James Woodruff did in Spartanburg County on or about October 2, 2012, 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 Cocaine Base, a schedule II controlled substance under provisions 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