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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

KENDRICK ALLEN GUDE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001133

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

ALICIA OLIVE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 VS.)
7 KENDRICK ALLEN GUDE,)
8 DEFENDANT.)
9

TRANSCRIPT
OF
RECORD
2011-GS-42-6813, 6814
2012-GS-42-3508, 3509
2012-GS-42-3192

10 July 9th, 2012
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

16 CHAD GRAHAM
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 JOHN RECKENBEIL
20 ESQ.
21 Attorney for the Defendant

22
23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

THE COURT: If your name is called, come forward to the box to my right and remain standing please.

SOLICITOR GILMER: Thank you, Your Honor.

Eric Greenway.

(Defendant stands.)

SOLICITOR GILMER: Kendrick Gude.

(No response.)

SOLICITOR GILMER: Walter Long.

(Defendant stands.)

SOLICITOR GILMER: Lashonda Smith.

(Defendant stands.)

SOLICITOR GILMER: Undrea Jeter.

(Defendant stands.)

SOLICITOR GILMER: Dennis Woody.

(No response.)

SOLICITOR GILMER: Jose Morales.

(Defendant stands.)

SOLICITOR GILMER: And we have a William Huggins who should be making his way in with Mr. Schultz.

THE COURT: All right. We're missing -- two of them haven't come up.

What was the second name you called?

SOLICITOR GILMER: Kendrick Gude, and it's my

1 understanding Mr. Reckenbeil is going to get him.

2 SOLICITOR GRAHAM: Mr. Reckenbeil is going outside to
3 get him, Your Honor.

4 (Pause.)

5 THE COURT: All right. Now, who is this gentleman?

6 MR. SCHULTZ: This is Mr. Huggins, William Huggins.

7 THE COURT: Thank you.

8 MR. SCHULTZ: Thank you, judge.

9 THE COURT: Come on up.

10 (Defendant complies.)

11 THE COURT: All right. This gentleman's name right
12 here is?

13 MR. RECKENBEIL: Mr. Gude, Kendrick Gude.

14 THE COURT: Mr. Gude.

15 All right. And there was one young lady that you
16 called that didn't come up.

17 SOLICITOR BOYD: Beg the Court's indulgence, Your
18 Honor.

19 (Pause.)

20 THE COURT: Who's, who's missing?

21 SOLICITOR BOYD: Your Honor, we're missing a Kendrick
22 Gude.

23 MR. RECKENBEIL: No, he's up here.

24 THE COURT: He's up here.

25 SOLICITOR GILMER: There was a Dennis Woody, Your

1 Honor.

2 SOLICITOR BOYD: Dennis Woody is on the trial docket
3 and if he's not here we'll get him this week.

4 THE COURT: Okay.

5 SOLICITOR BOYD: They'll be bringing in three off the
6 jail chain.

7 THE COURT: Do you have it right now?

8 COURT REPORTER: Yes, sir.

9 THE COURT: We want to be sure we have a record of
10 who's here.

11 SOLICITOR BOYD: It was about five seconds too late to
12 call the roll.

13 THE COURT: That's all right.

14 Madam Clerk, swear the defendants who are standing.

15 (WHEREUPON, all defendants were placed under oath at
16 this time.)

17 THE COURT: Please be seated.

18 (Defendants comply.)

19 THE COURT: Now, if any of you either failed or refused
20 to take the oath that the clerk just administered, please
21 stand.

22 (No response.)

23 THE COURT: All right. The record will reflect that
24 all the defendants who are present for pleas have been sworn
25 concerning their discussions with me this afternoon.

1 I'm going to go over some matters that would be common
2 to all of your cases if you later on decide to offer a
3 guilty plea. I'm not asking for your plea right now. Later
4 on we'll call your name individually, you'll come in front
5 of me, your lawyer will be present. We'll go over the
6 matters that deal directly with your case.

7 Now, I do want to mention to you that your attorney is
8 present. If at anytime you wish to discuss any matters with
9 your lawyer, while I'm talking with you, let me know. You
10 have every right to consult with your lawyer at every stage
11 of the proceedings. I'll be more than happy to allow you to
12 do so at this time.

13 First of all, I will explain you have a Constitutional
14 right to have your case considered by a Grand Jury before it
15 comes to this Court to be handled either by a plea or a
16 trial. The Grand Jury doesn't determine your guilt or
17 innocence. They decide whether the State has enough
18 evidence to justify the case coming forward to this Court
19 for a trial or a plea.

20 Well, if we got these folks, let's go ahead and get
21 them in to qualify. Bring them over.

22 Are they here to offer pleas today?

23 SOLICITOR BOYD: Yes, sir.

24 THE COURT: Bring them on over. We'll get their names
25 and we'll go forward.

1 Come on over. The police officer will show you where
2 to go.

3 Once you're in the box, remain standing for me.

4 All right. Let's get your names please.

5 Your name?

6 DEFENDANT: Brandon Anderson.

7 DEFENDANT: Kelvin Hollis.

8 DEFENDANT: Thomas Cowen.

9 DEFENDANT: Christopher Smith.

10 THE COURT: Have you got those?

11 COURT REPORTER: Yes, sir.

12 THE COURT: Swear these individuals.

13 (WHEREUPON, the above named defendants were placed
14 under oath at this time.)

15 THE COURT: All right. You can be seated.

16 (Defendants comply.)

17 THE COURT: I was watching all four of the gentlemen.
18 They have all taken the oath to tell the truth.

19 Gentlemen, I was going over with these folks here that
20 I'm going to go over matters that would be common to your
21 cases if you decide to plead guilty. I'm not asking for
22 your pleas right now. I'm told that you're here for that
23 purpose. But later on we'll call you and bring you in front
24 of me individually. We'll discuss your individual case at
25 that time and we'll discuss how you wish to plead at that

1 time.

2 Your lawyer is available to you at all times during
3 this process. If you feel that you need to consult with
4 your lawyer about any matters, let me know. I'll be glad to
5 stop and allow you to do so. You have every right to
6 consult with your lawyer at every stage of these proceedings
7 here.

8 I was telling the other defendants, I'll tell you, I've
9 not yet seen the paperwork in your case. I'll get that when
10 they call you in front of me individually. Therefore, I do
11 not know whether or not your case is been considered by a
12 Grand Jury. You have a Constitutional right to have the
13 Grand Jury consider your case. They decide whether the
14 State has enough evidence to justify the case moving forward
15 to this trial for either a plea or a trial.

16 Neither you or your lawyer is allowed to be present at
17 Grand Jury proceedings. Those are held in secret. When I
18 see your indictment, if it's been sent to the Grand Jury and
19 a true bill has been issued, it's properly before the court
20 and I can go forward. If it is not yet gone to the Grand
21 Jury, I can not go forward unless you are willing to waive
22 that step in the proceedings. So, we'll talk about that
23 when I see your paperwork.

24 Also, when you're called in front of me, I'll discuss
25 your relationship with your lawyer with you to be sure that

1 you're satisfied with your legal representation.

2 I'm going to ask you some questions now. If you have a
3 response I'll ask that you stand. I'll need to get your
4 name on the record before I discuss your response.

5 First of all, if any of you currently suffer from any
6 mental, physical, nervous condition, drug problem, or any
7 other condition that would affect your ability to reason, to
8 make good decisions, or to be able to handle your plea, if
9 that's true, please stand.

10 (No response.)

11 THE COURT: Have any of taken or used any drugs or any
12 other substances that would in anyway affect your ability to
13 reason, to make good decisions, or to handle a plea, if
14 that's true, please stand.

15 (No response.)

16 THE COURT: Now, if anyone has threatened you, coerced
17 you, put pressure on you, tried to intimidate you, in other
18 words, done something to you to try to make you or force you
19 to offer a plea, please stand.

20 (No response.)

21 THE COURT: When you offer a plea it must be done
22 freely and voluntarily. That means it's something that
23 you've thought about and you've decided that's the best way
24 to proceed in your case.

25 Now, if any of you were to be brought in front of me

1 later on to offer a plea, if somehow it would be your
2 feeling that that's something that you didn't want to do or
3 somehow that would be something that would be involuntary on
4 your part, please stand.

5 (No response.)

6 THE COURT: If any of you feel that you haven't had
7 enough time in which to prepare a defense or to consider
8 your case, please stand.

9 (No response.)

10 THE COURT: If anyone has made any promises or
11 guarantees to you or assurances to you about any matters in
12 connection with your plea, including but not limited to such
13 matters as pardon, parole, probation, early release, length
14 of sentence, so, if there's been any promises or guarantees
15 about any of those matters or any other matters, please
16 stand.

17 (No response.)

18 THE COURT: Now, later on, if you decide to plead
19 guilty and I decide to accept a plea, you'll be giving up
20 your Constitutional rights as they relate to the charges
21 that are before this Court. I have to be sure that you've
22 done that knowingly and intelligently. In other words, you
23 know what your rights are, you've made -- and you've made an
24 intelligent decision to proceed with a plea in spite of that
25 fact that you're giving up those rights.

1 For that reason I'm going to explain your
2 Constitutional rights to you. If it -- when I finish, if
3 you don't understand any of them or you have any questions,
4 please let me know. I'll explain them further to you.

5 First of all, we've talked about two of your
6 Constitutional rights already. You have a Constitutional
7 right to have your case go to a Grand Jury. We'll discuss
8 that specifically when I see your paperwork.

9 You also have a Constitutional right to your lawyer.
10 I've explained, if you're represented, your lawyer is
11 available to you at anytime during the proceedings. Let me
12 know. We'll be glad to let you have that consultation.

13 You also have the Constitutional right to request or
14 demand a trial by jury. Now, at that trial, you'd be
15 presumed to be innocent until the State proved your guilt,
16 and the State's burden of proof in the trial is proof beyond
17 a reasonable doubt. A defendant's not required to prove
18 anything at a criminal trial. That's because you would be
19 presumed to be innocent.

20 Also, at the trial, you could have the clerk issue
21 subpoenas to witnesses. Those subpoenas would require that
22 they attend the trial. You also would have the right to
23 confront or question anyone who might testify during the
24 trial.

25 You would have the Constitutional right to present any

1 defense you have to the charges that are before the Court.
2 You also have the Constitutional right to try to suppress
3 any and all evidence that the State may have against you.
4 That would include any statements that you might of
5 previously made.

6 At all times you have a Constitutional right to remain
7 silent. At a trial, if you chose to remain silent, the
8 judge conducting the trial is required to instruct the jury
9 that your silence can not be used against you in any manner
10 whatsoever.

11 Now, those are your Constitutional rights. If you have
12 any questions about any of those rights, please stand.

13 (No response.)

14 THE COURT: If there's anything that I've explained
15 that you do not understand, please stand.

16 (No response.)

17 THE COURT: It appears that you understand your rights,
18 and I will explain, if you plead guilty, you give up all of
19 those rights as they relate to the charges that are before
20 the Court with the exception of the right of having a lawyer
21 represent you until your plea is completed.

22 Now, if there's any of the rights that I've gone over
23 with you that you do not wish to give up in connection with
24 a plea today, please stand.

25 (No response.)

1 THE COURT: I will advise you that you have ten days
2 from the date that you enter a guilty plea and receive a
3 sentence in which to file an appeal of the plea if you
4 choose to do that.

5 Also, I will advise you that the oath that you have
6 taken to tell the truth will apply to all of your con, your
7 conversations with the Court today. That means, when you
8 come in front of me later on, you will still be under oath
9 to tell the Court the truth.

10 I also will advise you that if the State is making a
11 recommendation concerning sentencing in your case that it is
12 a recommendation. The Court is not required to accept the
13 recommendation. I will consider it. However, I have the
14 right and the authority to sentence any defendant up to the
15 maximum allowed by the law if I find that to be necessary.

16 So, at this point in time I'm going to declare that
17 these defendants are qualified to proceed with a plea if
18 they choose to do so.

19 Ladies and gentlemen, those of you who are not in
20 custody can have a seat back in the gallery.

21 Gentlemen, if you'll step forward and come out the
22 front please.

23 (Defendants comply.)

24 THE COURT: Thank you.

25 Step down to the bottom row and then come out.

1 (Defendants comply.)

2 THE COURT: Thank you.

3 The state may call the first case.

4 SOLICITOR GRAHAM: Thank you, Your Honor.

5 Kendrick Gude.

6 THE COURT: Mr. Gude, if you'll stop right there at the
7 microphone.

8 (Defendant complies.)

9 THE COURT: Thank you, sir.

10 Yes, sir.

11 SOLICITOR GRAHAM: Thank you, Your Honor.

12 Before you is Kendrick Gude present with his attorney,
13 John Reckenbeil. He's before you on five different
14 indictments stemming from three different incidents, Your
15 Honor.

16 THE COURT: All right.

17 SOLICITOR GRAHAM: Indictment 2011-GS-42-6813,
18 possession with intent to distribute marijuana. That
19 indictment, indictment has been true billed, Your Honor.

20 Indictment 2011-6814, possession with intent to
21 distribute marijuana within a half mile of a school or park.
22 That indictment has been true billed.

23 2012-3508, distribution of marijuana within a half mile
24 of a school or park. Mr. Gude is waiving presentment on
25 that indictment, Your Honor.

1 2012-3192, distribution of marijuana. That has been
2 indicted, Your Honor.

3 2012-3509, possession with intent to distribute
4 marijuana. He is -- Mr. Gude is waiving presentment on that
5 indictment, Your Honor.

6 These are second offenses. However, Mr. Gude is
7 pleading to these as firsts today, Your Honor, straight up
8 with no recommendation or negotiation from the State.

9 THE COURT: Thank you.

10 I'll give you a minute.

11 MR. RECKENBEIL: Thank you, judge.

12 (Pause.)

13 MR. RECKENBEIL: Thank you, judge. Sorry.

14 THE COURT: All right. Sir, your name is Kendrick
15 Allen Gude, is that right?

16 DEFENDANT: Yes, sir.

17 THE COURT: Now, Mr. Gude, you're in front of me today
18 on five different charges. I'm going to go over the charges
19 with you and the possible penalties.

20 First of all, in cases 2011-6813, 2012-3192, 2012-3509,
21 those are all charges of possession with intent to
22 distribute marijuana. They're -- you're pleading as a first
23 offense. That carries up to five years on each count and/or
24 a fine of up to \$5,000 on each count.

25 Now, they've all been indicted by the Grand Jury. I

1 believe. Let's see. I know there was one that wasn't.

2 Excuse me. 2012-3509 has not yet gone to the Grand Jury.

3 Are you waiving presentment on that charge?

4 DEFENDANT: Yes, sir.

5 THE COURT: All right. Those charges, as I've told
6 you, they're all drug offenses. In the future they could be
7 used against you if you were, had other drug convictions to
8 make the sentences in future drug convictions more severe.

9 Do you understand that drug cases carry that kind of
10 enhancement feature?

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. The State's not making
13 recommendations concerning sentencing. Therefore, I have
14 the right, as I normally do, to sentence you up to the full
15 extent allowed by the law.

16 Now, the next cases are 2012-3508 and 2011-6814.
17 They're both possession with intent to distribute marijuana
18 within a half mile of a school or park. They are both first
19 offenses. That carries up to ten years and/or a fine of up
20 to \$10,000.

21 Do you understand those charges?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you understand the possible penalties?

24 DEFENDANT: Yes, sir.

25 THE COURT: Both of those are designated as serious

1 offenses under the law. Let me explain to you that if you
2 were to plead guilty to these charges, they would constitute
3 what is commonly known as a strike under the law. That
4 means that, in the future, if you were to plead guilty to or
5 be found guilty of other crimes that were similarly
6 classified such as crimes classified as violent, serious, or
7 most serious, your pleas in these cases could be used to
8 make those future sentences more severe. It could result,
9 Mr. Gude, in you being sentenced to life in prison without
10 the possibility of ever getting a parole.

11 Do you understand that that is a possibility in the
12 future if you had future similarly classified offenses?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, again, those have been
15 indicted by the Grand Jury. Make sure I'm not speaking --
16 well, one of them, Number 2012-3508, has not gone to the
17 Grand Jury.

18 Are you waiving presentment on that charge?

19 DEFENDANT: Yes, sir.

20 THE COURT: They're both all presented without
21 recommendation. That means, on these charges, you are
22 facing a possible -- looks like about 35 years and/or fines.

23 Do you understand that, sir?

24 DEFENDANT: Yes, sir.

25 THE COURT: All right. Now, you're here today with Mr.

1 Reckenbeil.

2 Is he your lawyer in the matter?

3 DEFENDANT: Yes, sir.

4 THE COURT: Have you discussed the cases with him?

5 DEFENDANT: Yes, sir.

6 THE COURT: Are you satisfied with what he's done for
7 you?

8 DEFENDANT: Yes, sir.

9 THE COURT: Is there anything else you want to discuss
10 with him before we go forward?

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. Go ahead.

13 (Pause.)

14 MR. RECKENBEIL: Thank you, Your Honor.

15 THE COURT: Mr. Reckenbeil, are you ready to go
16 forward?

17 MR. RECKENBEIL: Yes, sir, Your Honor.

18 THE COURT: Mr. Gude, have you completed your
19 consultation?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, I note that the probation
22 officer is standing.

23 Does this involve a probation matter?

24 PROBATION OFFICER: Yes, Your Honor. I believe the
25 offense date is a violation of his probation.

1 THE COURT: All right. Now, Mr. Gude, the probation
2 officer indicates to me that you're already under probation
3 at this time.

4 Is that correct?

5 DEFENDANT: Yes, sir.

6 THE COURT: Are you aware that your plea in these cases
7 would constitute a violation of that probation?

8 DEFENDANT: Yes, sir.

9 THE COURT: And, so, you're offering these pleas with
10 that knowledge?

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. Now, as to these charges, I've
13 explained them to you I think. You have the right to plead
14 either guilty or not guilty to any or all of the charges.

15 How do you plead?

16 DEFENDANT: Guilty.

17 THE COURT: On all five charges?

18 DEFENDANT: Yes, sir.

19 THE COURT: Counselor, I'm sure you've discussed the
20 plea with your client.

21 Is that correct?

22 MR. RECKENBEIL: I have, Your Honor.

23 THE COURT: And have you also discussed the probation
24 matter with him as well?

25 MR. RECKENBEIL: Yes, Your Honor.

1 THE COURT: Are you satisfied that he understood your
2 discussions?

3 MR. RECKENBEIL: Yes, sir, Your Honor.

4 THE COURT: He tells me he's -- excuse me. I'm sorry.

5 MR. RECKENBEIL: Well, I don't know if we admitted to
6 the willful violation. We were planning on doing that today
7 as well.

8 THE COURT: We'll get to that.

9 MR. RECKENBEIL: Yes, sir.

10 THE COURT: I just wanted to be sure he's aware that
11 this -- you talked about the---

12 MR. RECKENBEIL: Yes, sir.

13 THE COURT: ---fact that this is a violation?

14 MR. RECKENBEIL: Yes, sir.

15 THE COURT: All right. Are you satisfied that he
16 understood the advice that you've offered him?

17 MR. RECKENBEIL: Yes, Your Honor.

18 THE COURT: He tells me he's made a decision to plead
19 guilty.

20 Do you agree with that decision?

21 MR. RECKENBEIL: I do, Your Honor.

22 THE COURT: Has he been able to assist you in his
23 defense?

24 MR. RECKENBEIL: Yes, sir.

25 THE COURT: Mr. Gude, you're 28?

1 DEFENDANT: Yes, sir.
2 THE COURT: How far did you go in school?
3 DEFENDANT: Eleventh grade.
4 THE COURT: Did you ever get your GED, sir?
5 DEFENDANT: Yes, sir.
6 THE COURT: And are you married?
7 DEFENDANT: No, sir.
8 THE COURT: Have any children?
9 DEFENDANT: Yes, sir.
10 THE COURT: How many?
11 DEFENDANT: Two.
12 THE COURT: And what ages are they?
13 DEFENDANT: Ten and eight.
14 THE COURT: Do they live at your home?
15 DEFENDANT: No, sir.
16 THE COURT: Mr. Gude, do you have a job?
17 DEFENDANT: Yes, sir.
18 THE COURT: And what are you doing?
19 DEFENDANT: Tonya G. Murray Cleaning Services.
20 THE COURT: All right.
21 DEFENDANT: Janitorial work.
22 THE COURT: Okay. Now I want to ask the solicitor to
23 go over the facts that are alleged in these cases. Listen
24 carefully cause I want to ask you about those in just a
25 minute.

1 Yes, sir.

2 SOLICITOR GRAHAM: Thank you, Your Honor.

3 On 2011-6813 and 2011-6814, that's PWID marijuana and
4 PWID marijuana half-mile. This incident occurred on
5 July 8th, 2011, when Spartanburg City narcotics officers
6 executed a search warrant at [REDACTED] inside the
7 city limits of Spartanburg. As the officer approached the
8 residence they noticed the defendant and a codefendant
9 attempting to flee out the back. An officer was able to
10 catch the defendant running through the back yard.

11 officers then searched the residence and found multiple
12 sets of black digital scales, a box of sandwich baggies, a
13 handgun located in the love seat in the living room, a book
14 bag containing digital scales, and other sandwich baggies,
15 \$1610.00 in U.S. currency on the defendant, \$330 on a
16 codefendant, and a total of 4,237.81 grams of marijuana,
17 that's over 9-pounds, Your Honor, throughout the house,
18 packaged in jars and plastic baggies, and the majority of
19 which was packaged in a black trash bag, Your Honor.

20 The defendant's cell phone was located also during the
21 search. This incident occurred within a half mile of Duncan
22 Park.

23 For 2011-3192 and 2012-3508, that's distribution of
24 marijuana and distribution of marijuana within a half-mile,
25 mile of a school or park. This incident occurred on

1 November 14th, 2011, when Spartanburg County narcotics
2 officers met with a confidential reliable informant in
3 reference to purchasing marijuana from the defendant. The
4 C.I. was searched prior to the purchase and was equipped
5 with audio and video surveillance equipment. The C.I. was
6 followed to the 100 block of _____ where he
7 purchased 6.91 grams of marijuana from the defendant. This
8 transaction was within a half-mile of Duncan Park. The
9 defendant was out on bond when this incident occurred, Your
10 Honor.

11 On Indictment 2012-3509, that's possession with intent
12 to distribute marijuana. This incident occurred on March
13 15th, 2012, when a Spartanburg County officer was on patrol
14 on South Port Road in Spartanburg County when a black
15 vehicle turned in front of the officer making him slow down.
16 The officer conducted a traffic stop at the intersection of
17 South Port Road and Highway 221 in Spartanburg County and
18 approached the vehicle.

19 The officer could smell marijuana coming from within
20 the vehicle and saw cigar blunts inside the car. The
21 defendant was the driver and was asked to exit the vehicle
22 and was read his Miranda rights. When questioned about the
23 marijuana, the defendant said they had smoked it. The
24 officer got the two other codefendants out of the vehicle
25 and searched the vehicle locating bags of marijuana, a gun,

1 and a digital scale.

2 The defendant handed the officer two bags of marijuana
3 containing 100 or weighing 110.1 grams from on his person.
4 The defendant had \$1,221.00 in his front pants pocket, and
5 the defendant was out on two different bonds when he
6 committed this offense, Your Honor.

7 I have officers from -- I have Travis McJunken from the
8 Spartanburg County Sheriff's Office and Jeffery Kirby from
9 the Spartanburg City Police who would like to speak---

10 THE COURT: I'll hear from them at the appropriate
11 time.

12 SOLICITOR GRAHAM: Thank you, Your Honor.

13 THE COURT: Mr. Gude, did you hear what the solicitor
14 told me about the facts that they're alleging in these
15 cases?

16 DEFENDANT: Yes, sir.

17 THE COURT: Did you understand what Mr. Graham told me?

18 DEFENDANT: Yes, sir.

19 THE COURT: Is that information the truth?

20 DEFENDANT: Yes, sir.

21 THE COURT: Have you told me the truth today?

22 DEFENDANT: Yes, sir.

23 THE COURT: Did anyone tell you how to respond to my
24 questions?

25 DEFENDANT: No, sir.

1 THE COURT: So, the answers you've given me have been
2 your own answers?

3 Is that true?

4 DEFENDANT: Yes, sir.

5 THE COURT: Is there any part of what you and I have
6 discussed today that you'd like to reconsider any response
7 you've given to me?

8 DEFENDANT: No, sir.

9 THE COURT: So, if I were to ask the same questions I
10 asked earlier again right now would I get the same answers
11 verbally from you?

12 DEFENDANT: Yes, sir.

13 THE COURT: Are you pleading guilty, sir, because you
14 are guilty?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right. I'm gonna accept the pleas as
17 being freely and voluntarily given. The defendant is aware
18 of the charges. He's aware of the penalties. He's had the
19 advice of a lawyer. He's satisfied with that advice.
20 There's a factual basis for the plea.

21 Counselor, you may speak for your client.

22 MR. RECKENBEIL: Thank you, Your Honor.

23 THE COURT: Let's, let's get this matter with the
24 probation on the record before we do that.

25 Yes, ma'am, if you'll tell me his probationary status,

1 please.

2 PROBATION AGENT: Yes, Your Honor.

3 He was before Judge Hayes on June the 9th, 2006, for
4 the offense of possession with intent to distribute
5 marijuana within a half of a mile of a school, and he
6 received a sentence of 10 years suspended to cost and
7 assessment with five years probation, Your Honor.

8 THE COURT: Okay. So, he was still on probation when
9 these events occurred?

10 PROBATION AGENT: Yes, Your Honor.

11 THE COURT: All right. Mr. Gude, did you hear the
12 solicitor go over the facts about your probation?

13 DEFENDANT: Yes, sir.

14 THE COURT: Is that information true?

15 DEFENDANT: Yes, sir.

16 THE COURT: I know I've already asked you, but you're
17 aware that this plea would be a violation of that probation?

18 DEFENDANT: Yes, sir.

19 THE COURT: Now, is Mr. Reckenbeil authorized to speak
20 on your behalf in connection with that matter as well?

21 DEFENDANT: Yes, sir.

22 THE COURT: Yes, sir, counselor.

23 MR. RECKENBEIL: Thank you, judge.

24 May it please the Court?

25 THE COURT: Yes, sir.

1 MR. RECKENBEIL: We appreciate the opportunity to get
2 these all wrapped up. I think, in the judicial economy of
3 all this, I think my client and I worked very diligently to
4 try to get this wrapped up.

5 Your Honor, there's a long history of him having these
6 transactions going on and I'm sure the officers are gonna
7 explain that more in depth than I could. But Kendrick's
8 always been a good client in the context of he's always
9 listening to what I'm having to do for the Court and has he
10 listened to me about other things outside of my office,
11 probably not.

12 But Kendrick's been working for the same janitorial
13 service since 2007. Obviously \$8 an hour hasn't, doesn't
14 seem to be the ones paying the bills where the other stuff
15 has been paying the bills. He's got family support here in
16 this courtroom. Two young children. Again, he's always
17 been -- family support's always been there for all the years
18 I've been representing him.

19 Kendrick suffered a serious serious injury. If the
20 Court looked -- Kendrick, if you would, turn around and show
21 the judge your head.

22 He was shot and injured and was lucky. Well, now it's
23 time I think that he realizes that that issue could of been
24 a whole lot worse. This is something where he's standing
25 before the Court and accepting responsibility, and I hope

1 that this opportunity, along with the fact of getting shot
2 and all the things that he went through with that, gives him
3 the opportunity to get his, his life on track.

4 I've dealt with those officers over there in Federal
5 Court and in State Court, and they would understand this.
6 In Federal Court the person is given an acceptance of
7 responsibility and points -- and it reduces their exposure.
8 I hope that the Court can see that we're, we've worked
9 diligently to try to get this all wrapped up.

10 Five separate trials would have been very costly, and I
11 hope that Mr. Gude coming in and admitting his fault here,
12 the Court would take that into consideration along with the
13 probation violation. Again, we're trying to get this all
14 wrapped up.

15 Your Honor, I know my client is wanting me to ask for
16 leniency, and I hope that, as the Court sees, that by this
17 acceptance of responsibility with this probation violation
18 that we can all get it wrapped up in one.

19 THE COURT: Your opportunity to speak, Mr. Gude.

20 DEFENDANT: I just like to apologize to the Court, to
21 the Court system, and to my family.

22 THE COURT: Priors.

23 SOLICITOR GRAHAM: Yes, Your Honor.

24 2000, unlawful carrying of a weapon.

25 2001, public disorderly conduct.

1 2002, entry onto another's land after notice.

2 2003, driving under suspension and accessory after the
3 fact to a D Classification felony.

4 2004, failure to stop.

5 2006, possession with intent to distribute marijuana.

6 2010, unlawful carrying of a weapon.

7 THE COURT: And I, I'll hear from the officers.

8 First, your name, sir?

9 OFFICER KIRBY: Your Honor, I'm Jeff Kirby. I work
10 with Spartanburg City Police Department.

11 THE COURT: Yes, sir.

12 OFFICER KIRBY: I would just like the Court to take
13 into consideration that the numerous actions of Mr. Gude
14 has -- his dealings with the Court hadn't corrected his
15 actions, and I would like the Court to take that into
16 consideration today, that the community needs to know that
17 we don't accept that behavior.

18 Thank you.

19 THE COURT: Your name, sir?

20 OFFICER MCJUNKEN: My name is Travis McJunken. I'm
21 with Spartanburg County Sheriff's Office, Your Honor.

22 THE COURT: Yes, sir.

23 OFFICER MCJUNKEN: My desire today is to impress upon
24 you that Mr. Gude does have several prior violations. My --
25 and subject of several investigations as well. My

1 investigation started after Investigator Kirby's
2 investigation. Mr. Gude was already on probation. Since my
3 investigation was completed, he is yet again been arrested
4 for the same offense, Your Honor.

5 It seems he's already had experience with the South
6 Carolina Department of Probation, Parole, and Pardon
7 Services. That doesn't seem to have led to any reformation
8 or rehabilitation as they so desire, their agency. I just
9 don't see any other way, at this point, other than maybe,
10 you know -- I don't believe leniency in this case. I think
11 leniency's already been granted several times over. I'm not
12 sure how much good leniency is gonna do anyone in these
13 cases. I think we're past leniency at this point, Your
14 Honor.

15 He's apparently -- he's a drug supplier in the County
16 of Spartanburg. Also the City of Spartanburg. It's all
17 inclusive. I'd just like you to take all that in
18 consideration today.

19 THE COURT: Thank you, sir.

20 Mr. Gude, I do note that you've got an extensive
21 record. You also have a record of continuing violations
22 while you're out on probation or you're out on bond. It
23 doesn't seem that the chances that this Court has given you,
24 and putting somebody out on bond is a second chance.
25 Putting somebody out on probation is a second chance, and it

1 doesn't seem that you've taken any of those second chances
2 to try to correct the behavior that you've exhibited over a
3 period of years.

4 It appears that maybe, perhaps you do not wish to
5 charge your behavior in that regard. I don't see any
6 evidence that you have. That's disturbing to the Court.

7 I'm gonna revoke the probation in full.

8 On the distribution of marijuana charges, the Sentence
9 is five years. Run concurrently with each other, and
10 consecutive to the probation revocation.

11 On the proximity charges, the Sentences are ten years
12 run concurrent with each other and the other sentences given
13 on the today's date, but consecutive to the probation
14 revocation.

15 Good luck to you, sir.

16 SOLICITOR GRAHAM: Thank you, Your Honor.

17

18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

19

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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 General Sessions for Spartanburg County, South Carolina, on the 9th day of July, 2012.

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

November 20th, 2012



PAMELA E. GREEN, Court Reporter

33711

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Kendrick Allen Gude 287625)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-42-2049

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 Perry Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg General Session
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) M758338, M129719, M754766 & M754767
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) July 9, 2012
(b) _____

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SPARTANBURG COUNTY
2013 MAY 02 AM 11:25
J. HURD BLAUGLEY

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty n/a
- (c) after a plea of nolo contendere n/a
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. n/a
- ii. _____
- 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) The Defendant was attempting to obtain new representation and did not pursue an appeal with his former legal counsel, John Reckenbeil, Esq.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

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M. HURLE CLERK

custody unlawfully:

- (a) That the Defendant's legal counsel, John Reckenbeil, Esq., provided the Defendant with legal advice that he would be serving concurrent sentences of ten years.
- (b) That the Defendant's legal counsel, John Reckenbeil, Esq., guaranteed the Defendant a certain sentence to be imposed to persuade the Defendant to plead guilty.
- (c) That the Defendant's legal counsel, John Reckenbeil, Esq., failed to file a Motion to Reconsider the Defendant's sentence within ten (10) days of the date of the sentencing.

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

- (a) n/a
- (b) _____
- (c) _____

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? Motion to

Reconsider in Spartanburg General Sessions.

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. Motion to Reconsider Sentencing
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Spartanburg General Sessions; 180 Magnolia Street; Spartanburg, SC 29306
 - ii. _____
 - iii. _____

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 SPARTANBURG COUNTY
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 M. HURF BLACKLEY

iv. _____

(c) the disposition thereof:

i. Denied due to Motion not being filed by John Reckenbeil, Esq. within ten (10) days of sentencing date.

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. 2/28/2013

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?

No.

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. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or

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SPARTANBURG COUNTY
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H. HOWE BLANKLEY

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) The Defendant has not appealed his sentence as of yet.

(b) _____

(c) _____

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

(a) your arraignment and plea? John Reckenbeil, Esq.

(b) your trial, if any? John Reckenbeil, Esq.

(c) your sentencing? John Reckenbeil, Esq.

(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? Fletcher N. Smith, Jr., Esq.

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. John Reckenbeil, Esq.; 215 Magnolia Street; Spartanburg, SC 29306

ii. Fletcher N. Smith, Jr., Esq.; 112 Wakefield Street; Greenville, SC 29601

iii. n/a

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

i. John Reckenbeil, Esq.; pre-trial, trial and sentencing

ii. Fletcher N. Smith, Jr., Esq.; Motion to Reconsider and PCR

iii. n/a

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

The Defendant wishes his sentence to be reduced to a ten (10) year concurrent sentence or other reasonable sentence imposed.

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

No

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H. HUNT C. JACKLEY

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Kendrick Gude, 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.

Kendrick Gude

SWORN to and subscribed before me this 17
day of April, 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires: 4-28-2028

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SPARTANBURG COUNTY
2013 MAY -2 AM 11:25
M. HUR E BLACKLEY

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

Kendrick Gude

I, , 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:

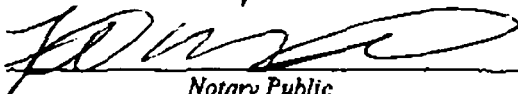
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kendrick Gude

Applicant

SWORN or affirmed to and subscribed before me this

17 day of April, 2013



Notary Public

My Commission Expires: 9-28-2020

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SPARTANBURG COUNTY
2013 MAY -2 AM 11:25
M. HURC BLACKLEY**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-2049
Kendrick Allen Gude, #287625,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed May 2, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the November 2011 term of the Spartanburg County Grand Jury for possession with intent to distribute marijuana (2011-GS-42-6813) and possession to intent to distribute marijuana within one-half mile of school ("proximity") (2011-GS-42-6814). He was also indicted at the June 2012 term for distribution of marijuana (2012-GS-42-3192) and possession with intent to distribute marijuana (2012-GS-42-3509). The Applicant was represented by John Reckenbeil, Esquire. On July 9, 2012, the Applicant pled guilty as indicted. The Honorable Roger L. Couch sentenced Applicant to concurrent sentences of ten years for the proximity charge and five years for each additional charge. In addition, Judge Couch ordered the Applicant's probation revoked and ordered it to run consecutively. A Motion for Reconsideration was filed on Applicant's behalf by Fletcher Smith, but

the Motion was denied for a lack of jurisdiction because it was filed past the ten day time limit. The Applicant did not appeal his convictions or sentences.

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

II.

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

- a. Ineffective assistance of counsel, in that;
 - i. Counsel provided Applicant with legal advice that Applicant would serve concurrent sentences of ten years,
 - ii. Counsel guaranteed the Applicant a certain sentence to persuade the Applicant to plead guilty,
 - iii. Counsel failed to file a Motion for Reconsideration within ten days following sentencing.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

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

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel.

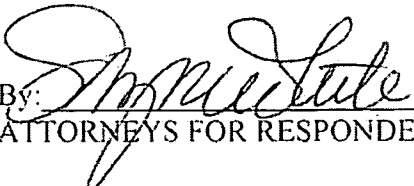
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 13, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Kendrick Allen Gude,

)
)

2013-CP-42-2049

Applicant,

)
)

v.

)
)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

)
)

Respondent.

)
)

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

Fletcher N. Smith, Jr., Esquire
Fletcher N. Smith, Jr., LLC
112 Wakefield Street
Greenville, South Carolina 29601



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 13th day of May, 2014.

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

3
 4 KENDRICK ALLEN GUDE,)
 5 Applicant,)
 6 vs.)
 7 THE STATE OF SOUTH CAROLINA,)
 8 RESPONDENT.)

TRANSCRIPT
 OF
 RECORD
 2013-CP-42-2049

9
 10 January 13th and 14th, 2015
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

17 FLETCHER N. SMITH, JR.
 18 ESQ.
 Attorney for the Applicant

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

21

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PAMELA E. GREEN
 Circuit Court Reporter
 Seventh Judicial Circuit

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
A-1	South Carolina Code Section	9	
A-2	South Carolina Code Section	9	

P R O C E E D I N G S

THE COURT: This is Kendrick Allen Gude, G-U-D-E, versus the State of South Carolina, 2013-CP-42-2049. The State is represented by Ms. White. The Applicant is represented by Fletcher Smith.

Let's see. He is presently confined at the Department of Corrections. He was represented by John Reckenbeil on July 9th of 2012. He pled guilty as indicted. He received ten years for a proximity charge and five years for the additional charges for which he pled, which was on Indictment 2011-6813, possession with intent to distribute marijuana, and 6814, possession with the intent to distribute within the proximity of a school and possession with the intent to distribute, 2012-3509.

He filed an application -- a motion for reconsideration and that was denied. His was past the ten day limit. None of his convictions were appealed.

He has alleged ineffective assistance of counsel. That being counsel provided him with legal advice that he would serve a concurrent sentence of ten years, that counsel guaranteed the Applicant a certain sentence to persuade him to plead guilty, and that counsel failed to file a motion for reconsideration within ten days following sentencing.

Is the Applicant ready to proceed?

John Reckenbeil - Direct examination
by Mr. Smith

1 MR. SMITH: We are, Your Honor.

2 THE COURT: Is the State ready to proceed?

3 MS. WHITE: Yes, Your Honor.

4 THE COURT: You may proceed, Mr. Smith.

5 MR. SMITH: Your Honor, at this time we call

6 Mr. Reckenbeil please.

7 JOHN RECKENBEIL, being first duly
8 sworn, testified as follows:

9 THE COURT: You may take your seat please. State your
10 full name for the record spelling your last name for the
11 court reporter.

12 THE WITNESS: John G. Reckenbeil. J-O-H-N. Middle
13 Initial G. Reckenbeil is R-E-C-K-E-N-B-E-I-L.

14 THE COURT: You may proceed.

15 MR. SMITH: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 MR. SMITH: May it please the Court?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q Mr. Reckenbeil, you had the opportunity to represent
22 Mr. Kendrick Allen Gude?

23 A Yes, sir, I did.

24 Q I'll be asking you some questions in regard to your
25 representation of him---

John Reckenbeil - Direct examination
by Mr. Smith

1 A All right.

2 Q ---in, in this post-conviction relief hearing.

3 A Yes, sir.

4 Q All right. What did you represent him on?

5 A I believe it was drug charges.

6 Q Okay. And I think, at some point, you had a, a guilty
7 plea scheduled for July 9th, 2012?

8 A I take your word for it that's the day, yes, sir.

9 Q All right. Now, during the course of the guilty plea
10 hearing there came a time when Mr., Mr. Gude right here had
11 a probation violation raised during the course of that
12 hearing.

13 Is that correct?

14 A Yes, sir.

15 Q At that time neither the prosecution or the probation
16 officers served him with a warrant for the probation
17 violation?

18 A The best of my memory I believe, yes, sir, that's
19 correct.

20 Q All right. And they did not -- there was no sworn
21 testimony from the probation officer with regard to his
22 violation of probation.

23 Is that correct?

24 A Ah.

25 Q There was a statement by the probation officer---

John Reckenbeil - Direct examination
by Mr. Smith

1 A Yes.

2 Q ---is that correct?

3 A Yes, sir, I believe the statement, and I -- usually
4 it's generical in saying that yes, you know, yes, Your,
5 Honor, this conviction would be a violation of his
6 probation. I think that's what's normally said.

7 Q Right.

8 And with regard to the probation violation, it could of
9 been -- a probation violation hearing could of been
10 conducted at a later date.

11 Is that correct?

12 A Yes, sir. Yes.

13 Q And as a matter of fact, the ten year sentence that you
14 said that Mr. Gude would probably, most probably get
15 actually, in effect, happened when the Judge sentenced him
16 to five years concurrent on two charges and ten years
17 concurrent on another charge?

18 All that would of run concurrent?

19 A Yes, sir.

20 Q But for that fact, the, the sentence was enhanced when
21 it -- when the probation violation came and he ran it
22 consecutive?

23 A Yes, sir.

24 Q All right.

25 A Yes, sir.

John Reckenbeil - Direct examination
by Mr. Smith

1 Q At that time, after that, Mr. Gude wanted to have a
2 motion for reconsideration because he was under,
3 understanding he was gonna get ten years?

4 A Yes, I, I would agree and I think we both were---

5 Q Shocked?

6 A ---shocked is the word I would say. I'd use the word
7 shocked, yes.

8 Q All right. Now, under our law you have to file the
9 motion for reconsideration during the same term of Court or
10 within ten days?

11 A That's the rule, yes, sir.

12 Q All right. And at that time you did not file a motion
13 for reconsideration timely, is that correct?

14 A Well, yeah, it wasn't filed, no, sir.

15 Q All right. And the other thing too was that no appeal
16 was timely filed either?

17 A Correct. No appeal was filed.

18 Q Right.

19 And it's also in the record that the judge didn't
20 instruct Mr., Mr. Gude that he had ten days to appeal it
21 either, did he?

22 A If, if it's not there I'll take your word for it it's
23 not in there.

24 Q All right. I mean the record speaks for it itself?

25 A Yes, sir. Yes, sir.

John Reckenbeil - Direct examination
by Mr. Smith

1 Q And so, so the long of short of it is the -- he had
2 a -- basically, basically -- I'll show you. It's this one.
3 This one.

4 (WHEREUPON, two South Carolina Code Sections were
5 marked as Applicant's Exhibit Nos. 1 and 2 for
6 identification purposes only at this time.)

7 Q I think you're probably aware of, of -- I'll show
8 you -- may I approach the witness?

9 THE COURT: Yes, sir.

10 MR. SMITH: Thank you, Your Honor.

11 Q Here's Plaintiff's Exhibit No. 1 for identification and
12 Plaintiff's Exhibit No. 2 for identification. Those are two
13 statutes.

14 Is that correct, Mr. Reckenbeil?

15 A Yeah, 24-21-300.

16 Q And they, that pretty well set forth the process of how
17 a probation violation is suppose to be conducted?

18 A Right, they issue a citation to a person, correct.

19 Yes.

20 Q Right.

21 And in this, in this regard, based on your testimony,
22 it doesn't appear that the statute was complied with.

23 Is that correct?

24 A Right, a written citation.

25 Q And/or an affidavit?

John Reckenbeil - Direct examination
by Mr. Smith

1 A Correct, yeah. Yes, sir.

2 Q All right. So based on the fact that the probation
3 officer didn't follow the proper procedure in, in, in doing
4 the, in doing the probation violation during the course of
5 the hearing, a motion for reconsideration would of been more
6 than just harmless error.

7 It could of had a substantial impact on the Judge maybe
8 reconsidering the sentence, could it not?

9 A Yes, sir.

10 Q All right. And Mr. Gude doesn't, doesn't challenge the
11 idea that, you know, the ten years and the five years, that
12 was good. We just challenge the idea that there was no
13 appeal and there was no reconsideration. That's all we
14 challenge.

15 Okay?

16 A Yeah, I, I understand. I, I---

17 Q All right.

18 A I think the consecutive, I, I was very shocked.

19 Q Right.

20 A I can, I can honestly say I was shocked.

21 Q Because the solicitor, in effect, reduced a, I think a
22 second offense drug charge down to a first offense, correct?

23 A Yes, sir.

24 Q And so, at that point, it wasn't that much of a serious
25 nature. Otherwise he would of kept it at the top offense if

John Reckenbeil - Direct examination
by Mr. Smith

1 the solicitor had been wanting this guy to get a substantial
2 amount of time?

3 A That's -- I guess that's, that's one way of looking at
4 it, yes, sir.

5 MR. SMITH: All right. No further questions for this
6 witness, Your Honor.

7 THE COURT: You may proceed.

8 MS. WHITE: Thank you, Your Honor.

9 THE COURT: You welcome.

10 CROSS-EXAMINATION

11 BY MS. WHITE:

12 Q Mr. Reckenbeil, first of all, did Mr. Gude request that
13 you file a motion for reconsideration after the plea?

14 A I, you know, I can't say that he did or he didn't, you
15 know, but I, I think there was a very quick exchange before
16 he was led away, and I think what I may have said to him
17 was -- is that, you know, you can't reconsider a judge just
18 kind of making a, a very surprising decision, yes.

19 Q If he had asked you to file a motion for
20 reconsideration with some basis, would you have done that?

21 A Yes, I would of. Yeah, if I thought there was a basis,
22 yes.

23 Q Okay. And in regards to the notice for appeal, it is
24 correct that they did this as a group kind of initially
25 where they charge everyone with their rights and kind of do

John Reckenbeil - Cross-examination
by Ms. White

1 it as a group plea initially?

2 A Right. If I'm not -- it's been a while since I've been
3 doing some criminal work, and so if I'm not mistaken, Judge
4 Couch does an initial qualifying kind of on the right jury
5 box in his courtroom, and he goes through all the questions,
6 and attorneys are required to be there. And I do believe,
7 at the end of it, one of his last statements is that you
8 have ten days to appeal any decision you're displeased with.

9 Q And that would be Page 13 in this record that Mr. Gude
10 was also advised---

11 A I'll take your word for it.

12 Q ---that he had ten days to appeal?

13 In regard to the proceeding with the probation
14 revocation at the same time of this, the Court asked
15 Mr. Gude and discussed with him on the record as to whether
16 or not he wanted to proceed with it that day, did he not?

17 A Correct. Yes, he did.

18 Q And he asked him if he was aware that that was a
19 violation and that he was wanting you to go ahead and handle
20 that at the same day as the plea.

21 Is that right?

22 A That's correct.

23 Q And unfortunately he got a much heavier sentence than
24 he wanted, but was there any question in your mind that he
25 knew that when he went there to plead that day he was also

John Reckenbeil - Cross-examination
by Ms. White

1 gonna be most likely handling a probation revocation issue?

2 A I can't say definitively, but I'm sure he's aware of --
3 that he's on probation.

4 Q Have you spoken with him about the fact that he was on
5 probation and this guilty plea may have---

6 A Well---

7 Q ---violated?

8 A Yeah, without question I think that in -- I think I
9 might of been the lawyer that actually was on the case that
10 he got probation for, and so it was a while back. But, yes,
11 if it came up, which normally it does, then that's a
12 situation where I see kind of, in judicial economy and kind
13 of the way to do it is one fatal swoop, take it all
14 together, and then it's usually ran concurrent and that's,
15 pretty certain, that's exactly what I told him standing up
16 there that day.

17 Q And if the record reflects that the judge asked you if
18 you had also discussed the probation matter with him, you
19 said yes, sir --

20 A Right.

21 Q -- on the record and you said we were planning on
22 admitting to the willful violation today --

23 A Okay.

24 Q -- then that would indicate to you that you had most
25 likely talked with him about that prior?

John Reckenbeil - Cross-examination
by Ms. White

1 A That would be correct, yes, ma'am.

2 Q Okay. Thank you.

3 That's all I have, Your Honor.

4 THE COURT: Any redirect?

5 MR. SMITH: Thank you, Your Honor.

6 THE COURT: You welcome.

7 MR. SMITH: May it please the Court?

8 THE COURT: Yes, sir, you may proceed.

9 REDIRECT EXAMINATION

10 BY MR. SMITH:

11 Q It, it appears to me that the Court, when it discussed
12 on Page 28 of the, of the Court record says, "Your Honor, I
13 know my client is wanting me to ask for leniency and I hope
14 that, as the Court sees it, that by this acceptance of
15 responsibility with this probation violation that we can get
16 it all wrapped up into one, and the Court gave Mr. Gude an
17 opportunity to speak. He just said he just wanted to
18 apologize to the Court system.

19 So he wasn't accepting responsibility at that time, was
20 he, to your knowledge, for the probation violation?

21 A I guess, yes, you can, you can infer that.

22 Q All right. And the, the thing about it too, as well,
23 is that the probation violation could of been heard at a
24 separate date?

25 A Sure, yes, sir, it could of.

John Reckenbeil - Redirect examination
by Mr. Smith

1 Q And just because you or Mr. Gude might have wanted to
2 have the pro-violation -- probation violation maybe heard,
3 the fact is the State has an obligation to comply with the
4 statute when it brings the charge.

5 Is that correct?

6 A Yes, sir, that's correct.

7 Q And, at that time, what could of been brought before
8 the Court at that time was that the probation that you got
9 him in that other case he had already served fours years on
10 it.

11 Isn't that correct?

12 A I'll, I'll -- yes, sir, I'll take your word for it.

13 Q So he had almost completed the probation when he got
14 charged with this other offense that he got slapped with in
15 this, in this case that you were subsequently -- went to?

16 A The -- would of completed four years of probation at
17 the time that we did the, the plea, but I believe that the,
18 the charges were probably about a year before I think the
19 plea was.

20 Q Okay. And so the long and the short of it is that if
21 Mr. Gude wasn't aware of the probation violation going to be
22 apart of the sentencing that date, then he should of been
23 given an opportunity to consult with counsel in detail about
24 what the possible effects of a probation violation could be
25 with regard to a concurrent sentence as well as a

John Reckenbeil - Redirect examination
by Mr. Smith

1 consecutive sentence?

2 A Sure.

3 Q Is that correct?

4 A Yes, sir.

5 Q And, in that regard, you don't recall whether or not
6 you had those kind of conversations with him, do you?

7 A Oh, I can, I can say, yeah, I can tell him that -- when
8 him and I were talking about it, I said I've never seen
9 Judge Couch not run it concurrent, and so we've had, I'm
10 sure these are discussions that are happening all the time
11 where lawyer's are making judgment calls as to what they
12 think a judge is gonna do. And so, yeah, I, I -- literally,
13 it caught me by surprise when, when he said consecutive. So
14 I really thought that it was just gonna be -- everything
15 taken care of at one time.

16 MR. SMITH: Thank you, Your Honor.

17 THE COURT: You welcome.

18 MS. WHITE: Just briefly, Your Honor.

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

20 RECROSS EXAMINATION

21 BY MS. WHITE:

22 Q Mr. Reckenbeil, just as Mr. Smith was asking you about
23 whether or not he acknowledged his probation, would you
24 agree if, in the transcript on Page 26, the Judge asked him
25 "did you hear the solicitor go over the facts about your

John Reckenbeil - Recross examination
by Ms. White

1 probation" and he said "yes, sir."

2 "Is that information true?"

3 "Yes, sir."

4 "I know I've asked you, but you're aware that this is a
5 violation of probation?"

6 "Yes, sir."

7 And then he said, "is Mr. Reckenbeil authorized to
8 speak on your behalf in connection with that matter as well"
9 and the defendant said "yes, sir."

10 So, at that point, he was acknowledging that he was
11 aware that there was a probation revocation matter that was
12 gonna be handled that day and that---

13 A Yes.

14 Q ---he was aware that this was a violation?

15 A Yes, I would agree with that's the way the transcript
16 reads.

17 Q Thank you.

18 MR. SMITH: Your Honor, I don't want to beat a dead
19 animal to death, but---

20 THE COURT: You get the last say. It's your burden of
21 proof.

22 MR. SMITH: Thank you.

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

24 REDIRECT EXAMINATION

25 BY MR. SMITH:

John Reckenbeil - Redirect examination
by Mr. Smith

1 Q Mr. Reckenbeil, is there a difference between a
2 probation officer and a solicitor?

3 A Yes, there is.

4 Q And the solicitor, in effect, did not make any
5 statements with regard to any probation violation to your
6 knowledge?

7 A Well, I think the way that the transcript reads is that
8 the, the solicitor went over the facts of the case, and then
9 I, I think a probation agent stood up and said that yes,
10 sir, this would be a violation of probation, and there was
11 no official citation I think handed to Mr. Gude --

12 Q Thank you.

13 A -- to answer your question.

14 Q Thank you.

15 That's all I have.

16 THE COURT: Are you saying the probation agent never
17 gave you a copy of the violation or violation report or a
18 citation?

19 THE WITNESS: Your Honor, I don't believe so, no. I
20 believe that the agent stood up, and it's been, been some
21 time, and, again, I kind of stopped doing criminal work, but
22 several years ago a probation agent would normally, in, in
23 the courtroom, stand up and say, by checking my computer,
24 Your Honor, or she would hand up a notice to the Court to
25 say that this is a violation or that they would -- to

1 indicate to the judges that they're, in fact, on probation.

2 THE COURT: Any questions as a result of the Court's
3 questions from the Applicant---

4 MR. SMITH: No, ma'am.

5 MS. WHITE: No, Your Honor.

6 THE COURT: From the State?

7 MS. WHITE: Nothing.

8 THE COURT: All right, sir. You may step down.

9 THE WITNESS: Thank you.

10 THE COURT: Just leave those with the court reporter.

11 THE WITNESS: Thank you.

12 THE COURT: What is the case number of the probation
13 revocation, criminal case number?

14 MS. WHITE: It is -- let's see.

15 Your Honor, I'm looking for the correct ones.

16 THE COURT: The record says he appeared before the
17 judge in 2006, didn't he, or 2000 and --?

18 MS. WHITE: They're several, Your Honor. He pled
19 guilty --.

20 THE COURT: I have the indictment numbers for that. I
21 need to know the -- I need to know where his probation was
22 revoked where they say he appeared before Judge Hayes on
23 June 9th of 2006 and that was PWID marijuana within a half
24 mile proximity. He received ten years suspended to costs
25 and five years probation.

1 MS. WHITE: All right. I was looking -- I found the
2 case that -- on Mr. Reckenbeil represented him on earlier
3 when he pled in 2011. So I was looking --.

4 MR. SMITH: Your Honor, I think it is the one---

5 THE COURT: He wouldn't of---

6 MR. SMITH: ---in 2006 I think.

7 THE COURT: They waited five years before he pled
8 guilty?

9 MS. WHITE: Let me see what the indictment says.

10 No, that's a 2010 indictment. I don't see a 2006.

11 Okay. It was a -- Your Honor, there's a warrant
12 number, H879219. He pled to manufacturing, possession. It
13 was convicted. It was a Y.O.A. sentence not to exceed five
14 years.

15 THE COURT: That wouldn't be this one cause he got a
16 ten year sentence.

17 MS. WHITE: Here, Your Honor, Warrant H903349, it was a
18 conviction, ten years suspended to time served and five
19 years of probation, and it was probation to begin after he
20 completed a Y.O.A. That was a -- it looks like a proximity
21 charge, and that was on June 9th, 2006, yes, Your Honor.

22 MR. SMITH: Your Honor, he informs me that he completed
23 the Y.O.A. in 2008.

24 THE COURT: In 2008?

25 MR. SMITH: Yes, ma'am.

1 THE COURT: But you-all don't have an indictment number
2 for the probation revocation?

3 MS. WHITE: I'm looking to see. The ones I have, Your
4 Honor, are 2011 and '12 ones.

5 (Pause.)

6 MS. WHITE: Oh, here it is.

7 Your Honor, if I may approach?

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

9 MS. WHITE: This is the actual order where they
10 terminated the probation. It's a 2005-GS-42-5073 and it
11 was---

12 THE COURT: What was the last number?

13 MS. WHITE: 5073.

14 THE COURT: That would be it.

15 MS. WHITE: Yes, it was possession with intent to
16 distribute within half mile and that was in 2006.

17 THE COURT: Okay. The Applicant may proceed.

18 MS. WHITE: At this time, we call Ms. Tonya---

19 UNIDENTIFIED PERSON: Tana.

20 MR. SMITH: Yeah, Tana.

21 What's your last name, Ms. Tana?

22 UNIDENTIFIED PERSON: Ferguson.

23 MR. SMITH: Ferguson.

24 You're the mother, right?

25 UNIDENTIFIED PERSON: Uh-huh. (Affirmative.)

Dana Brackins - Direct examination
by Mr. Smith

1 MR. SMITH: Come up, Ms. Ferguson.

2 Tana. I'm sorry. I apologize.

3 DANA BRACKINS, being first duly
4 sworn, testified as follows:

5 THE COURT: If you would take the seat in the witness
6 stand, please, and state your full name for the record
7 spelling your last name for the court reporter.

8 THE WITNESS: Dana Brackins. B-R-A-C-K-I-N-S.

9 DIRECT EXAMINATION

10 BY MR. SMITH:

11 Q Ms. Brackins, do you know Mr., Mr. Gude?

12 A Yes, that's my fiance.

13 Q All right. And on -- back on July 9th, 2000 -- where
14 are you working though?

15 where are you working?

16 A I work now at Syncreon---

17 Q Okay.

18 A ---in Greer.

19 Q What do you do at Syncreon?

20 A I'm a packer.

21 Q Okay.

22 THE COURT: Please spell that.

23 THE WITNESS: Syncreon?

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

25 THE WITNESS: S-Y-N-C-E-R-I-O-N -- I-E-N. It's I-O-N I

Dana Brackins - Direct examination
by Mr. Smith

1 think. It's in Greer.

2 THE COURT: Thank you.

3 You may continue.

4 Q And since, since this -- and on July 9th, 2012, were
5 y'all engaged at that time too?

6 A No, we were common law.

7 Q Common law?

8 A Yes.

9 Q And do y'all have any children?

10 A No.

11 Q Okay.

12 A Not together.

13 Q All right. Now, on that day he pled guilty.

14 Do you recall that?

15 A Yes.

16 Q After he pled guilty and he was sentenced, did you have
17 an opportunity to go speak to his, his lawyer,
18 Mr. Reckenbeil?

19 A When we spoke with Mr. Reckenbeil in the hallway---

20 Q Who is we?

21 A Me, Tana, and Gilbert---

22 Q Okay.

23 A ---standing in the hallway.

24 Q And what did you say to Mr. Reckenbeil, if anything?

25 A He said that we should fill out for a PCR because he

Dana Brackins - Direct examination
by Mr. Smith

1 wasn't -- something wasn't done correctly, but we didn't
2 understand his.

3 Q Okay. Did you ever ask him for the opportunity to file
4 a motion for reconsideration?

5 A We didn't know anything about that.

6 Q All right. And do you know whether or not he had, he
7 had any other conversations with Mr., Mr. Gude here?

8 A Gude?

9 Q Yeah.

10 A Not to my knowledge, no.

11 Q All right. So he indicated that something was not
12 right?

13 A Yes.

14 Q But he didn't explain to you that something was not
15 right?

16 A No, he just told us that we needed to file for a PCR
17 and that's how we come up with the PCR.

18 Q All right. And he didn't say anything about an appeal
19 at that time?

20 A No.

21 Q And he didn't say anything about a motion for
22 reconsideration?

23 A No.

24 MR. SMITH: That's all the questions I have.

25 THE COURT: Any questions for the witness?

Kendrick Gude - Direct examination
by Mr. Smith

1 MS. WHITE: Nothing, Your Honor.

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

3 Applicant may proceed.

4 MR. SMITH: At this time we call Mr. Kendrick Allen
5 Gude.

6 THE COURT: Sir, if you'd come to the stand and be
7 sworn.

8 KENDRICK ALLEN GUDE, being first duly
9 sworn, testified as follows:

10 THE COURT: If you would take the witness stand and
11 state your full name for the record spelling your last name
12 for the court reporter.

13 THE WITNESS: Kendrick Gude, G-U-D-E.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. SMITH:

17 Q Mr. Gude, you presently reside in the South Carolina --
18 a facility of the South Carolina Department of Corrections
19 --

20 A Yes, sir.

21 Q -- after being sentenced to a term of incarceration on
22 July 9th, 2012?

23 A Yes, sir.

24 Q As a result of that, that sentence that Judge Couch
25 imposed upon you, you have now filed a post-conviction

Kendrick Gude - Direct examination
by Mr. Smith

1 relief claim against Mr. Reckenbeil?

2 A Yes, sir.

3 Q And you heard that he requested that you or some family
4 member do that on, on your behalf?

5 A Yes, sir.

6 Q Now, with regard to the probation violation in this
7 case, did Mr. Reckenbeil ever receive a report from the
8 Probation Office that he discussed with you about the
9 probation violation that you obtained as a result of this
10 criminal charge that you were---

11 A No, sir.

12 Q ---pleading guilty to?

13 Did he ever discuss what the consequences could be as a
14 result of you pleading guilty and, at the same time, have a,
15 a probation revocation hearing?

16 A No, sir.

17 Q Did he discuss in detail what the consequences of the
18 sentence, on a consecutive basis would be, with regard to
19 being -- with the imposition of the two charges that you
20 pled guilty to on July the 12th, 2012?

21 A No, sir.

22 Q As a -- did you know, at that time, the difference
23 between a solicitor and a probation agent?

24 A Yes, sir.

25 Q And when the judge asked you about the solicitor you

Kendrick Gude - Direct examination
by Mr. Smith

1 were responding to the Judges about the solicitor and
2 about---

3 A Yes, sir.

4 Q ---not the probation agent?

5 A Yes, sir.

6 Q Now, with regard to when the -- I think you had a bunch
7 of, a bunch of people who were criminally accused that were
8 sitting in this box?

9 A Yes, sir.

10 Q And the judge was asking you, all as a group, whether
11 or not you, you were giving up certain rights and things of
12 that nature?

13 A Yes, sir.

14 Q As the guilty plea progressed and after the sentencing,
15 did the judge reaffirm that you had a right to appeal your
16 conviction within ten days?

17 A Yes, sir.

18 Q He -- well, I'd like to show you -- the record will
19 reflect that he didn't after the, after you were sentenced.

20 If I may approach the witness and show him that page?

21 THE COURT: You may.

22 Q This is on Page 28. It doesn't appear that the judge
23 indicated to you on that page that -- for -- that you had a
24 right to appeal after ten days?

25 A No, sir, I thought you were saying when I was over

Kendrick Gude - Direct examination
by Mr. Smith

1 there.

2 Q Over here he did.

3 A Yeah. Yeah.

4 Q But did you recall it after -- did you recall, after
5 you went through the guilty plea?

6 I mean it was a lot going on.

7 Did you recall him -- that you had a ten day period in
8 order to appeal?

9 A No, sir, I thought Mr. Reckenbeil would handle that for
10 me.

11 Q All right. What about the motion for reconsideration?

12 At anytime did you ask Mr. Reckenbeil to file a motion
13 for reconsideration in this case?

14 A No, sir.

15 Q You never did?

16 A No, sir.

17 Q Okay. And the relief you're asking for the Court for
18 today is to, to, to try to redo -- to try to get a reversal
19 with regard to the probation violation because you thought
20 it was ineffective assistance of counsel with regard to that
21 particular claim?

22 Is that correct?

23 A Yes, sir.

24 MR. SMITH: That's all I have, Your Honor.

25 THE COURT: Any questions for the witness?

John Reckenbeil - Direct examination
by Ms. White

1 MS. WHITE: Nothing for this witness, Your Honor.

2 THE COURT: Sir, you may step down.

3 Anything further from the Applicant?

4 MR. SMITH: Nothing further from the Applicant.

5 THE COURT: Anything from the State?

6 MS. WHITE: Yes, Your Honor.

7 We would like to recall John Reckenbeil.

8 THE COURT: Sir, if you'd come back to the stand. I'll
9 remind you you're still under oath.

10 (Witness returns to the stand.)

11 JOHN RECKENBEIL, having been previously
12 sworn, testified as follows:

13 THE COURT: You may proceed.

14 MS. WHITE: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. WHITE:

17 Q Mr. Reckenbeil, we've talked about the issue with
18 whether or not there was an actual probation warrant served.

19 Is that common practice here for them to actually
20 handle that in -- at the same time of the guilty plea
21 without issuing a warrant?

22 A In my experience, yes. It's very common.

23 Q And is that something that, in your experience, you've
24 handled before -- do you waive essentially the right to have
25 them serve you with a warrant when you agree to go ahead and

John Reckenbeil - Direct examination
by Ms. White

1 handle it together?

2 A That's my understanding in the way that it's proceeding
3 with the probation agent being in the courtroom informing
4 the Court and then the Court obviously informing the
5 defendant of the probation violation and then it's usually
6 wrapped up all into one.

7 Q Okay. And in regards to this actual plea, Mr. Gude had
8 pretty or a number of prior convictions?

9 Is that right?

10 A Yes, he had a number of prior convictions. Enough to
11 have the investigating officers come to the Court, which is
12 a rarity. Normally you've got the solicitor that does the
13 plea, and, in a, in a -- not really victimless crime, but
14 when you have drug offenses, it's just usually the
15 solicitor, but you had Officer Kirby and Officer McJunkin
16 come and actually speak before the Court, and that impresses
17 upon a judge a, a pretty, a pretty awesome responsibility, I
18 guess to use the term, to Judge Couch that these officers
19 are taking time out of their day to come into a courtroom
20 and say that this individual has had significant priors and
21 the investigation determines that there's a significant
22 amount of activity. I think that's what swayed Judge
23 Couch's mind to do what he did.

24 Q And, in fact, Officer McJunkin mentioned several times
25 the fact that Mr. Gude had been on probation, had had

John Reckenbeil - Direct examination
by Ms. White

1 several prior violations of probation, and had continued to,
2 to commit crimes?

3 Is that right?

4 A Correct.

5 Q Okay. Could the officers have come if the probation
6 hearing was at -- held at a, held at a separate time?

7 A Oh, sure they could. Yeah, I think that's -- these
8 officers, in my experience, they've been around for quite
9 sometime. I'm sure that they were the officers on several
10 of the cases. So, yes, absolutely, they could come.

11 Q Okay. Thank you.

12 That's all I have at this time, Your Honor.

13 THE COURT: You may proceed.

14 MR. SMITH: Thank you, Your Honor.

15 May it please the Court.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. SMITH:

19 Q Okay. There's been a common -- a lot of common
20 practice in America through the years.

21 You understand that?

22 A Yes, sir.

23 Q And then the, the Constitution and statutes say you
24 can't do if even if it is a common practice, right?

25 A Well, I -- that's a -- that's a pretty vague question I

John Reckenbeil - Cross-examination
by Mr. Smith

1 guess if that's---

2 Q well, isn't it your obligation to force the State to
3 comply with the statutory provisions of the law in behalf of
4 your client to make sure you represent him properly?

5 A I would say that that is the job of the defense lawyer,
6 yes, sir.

7 Q Right.

8 So even if the common practice is something, you still
9 have an obligation and a duty and a responsibility to your
10 client to make sure his rights are still protected?

11 Isn't that correct?

12 A Sure. If the common practices don't comply with what
13 the purpose of the statute are, yes, sir.

14 Q Right.

15 You testified earlier that the conduct of the Probation
16 Office was not in compliance with the statutes on that day
17 even though the common practice was like that?

18 A Oh, my testimony was -- is that there was no citation
19 issued.

20 Q Right.

21 And you've read the statute that I gave you. One of
22 those exhibits stated there must be a citation given to you.

23 Is that correct?

24 A I believe that a citation is required, yes, sir.

25 Q And you also did not have any, even in your possession

John Reckenbeil - Cross-examination
by Mr. Smith

1 not even today, a copy of the probation report, do you?

2 A No, sir.

3 Q And so you couldn't have gone over the probation report
4 with Mr. Gude on that day either, could you?

5 A Probation report of the violations that happened?

6 Q Of the violation, that's right?

7 A No, sir, couldn't do that.

8 Q No further questions.

9 Oh, another thing too.

10 Did you -- will you admit that you did tell them to
11 file a post-conviction relief?

12 A Yes, I did say that to him.

13 Q So you -- even you thought you had made a mistake
14 during the course of that particular guilty plea hearing.

15 Is that correct?

16 A No. Now that you said -- no.

17 Q I think you---

18 A Now that you said the word mistake, now I get to answer
19 that question.

20 Q Okay.

21 A You left the door opened a little bit.

22 Q Yes, sir.

23 A I said that the fact that the, the law allows him to
24 file a post-conviction relief.

25 Do I think that it's a common practice that an

John Reckenbeil - Cross-examination
by Mr. Smith

1 individual should use their time wisely in a courtroom?

2 Yes. I think that that goes a long way for a judge. I
3 also think it's a -- the fact that a person accepting
4 responsibility is not a mistake, and, therefore, that a
5 judge would look at it lenient and unfortunately the mistake
6 is the fact of a continued action that has the same result.
7 That is a mistake.

8 And so I think that the officers took it upon
9 themselves to make sure that that mistake didn't happen
10 again, and, so, therefore, the mistake was the fact that I
11 believed that Judge Couch would go along with the fact of it
12 being run concurrent, but I don't think Judge Couch made a
13 mistake in doing what he did to protect the citizens of this
14 county and this country from continuation of, of committing
15 illegal acts.

16 Q All right. Now, the question is, on a post-conviction,
17 is not whether the judge made a mistake. The question is
18 that you made the mistake.

19 A Yes, sir.

20 Q All right. No further questions.

21 THE COURT: Anything further?

22 MS. WHITE: Just briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. WHITE:

25 Q The violation of his probation occurred at the time he

John Reckenbeil - Redirect examination
by MS. White

1 pled this day?

2 Is that right?

3 The violation that they're discussing is---

4 A Right.

5 Q ---as a result of this plea?

6 A There's -- yeah, my understanding is there's several
7 ways that probation can be violated, but there has to be
8 some sort of affirmative act to violate your probation and
9 thus the guilty plea would be that and would ultimately come
10 back at a later day.

11 MS. WHITE: Okay. Thank you. That's all I have, Your
12 Honor.

13 THE COURT: Sir, you may step down.

14 THE WITNESS: Thank you.

15 THE COURT: Anything further from the State?

16 MS. WHITE: Nothing further.

17 THE COURT: Any rebuttable?

18 MR. SMITH: No rebuttable, Your Honor.

19 THE COURT: Anything further for the record from the
20 Applicant?

21 MR. SMITH: Your Honor, we believe that the State of
22 South Carolina violated two statutory provisions, 24-21-450
23 and 24-21-300.

24 THE COURT: I need you to repeat those for me.

25 MS. WHITE: I'm sorry, Your Honor.

1 THE COURT: Yes, sir.

2 MR. SMITH: I gave them as exhibits to the Court.

3 THE COURT: I have them.

4 MR. SMITH: okay.

5 THE COURT: I just want the record to be correct.

6 MR. SMITH: Oh, yes, ma'am.

7 THE COURT: I couldn't hear you. So I don't think the
8 court reporter could.

9 MR. SMITH: Yes, ma'am.

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

11 MR. SMITH: South Carolina Code Section 24-21-300,
12 issuance of citation to person released pursuant to Offender
13 Management System Act for violation of release terms and
14 Section 24-21-450, arrest for violation of terms of
15 probation;bond.

16 THE COURT: You may continue.

17 MR. SMITH: Your Honor, we believe that those, that, at
18 the very minimum, he should of had a probation violation
19 report because counsel for him, at that time, has just
20 testified that there was several ways that the probation
21 violation could have occurred, and, as a result, Mr. Gude
22 had the, had -- should of had the benefit, at that time, of
23 his counsel completely explaining in detail what the
24 consequences of pleading guilty and having a probation
25 violation sprung on him on the same day that he was

1 pleading.

2 That did not occur except through a colloquy between
3 the probation officer and the Court, which was not under
4 oath, and, therefore, could not be considered to be an
5 affidavit, and also between the colloquy between his counsel
6 and the Court when the solicitor, according to Mr.
7 Reckenbeil in his direct examination, was saying that they
8 weren't expecting Judge Couch, even with the two officers
9 testifying, to give this guy what constitutes a 20 year
10 sentence when they were expecting just a ten year sentence.

11 Also, I think it is up -- it's -- I think we lawyers do
12 have an obligation to make sure that the State complies with
13 the, with the terms and conditions of the statutes because,
14 when we're talking about stripping someone of their liberty,
15 due process requires that not only does he receive the
16 proper process from the State, but also that his lawyer
17 performs in a fashion that will give that person an, an
18 opportunity to mitigate the -- mitigate the consequences of
19 what he's facing.

20 In this regard, Mr. Reckenbeil is just testified that
21 he didn't discuss, discuss the complete consequences of what
22 could happen to this man. He didn't have the report from
23 the probation people. They didn't have a warrant. They had
24 nothing. All they had was a statement.

25 In that regard, I think the counsel was deficient in

1 that regard in that the post-conviction relief complaint be
2 upheld by, by the Court if the Court deems it proper.

3 Thank you.

4 THE COURT: You're welcome.

5 Would the State like to respond?

6 MS. WHITE: Thank you, Your Honor.

7 The State would argue that, at this situation,
8 counsel's testimony is more credible than that of the
9 Applicant. He testified that he did, in fact, had
10 represented Mr. Gude on prior charges, was well aware that
11 he was facing and was on probation at the time of this, and
12 that this plea would violate and be considered a violation
13 of his probation.

14 I think the record is clear that Mr. Gude had also
15 spoken with Mr. Reckenbeil about that, that they had
16 discussed that, and it was a matter essentially of strategy
17 to try to go ahead and proceed with that, admit to the
18 violation in the hopes that Judge Couch would run all of
19 those concurrent.

20 Unfortunately, because of numerous other violations,
21 and prior convictions as well as the officers speaking,
22 Judge, Judge Couch chose not to do that. But it was well
23 within his right to do that and was in the sentencing
24 guidelines.

25 So, we would ask that you deny the application.

1 MR. SMITH: Just a half a minute rebuttable, Your
2 Honor?

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

4 MR. SMITH: When Mr. Reckenbeil told the family members
5 they should file a post-conviction relief, it, it appears,
6 from Mr. Reckenbeil's, he was telling them actually to
7 appeal because he said in his testimony he didn't believe
8 that the judge made a mistake.

9 Well, that would be a direct appeal if he was telling
10 them to appeal, and he got the post-conviction mixed up with
11 the appeal because post-conviction actually goes against the
12 lawyer's representation and not against any mistakes that
13 the Judge may of made with regard to those except if they
14 are collateral to what the lawyer did or did not do in terms
15 of his representation of his client.

16 MS. WHITE: Nothing further from the State, Your Honor.

17 THE COURT: In an application for post-conviction
18 relief the Applicant has the burden of proof by
19 preponderance of the evidence, and he must prove, pursuant
20 to the Strickland standard, that his client was in -- I mean
21 that his attorney was ineffective, and that his conduct, his
22 counsel's client his -- I can't talk this morning. I'm
23 sorry. That his counsel's representation so undermined the
24 proper functioning of the process that basically the result
25 can not be relied upon.

1 This is an -- well, I don't know that it's an unusual
2 posture. But it is a guilty plea and there's been no
3 allegation or argument that the Applicant in this case would
4 not have pled guilty. What he is asking the Court to do is
5 to give him basically a new probation revocation hearing or
6 a new probation revocation process, and I would imagine that
7 the burden or the applicable standard is the same, which
8 that -- which is proving that counsel's performance was
9 deficient, that it fell below reasonableness under
10 professional norms, and that he has been prejudiced, and
11 that is a reasonable probability that instead of pleading
12 guilty or, in this instance, instead of going forward with
13 the probation revocation, he would have insisted on going to
14 trial, which that problem of it would be inapplicable as we
15 don't -- you don't get a trial in a probation revocation
16 situation.

17 I've listened to the testimony of both counsel and the
18 Applicant as well as the Applicant's witness, and there's
19 several things that I have observed in the record of this
20 case and I sent my clerk to try to find a criminal file in
21 this case to see if it, in fact, included a citation or a
22 probation report. But I would note preliminarily that there
23 would be no need for a probation report in this case.

24 His plea, in and of itself, is a willful violation. As
25 when you're on probation you're under strict conditions not

1 to violate any state, federal, or local law. And by virtue
2 of doing that, the state presumes that your violation is
3 willful by pleading guilty. So there really wasn't anything
4 to go over. It wasn't anything really to contest because
5 you had a contemporaneous record of him pleading guilty.
6 That being the violation. But I was just curious and I
7 don't know if they've been able to locate it because she's
8 been gone for some time, which leads me to believe maybe
9 they weren't able.

10 Speak of her she appears.

11 How about that?

12 Were they able to find it.

13 THE LAW CLERK: This is the clerk.

14 THE CLERK: Hello.

15 THE COURT: Hello. You can keep that one. I just
16 needed -- I needed his -- actually what I needed was 2000 --
17 oh, okay.

18 So you don't have 2005?

19 THE CLERK: No, it's in storage.

20 THE COURT: I don't know that it's -- well, I'm just
21 curious. If you could get it that would be helpful.

22 THE CLERK: Okay. So we'll get it and I'll bring it to
23 you.

24 THE COURT: Yes, ma'am.

25 THE CLERK: All right.

1 THE COURT: It's, it's 2005-GS-42-5073. We'll write it
2 down for you.

3 They don't -- it's a 2005 file. They don't have them
4 on site. It's in storage.

5 So I'm gonna look at it out of curiosity. I don't know
6 that it's dispositive, but I, I'd just like to see it.

7 THE CLERK: Thank you.

8 THE COURT: I'd just like to see if something was
9 placed in the record.

10 But going back to what, what is most persuasive is the
11 transcript, which is a contemporaneous record of what
12 actually took place on that date.

13 First of note, there has been reference to 24-21-300
14 and 24-21-450, which are the statutes that deal with
15 revocation of probation and issuance of process when it
16 deals with someone having violated their probation. And
17 while it could be argued that the procedure that is
18 articulated in those statutes has not been followed, the
19 statutes, in their language, in their plain and ordinary
20 meaning, say may. They do not say must. So they're
21 discretionary in their nature.

22 So it does not mean that probation has to follow that
23 procedure, and I can not discern any prejudice to the
24 Applicant in terms of a violation of procedure of due
25 process for that procedure not having been followed.

1 Routinely it's done that way across the state and
2 they're a myriad of reasons for it, all of which enure to
3 the benefit of the defendant because what happens is if you
4 delay, you run the possibility of them being transported and
5 then it taking months for them to get back for a hearing,
6 and that substantially enures against their benefit because
7 they don't get any pre-detention time for all that cause
8 what ends up happening is they plead guilty, they get
9 transported, they go to R&E, which takes 45 days, and they
10 get processed into the system, and then you have to come
11 back to Court. And by the time -- and then they don't get
12 served with a warrant till they come back, which means
13 that's a whole another three months they're not gonna get
14 credit for.

15 So when you really look at it in the grand scheme of,
16 of it, it's done that way for the benefit of the defendant
17 so that he does or she does not lose valuable pre-detention
18 time in the system and so that they get credit for the time
19 that they're actually serving. So I can't discern any
20 prejudice to him even if I assumed, for argument sake, that
21 the procedure was not followed as has been articulated by
22 his counsel.

23 Now, moving to his next argument that an appeal was not
24 filed and he was not aware that he could file an appeal,
25 again, if I were to accept his argument wholesale, which is

1 that he didn't know you could file an appeal and it wasn't
2 done routinely in matters of this type, appeals aren't filed
3 and they aren't filed because we all know they're futile.
4 The, the burden of proof is so high in that it is -- you've
5 waived all your rights.

6 So unless you can prove that your plea is in some way
7 involuntary, you're not gonna -- you're -- I mean the way to
8 do it is a PCR, and there's nothing in this record that
9 indicates his plea was involuntary, that it was coerced,
10 that he was not fully advised prior to entering into the
11 plea. So it is unlikely that he would of prevailed on an
12 appeal.

13 So the burden is not whether somebody failed to file an
14 appeal. The ineffective part of it comes in when someone is
15 suffered prejudice because they would of prevailed on the
16 appeal, and there's no indication in this record he would of
17 prevailed on the appeal, which takes us to the next
18 allegation that's been raised regarding the motion for
19 reconsideration.

20 I've reviewed the transcript and it is very clear that
21 even if that motion had been timely, it is unlikely Judge
22 Couch would of changed his opinion although I'm not
23 clairvoyant and I can't read my colleague's minds. But I
24 can tell you that, similarly situation, although I rarely
25 run sentences consecutive, I might of been tempted in this

1 instance to do that.

2 Where you have someone who has an extensive criminal
3 history, who, while on probation for another -- well, let me
4 back up. He had a Y.O.A. revocation, which he served, came
5 out on Y.O.A. parole I would presume. The Judge's
6 routinely, as they do, give you the maximum sentence, hang
7 the maximum amount of probation over you because they assume
8 that you just ain't gonna do right, and if they do not,
9 then, within that five years, they've given you the benefit
10 of not giving you the maximum sentence hoping against hope
11 that you will do right. You'll serve your probation, you'll
12 get off probation, and you'll never have any further contact
13 with the system.

14 But what happened in this instance is he did the Y.O.A.
15 revocation, came out, was on probation, and while he may
16 have successfully served his probation for four years, he
17 got in more trouble. Not only did he get in more trouble,
18 he got four additional charges. Two proximity -- well, one
19 proximity and three possession with the intent to distribute
20 charges all within a year of one another and within a very
21 short time period of being out on this probation even though
22 he would of successfully completed his Y.O.A. parole.

23 And so it is clear from the record that what was most
24 persuasive to Judge Couch, and I'll, and I'll read what he
25 said at Page 30, "Mr. Gude, I do note that you've got an

1 extensive record. You also have a record of continuing
2 violations while you're out on probation or you're out on
3 bond. It doesn't seem that the chances that this Court has
4 given you -- in putting somebody out on bond is a second
5 chance. Putting somebody out on probation is a second
6 chance, and it doesn't seem that you've taken any of these
7 second chances to try to correct the behavior that you've
8 exhibited over a period of years. It appears that maybe
9 perhaps you do not wish to change your behavior in that
10 regard. I don't see any evidence that you have. That's
11 disturbing to the Court" and then he revokes your charges
12 and he clearly articulates the reasoning for why he did what
13 he did.

14 And, under those circumstances, again, going back to
15 prevailing on an appeal or motions for reconsideration, it
16 does not appear in any way that Judge Couch abused his
17 discretion. Sentencing is discretionary and he felt, under
18 these circumstances where you have someone with an extensive
19 criminal history, who evidenced and had no indication of
20 changing that behavior, that he felt a consecutive sentence
21 was appropriate.

22 So, again, the measure in performance is not whether he
23 failed to file a motion for reconsideration, but whether
24 there was some prejudice suffered as a result meaning that
25 the result would of been different, and I really can't

1 discern from what the transcript or anything else in the
2 file that Judge Couch would have changed his mind and, you
3 know, I've done -- I've been doing this a long time now, and
4 I can't think of anytime I've ever had a hearing on a motion
5 for reconsideration of sentence cause I thought about it
6 before I did it, and I think most of us think the same way.
7 Although sometimes, like I've had hearings where I've
8 miscalculated, it's late at night, verdict comes back 11:00,
9 12:00 at night, and I've missed -- I've missed my math and I
10 look at my notes the next morning and I go that was not what
11 I intended to do, and I called the lawyers and said listen,
12 I messed up on my math and I need y'all to file a motion for
13 reconsideration so I can fix what I intended to do.

14 We're not perfect. We're not infallible. We make
15 mistakes and I think that, under those circumstances, that
16 we take measures to correct that. And even, even if it was
17 untimely filed, if Judge Couch wanted to he could of heard
18 it, and if he had any inclination he might change it, I
19 suspect, cause I've done it, I mean I suspect he would have
20 given it some consideration and I doubt the State would of
21 objected to it.

22 So there's no indication that he would have been
23 successful on a motion for reconsideration, and, again, at
24 Page 13, Judge Couch very clearly articulates that
25 sentencing is within his discretion, that he can give the

1 maximum sentence if he feels it is, it is appropriate, and,
2 again, it appears that the, the deciding factor of Judge
3 Couch's decision had to deal with the criminal -- with the
4 Applicant's criminal history.

5 What is unfortunate in this case is, and I use that
6 word delicately, is that, in life, you can't predict
7 anything and certainly, although I've practiced law and I
8 loved -- I mean like other lawyers, I would love to believe
9 that you could predict what a judge was gonna do, but having
10 clerked for a judge, I knew that wasn't possible cause you
11 change your mind 20 times while you're listening to
12 something. A lawyer can only tell, within certain variables
13 of behavior, what they think a judge may do, but they can't
14 guarantee that unless it's a negotiated situation in which
15 case you still can't guarantee it because a judge could
16 always reject it, and force the matter to go to trial or
17 force additional negotiations because of what is been
18 presented is unacceptable to them.

19 But what I -- it appears to me that counsel in this
20 case did what he said, based on my experience with Judge
21 Couch, he usually will revoke it, he may even revoke it in
22 full, and he'll run it concurrent. That's what he usually
23 does, but he can't guarantee that, and I'm certain Judge
24 Couch may have thought about doing that himself before he
25 heard all of it, and once he heard all of it, it's clear he

1 articulated his reasoning for running it, running the
2 revocation consecutive, and while an unexpected result may
3 be well unpleasant and while hindsight is always 20/20, it
4 is not the basis for an ineffective assistance claim, and I
5 do not find credible the Applicant's testimony that this
6 came as some surprise to him.

7 He knew he was on probation. I'm certain counsel
8 explained to him that a plea would be a violation of that
9 probation. So either you could do it now or you could put
10 it off later, but the end and the net result is the same.
11 It was gonna be revoked and I don't know that another judge
12 would of done it any differently, and generally I find that
13 when officers are that adamant about showing up, they're
14 gonna show up for everything. They're not just gonna show
15 up for a plea. They're gonna show up at the probation
16 revocation and they're gonna say what they intended to say,
17 and it was clear that they felt very strongly about
18 Mr. Gude's behavior in the community, and I think that it
19 did have some effect on Judge Couch's sentencing.

20 But I think what was more dispositive is it's very
21 troubling when somebody has been out and, as we know,
22 probation is a state of grace and you allow someone to be in
23 the community and they continue to violate the law, and I
24 think that is what is most persuasive and at least comes
25 across in the record.

1 So having made those observations, I find the Applicant
2 has failed to meet his burden of proof and the application
3 is denied. I will do a form order indicating that the
4 relief was not granted and directing the Attorney General to
5 provide the Court with a proposed order within 20 days of
6 today, and she will send that to djeffersonsc@sccourts in
7 word format, and, Mr. Smith, I'm directing that she provide
8 you with a copy of that order in the same manner---

9 MR. SMITH: Thank you, Your Honor.

10 THE COURT: ---by email so that you have it as well in
11 the event that there's something you would like to add to
12 the order once it is proposed.

13 Is there anything further for the record from the
14 Applicant?

15 MR. SMITH: Nothing further from the Applicant.

16 THE COURT: From the State?

17 MS. WHITE: Nothing, Your Honor.

18 THE COURT: Thank you--all very much.

19 MR. SMITH: Thank you.

20 MS. WHITE: Thank you, judge.

21 THE COURT: You're welcome.

22

23 (WHEREUPON, this case was in recess for the evening.)

24

25

1 Tuesday, January 14th, 2014

2
3 THE COURT: On Kendrick Allen Gude, G-U-D-E, which is
4 2013-2049, I had the Clerk's Office retrieve his original
5 probation case, which was 2005-GS-42-5073, which was a PWID
6 half mile proximity, cause I wanted to determine if, in
7 fact, there were any probation revocation documents, that
8 being a report or a citation in the record, that being his
9 file, and there was not. Not that -- I mean I already said
10 for the record that wouldn't change the Court's disposition,
11 but I wanted to check just to make sure that it was not, in
12 fact, present in the record and that we had not overlooked
13 it, and I will put that in my order.

14 So you don't need to---

15 MS. WHITE: Thank you, Your Honor.

16 THE COURT: ---do anything.

17
18
19 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
20
21
22
23
24
25

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 13th and 14th day of January, 2015.

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

Jury 31st, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Kendrick Allen Gude, #287625,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2049

ORDER OF DISMISSAL

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Fletcher N. Smith, Jr., Esquire
Suzanne H. White, Esquire
John G. Reckenbeil, Esquire
January 13, 2015
Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 2, 2013. The Respondent made its Return on or about May 13, 2014. An evidentiary hearing into the matter was convened on January 13, 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. John G. Reckenbeil, 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.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the November 2011 term of the Spartanburg County Grand Jury for Possession with Intent to Distribute Marijuana-Second Offense¹ (2011-GS-42-6813) and Possession with Intent to Distribute Marijuana Within One-Half Mile of School² (PWID Proximity) (2011-GS-42-6814). He was also indicted at the June 2012 term for Distribution of Marijuana-Second Offense³ (2012-GS-42-3192) and Possession With Intent to Distribute Marijuana-Second Offense⁴ (2012-GS-42-3509). The Applicant was represented by John Reckenbeil, Esquire. On July 9, 2012, the Applicant pled guilty to each of the charges as first offenses with no recommendation or negotiation by the State. The Applicant waived presentment of Indictment Number 2012-GS-42-3509 to the grand jury (Tr. 17:14-19).⁵

The Honorable Roger L. Couch sentenced the Applicant to concurrent sentences of ten (10) years for the PWID Proximity-First Offense charge and five (5) years for each additional

¹ PWID Marijuana-First Offense is a felony punishable by imprisonment for "not more than five [(5)] years" or a fine of "not more than five thousand dollars [(\$5,000.00)], or both." S.C. CODE ANN. § 44-53-370(b)(2)(2011). For PWID Marijuana-Second Offense, "the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten [(10)] years or fined not more than ten thousand dollars [(\$10,000)], or both." *Id.*

² An offender who commits the crime of PWID Proximity is guilty of a "[serious] felony and, upon conviction, must be fined not more than ten thousand dollars [(\$10,000.00)], or imprisoned not more than ten [(10)] years, or both." S.C. CODE ANN. § 44-53-445(D)(1) (2011); S.C. CODE ANN. § 17-25-45 (2011).

³ An offender who commits the felony of Distribution of Marijuana-First Offense "for a first offense must be imprisoned not more than five [(5)] years or fined not more than five thousand dollars [(\$5,000.00)], or both." S.C. CODE ANN. § 44-53-370(b)(2)(2011). For Distribution of Marijuana-Second Offense, "the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten [(10)] years or fined not more than ten thousand dollars [(\$10,000)], or both." *Id.*

⁴ PWID Marijuana-First Offense is a felony punishable by imprisonment for "not more than five [(5)] years" or a fine of "not more than five thousand dollars [(\$5,000.00)], or both." S.C. CODE ANN. § 44-53-370(b)(2)(2011). For PWID Marijuana-Second Offense, "the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten [(10)] years or fined not more than ten thousand dollars [(\$10,000)], or both." *Id.*

⁵ Upon review of the plea transcript, it appears that the Solicitor referenced that the Applicant waived presentment to the grand jury on both Indictment Number 2012-GS-42-3508 and Indictment Number 2012-GS-42-3509. Only Indictment Number 2012-GS-42-3509 is before the PCR Court. The Applicant waived presentment to the grand jury on Indictment Number 2012-GS-42-3509 (Tr. 16:2-4). However, the Applicant does not challenge this issue on collateral review.

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charge. Specifically, the Applicant was sentenced to five (5) years for Possession with Intent to Distribute Marijuana—First Offense (2011–GS–42–6813); ten (10) years for Possession with Intent to Distribute Marijuana Within One–Half Mile of School (PWID Proximity) (2011–GS–42–6814); five (5) years for Distribution of Marijuana—First Offense (2012–GS–42–3192); and five (5) years for Possession With Intent to Distribute Marijuana—First Offense (2012–GS–42–3509). The plea court ordered the Applicant’s drug charges be run concurrently with one another. In addition, Judge Couch revoked in full the Applicant’s probation on Indictment Number 2005–GS–42–5073 and sentence of ten (10) years’ imprisonment suspended upon the service of five (5) years’ probation for PWID Marijuana Proximity. The plea court ordered the Applicant’s probation revocation to run consecutively to his drug charges.

The Applicant’s Counsel filed a Motion for Reconsideration on the Applicant’s behalf, but the Motion was denied for a lack of jurisdiction because it was filed past the ten (10) day limitations period. See Rule 29(a), SCRCrimP. (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.”). The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - i. Counsel provided Applicant with legal advice that Applicant would serve concurrent sentences of ten years,
 - ii. Counsel guaranteed the Applicant a certain sentence to persuade the Applicant to plead guilty,
 - iii. Counsel failed to file a Motion for Reconsideration within ten (10) days following sentencing.

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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 retained Counsel to represent the Applicant on drug charges and his guilty plea was scheduled for July 9, 2012. The Applicant testified that his probation revocation matter was handled at the same time as the guilty plea, but he believes it should have been handled at a later day because his active sentence on his probation revocation was imposed consecutively with his plea. Further, the Applicant testified that he never discussed the probation revocation matter with Counsel prior to the day of the plea. The Applicant testified that he never received a copy of the probation violation warrant, pursuant to S.C. CODE ANN. § 24-21-300, -450 (2011), as required by statute. (Applicant's Exhibits #1 and #2). The Applicant testified that he never asked Counsel to file a motion for reconsideration.

Counsel testified that the Applicant's exposure was five (5) years and ten (10) years, concurrent on his pending drug charges. Counsel testified that he did discuss the possibility of handling the plea and probation revocation matter at the same time with the Applicant prior to the day of the plea and had advised the Applicant that his probation could be revoked; however, he and the Applicant "were both shocked" that the plea court ran the Applicant's probation revocation consecutively to his guilty pleas. Counsel did acknowledge that the Applicant was

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never served with a copy of the probation violation warrant. Counsel testified that the Applicant never requested that Counsel file a motion for reconsideration; that he could not recall whether he filed the motion for reconsideration on the Applicant's behalf; but that he would have filed a motion for reconsideration if he had a basis and the Applicant had made that request. Counsel admitted that the Applicant's motion for reconsideration was not filed within the ten (10) day limitations period. Counsel likewise testified that he did not appeal the Applicant's sentence and conviction and believed that sentencing was "discretionary." Similarly, Counsel testified that had he discerned any legal ground to file an appeal, he would have filed an appeal on behalf of the Applicant.

Counsel further testified that the Applicant was not accepting responsibility for his probation violation; rather, he just wanted to apologize in general. Counsel stated that the Applicant's probation revocation could have been heard at a different time. Counsel further clarified that the Applicant's probationary case was from one (1) year before his plea and the Applicant had already served three (3) of his four (4) years of probation. Counsel instructed his client to file a PCR and said "I've never seen Judge Couch not run [a probation revocation] concurrent," although he did not believe Judge Couch made a mistake in protecting citizens from the Applicant's continued criminal behavior and illegal activities. Counsel further opined that "attorneys make judgment calls." Counsel acknowledged that the Applicant agreed to the probation agent's summary of his probation case. Counsel further clarified that although the probation agent stood up and said the Applicant's guilty plea was a violation of his probation, she never gave them a copy of the violation report.

The Applicant's finance, Dana Brakins testified that she and the Applicant were not married at the time of the Applicant's plea, but that they were together. She further testified that

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Counsel told them to file a PCR but had no idea about a motion for reconsideration.

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

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(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 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 Applicant’s constitutional rights, and his possible defenses or lack thereof. 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 promised or guaranteed the Applicant a specific sentence. 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 549, 543

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(4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Failure to Receive Copy of Probation Violation Report

At the hearing, the Applicant alleged that his plea should be vacated because he did not receive a copy of the probation citation and violation report, pursuant to S.C. CODE. ANN. § 24-21-300, -450 (2011), as required by statute. "At any time during the period of probation or suspension of sentence the court, or the court within the venue of which the violation occurs, or the probation agent *may* issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence." S.C. CODE. ANN. § 24-21-450 (2011) (emphasis added). The statute provides the procedure for detaining individuals in order to conduct a probation violation hearing:

In case of an arrest, the arresting officer or agent must have a written warrant from the probation agent setting forth that the probationer has, in his judgment, violated the conditions of probation, and such statement shall be warrant for the detention of such probationer in the county jail or other appropriate place of detention, until such probationer can be brought before the judge of the court or of the court within the venue of which the violation occurs. Such probation agent must forthwith report such arrest and detention to the judge of the court, or of the court within the venue of which the violation occurs, and submit in writing a report showing in what manner the probationer has violated his probation.

Id. Similarly, "[a]t any time during a period of supervision, a probation agent, instead of issuing a warrant, *may* issue a written citation and affidavit setting forth that the probationer, parolee . . . in the agent's judgment violates the conditions of his release or suspended sentence." S.C. CODE. ANN. § 24-21-300 (2011) (emphasis added). The procedure for court review of the probationer's violation commands the probation agent to forward her report to the judge:

When directed by the court, the probation agent must fully investigate and report to the court in writing the circumstances of the offense and the criminal record,

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social history, and present condition of the defendant including, whenever practicable, the findings of a physical and mental examination of the defendant. When the services of a probation agent are available to the court, no defendant charged with a felony and, unless the court shall direct otherwise in individual cases, no other defendant may be placed on probation or released under suspension of sentence until the report of such investigation has been presented to and considered by the court.

S.C. CODE. ANN. § 24-21-420 (2011). The probation agent has a duty to issue a warrant or citation for the offender's arrest and furnish a copy to both law enforcement and the court in which the probationer's violation hearing may be heard. S.C. CODE. ANN. § 24-21-450 (2011). Likewise, when directed by the court, the probation agent has the duty to furnish her report to the reviewing court. S.C. CODE. ANN. § 24-21-420 (2011). Pursuant to the statutes cited by the Applicant in his prayer for relief, probation has no concomitant duty to provide the offender with a copy of its citation and report. S.C. CODE. ANN. § 24-21-450 (2011). The statutory procedure empowering probation to provide a copy of the violation citation and report to the probationer is not mandatory; in practical application, the probationer routinely waives his ability to review the citation and report prior to the hearing.⁶ Therefore, the Applicant's assertion that his plea was involuntary based on probation's failure to provide him with a copy of the citation and report prior to his revocation hearing is without merit.

Moreover, this Court finds that Counsel's testimony was most credible that he discussed the nature of the offenses, potential sentences, and the fact that the guilty plea would be considered a willful violation of his probation. This Court finds that the statutes are discretionary in nature and that from a practical standpoint, handling his probation revocation simultaneously

⁶ In practical application when a Defendant's guilty plea constitutes the willful violation of his probation and is being handled concurrent to the plea there is insufficient time in advance for the preparation of a warrant and violation report. The Defendant's actual entry of the guilty plea is the violation. As a result service of these documents under these circumstances is usually waived by the Defendant and his counsel. As a practical matter the only information that would be included in these documents forming the basis of the violation would be the violation of state law ergo the guilty plea. It is unusual that this information would have been provided to the probation department prior to the entry of the plea unless there were other violations and a warrant had already been issued for the Defendant.

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with his guilty plea inured to the Applicant's benefit. This Court notes that the Applicant continued to receive charges while he was out on probation and as the record indicates, in formulating his sentence, the Honorable Roger L. Couch considered the Applicant's record and his decision not to take advantage of probation as a second chance and state of grace. The plea court fully articulated its reasons for sentencing and the record reflects the propriety of its ruling. It appears from the record that the turning point in the Applicant's sentencing was his record and the timing of his new charges, not a violation of his procedural due process. This Court finds that the plea court did not commit an abuse of discretion by sentencing the Applicant's plea sentences consecutive to his active service on his probation case based on his extensive continued criminal behavior while on supervision. See State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits."); Treece v. State, 365 S.C. 134, 136, 616 S.E.2d 424, 425 (2005) (citing Finley v. State, 219 S.C. 278, 282, 64 S.E.2d 881, 882 (1954)) ("It is well-settled that sentences are deemed to run concurrently "unless the intention that one should begin at the end of the other is expressed."); Major v. S. C. Dep't of Prob., Parole & Pardon Servs., 384 S.C. 457, 465-66, 682 S.E.2d 795, 799-800 (2009) (citing State v. McKay, 300 S.C. 113, 115, 386 S.E.2d 623, 623 (1989)) ("Confined by these legislative enactments, and the doctrine of separation of powers, a sentencing court is not authorized to determine parole eligibility. Instead, a court's final judgment in a criminal case is the pronouncement of the sentence which includes the ability to designate whether sentences run concurrent or consecutive, subject to statutory restrictions.").

Failure to Advise of Penalty and Sentencing Consequences

The Applicant also alleges that Counsel was ineffective for failing to inform the Applicant of the penalty ranges associated with his charges, the potential sentences he was

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facing, the terms of the plea offer, and the consequences of entering his plea. Specifically, the Applicant alleges Counsel failed to advise him that the plea court could run his sentences consecutively and “guaranteed” his sentence would be run concurrently.

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 the potential that the plea court would find he violated his probation.

Further, the Applicant’s prior record consisted of a 2000 Unlawful Carrying of a Weapon conviction; a 2000 Public Disorderly Conduct conviction; a 2002 Entry onto Another’s Land After Notice conviction; 2003 Driving Under Suspension and Accessory After the Fact to a Class D Felony convictions; a 2004 Failure to Stop for a Blue Light conviction; a 2006 PWID Marijuana; and a 2010 Unlawful Carrying of a Weapon conviction (Tr. 28:24–29:6; 30:20–31:6). On June 9, 2006, the Applicant received a Youthful Offender Act probation revocation, which was completed in 2008. Thereafter, the Applicant committed the offenses that were the subject of his probationary case. The Applicant received a ten (10) year sentence suspended to five (5) years probation, five (5) of which were revoked during his plea sentencing.

Considering the Applicant’s extensive criminal history, this Court finds his claim that he did not understand the judge’s discretion in running sentences consecutively or concurrently is without merit. Further, considering the Applicant was on probation while he committed and pled guilty to the instant offenses, this Court finds it unreasonable that the Applicant would have thought that the plea court would not revoke his probation in full. Moreover, just because the Applicant’s sentence was harsh and his plea ended in a bad result is not proof that Counsel’s assistance was ineffective; the Applicant’s contact with law enforcement, commission of the

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charged offenses, and guilty plea to the charged offenses consisted of willful violations of the Applicant's probation and had nothing to do with Counsel's assistance. The Applicant's guilty plea in and of itself was the willful violation of his probation and Counsel, the probation agent, and the plea court were not required to review any additional grounds or present any further proof at the Applicant's violation hearing. Therefore, this Court finds the uncorroborated assertion that Counsel "guaranteed" his sentences would run concurrently is without merit. This Court finds Counsel was not deficient in this regard and his performance did not affect the outcome of the Applicant's proceeding. Cf. Legare v. State, 333 S.C. 275, 282, 509 S.E.2d 472, 476 (1998) (where sentencing court had discretion in running terms concurrently or consecutively, counsel not ineffective for failing to request concurrent sentence). See generally 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

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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 crimes). This Court finds that any alleged deficiencies in the Applicant's personal understanding of the ramifications of his plea were cured during the plea court's colloquy.

The Applicant agreed to proceed with his probation violation hearing after the conclusion of and concurrent to his guilty plea; that he knew his plea to violating a state law constituted a willful violation of his probation; and that he was offering his guilty pleas with the knowledge of his probation violation (Tr. 18:23–25:23–26:21). The Applicant agreed with the facts of his underlying probationary case; agreed that he was still on probation at the time he committed the instant offenses; and agreed that his plea would be a violation of his probation (Tr. 26:8–21). Further, the plea court advised the Applicant twice that it retained the ability to sentence the Applicant to the maximum penalty provided by law (Tr. 15:20–16:15; 16:16–17:13; 17:20–24).

Counsel likewise affirmed to the plea court that he discussed the plea and probation matter with the Applicant; that the Applicant understood that his plea was a violation of his probation; that he was satisfied the Applicant understood their discussions; that the Applicant was able to assist in his defense; and that he agreed with the Applicant's decision to plead guilty (Tr. 19:19–20:24). Further, Counsel affirmed that he and the Applicant agreed to dispose of the Applicant's probationary case concurrently with his plea hearing (Tr. 27:1–4). Counsel also told the court that the Applicant agreed that he had willfully violated the terms of his probation (Tr. 20:4–7).

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

Improperly "Promised" Sentence

The Applicant alleges that Counsel was ineffective for improperly promising him a sentence he would receive in return for his guilty plea and therefore his guilty plea was rendered involuntary. This Court finds that Counsel's testimony was most credible that he discussed the nature of the offenses, potential sentences, and the fact that the guilty plea would be considered a willful violation of his probation.

This Court finds most compelling the transcript of the Applicant's plea colloquy. The Applicant told the plea court that he understood the potential penalty associated with PWID Marijuana; the drug enhancement scheme; that the State was making no recommendations concerning sentencing; and that the court could impose the maximum penalty (Tr. 15:20-16:15; 17:20-24). The Applicant then told the plea court that he understood the potential penalty associated with PWID Marijuana Proximity; that the offenses were classified as serious; that, under the "three strikes" law, the Applicant could be sentenced to LWOP if he was convicted of other crimes classified as violent, serious, or most serious; that the State was not making a recommendation as to sentencing; and that the Applicant could be imprisoned for the maximum allowable term (Tr. 16:16-17:13; 17:20-24). The Applicant agreed that no one had made any promises, guarantees, or assurances to him about his plea, including pardon, parole, probation, early release, and length of sentence (Tr. 10:10-17; 24:23-25:12).

Therefore, this Court finds the Applicant's plea was not rendered involuntary based on his allegations that he was guaranteed or promised a certain sentence. See Wolfe v. State, 326 S.C. 158, 164-66, 485 S.E.2d 367, 370-71 (1997) (in finding that plea was not rendered

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involuntary by the applicant's erroneous assumption that he was promised a deal, the court opined, "[w]ishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made"); see, e.g., Rayford v. State, 314 S.C. 46, 48–49, 443 S.E.2d 805, 806–807 (1994) (transcript of plea hearing refuted applicant's claim that he did not understand the terms of his plea arrangement where plea court cured any possible misapprehensions); Richardson v. State, 310 S.C. 360, 362–63, 426 S.E.2d 795, 797 (1993) (having heard incorrect information regarding plea arrangement, fatal misimpressions were corrected by accurate information from the plea court).

Failure to File Motion for Reconsideration and Appeal

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

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

"[A]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). The South Carolina Appellate Court Rules provide the procedure for appealing a guilty plea and sentence from the Circuit Court:

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If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed

SCACR 203(d)(1)(B)(iv). See Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thrift, 378 S.C. 70, 661 S.E.2d 373 (2008).

Additionally, this Court finds that based on Counsel's credible testimony and a review of the transcript, there is no evidence or indication that the Applicant's timely Motion for Reconsideration would have been successful (Tr. 28:24–29:6; 30:20–31:6). Further, based on the sentencing discretion of the plea court, this Court finds that no evidence indicates that the Applicant would have prevailed on appeal. Rather, it appears that had the Applicant filed an appeal, it likely would have been dismissed pursuant to an Anders brief. Anders v. California, 386 U.S. 738, 741–42, 87 S. Ct. 1396, 1398–99 (1967). 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). 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, 74

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. 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

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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 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 transcript of the guilty plea to be most compelling. First, the plea court swore the Applicant and explained the plea proceedings, generally (Tr. 5:23–6:19, 7:19–9:4). The Applicant affirmed that he did not suffer from any mental, physical, or nervous condition,

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CLERK OF COURT

drug problem, or any other condition that would affect his ability to reason, to make good decisions, or to enter his plea (Tr. 9:5–10); that he had not taken or used any drugs or other substances that would affect his ability to reason (Tr. 9:11–15); that no one had threatened, coerced, pressured, or intimidated him to offer his plea (Tr. 9:16–20; 24:23–25:12); that his plea was free and voluntary (Tr. 9:21–10:5; 24:23–25:12); that he had enough time to consider his case and prepare a defense (Tr. 10:6–9); and that no one had made any promises, guarantees, or assurances to him about his plea, including pardon, parole, probation, early release, and length of sentence (Tr. 10:10–17; 24:23–25:12). The plea court advised the Applicant of his constitutional rights, which the Applicant thereafter waived (Tr. 10:18–12:25). The plea court advised the Applicant that he was consistently under oath to tell the truth; that he had the right to appeal his plea and sentence within ten (10) days of his plea; and that the court was not required to sentence the Applicant in accordance with the State’s recommendation and had the authority to impose the maximum sentence allowed by the law, if necessary (Tr. 13:1–15; 24:21–22). Thereafter, the court qualified the Applicant’s plea (Tr. 13:16–18) and accepted his plea as freely and voluntarily given (Tr. 25:16–20).

The Applicant told the plea court that he understood the potential penalty associated with PWID Marijuana; the drug enhancement scheme; that the State was making no recommendations concerning sentencing; and that the court could impose the maximum penalty (Tr. 15:20–16:15; 17:20–24). The Applicant then told the plea court that he understood the potential penalty associated with PWID Marijuana Proximity; that the offenses were classified as serious; that, under the “three strikes” law, the Applicant could be sentenced to LWOP if he was convicted of other crimes classified as violent, serious, or most serious; that the State was not making a recommendation as to sentencing; and that the Applicant could be imprisoned for the maximum

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CLERK OF COURT
JULIA A. BROWN

allowable term (Tr. 16:16–17:13; 17:20–24). The Applicant also affirmed that he had ample opportunity to discuss his case with Counsel and was satisfied with his attorney’s services (Tr. 17:25–18:11). The Applicant affirmed that the alleged facts were correct and that he was pleading guilty to all charges (Tr. 19:12–18; 24:13–20).

The Applicant agreed to proceed with his probation violation hearing during his guilty plea; that he knew his plea constituted a violation of his probation; and that he was offering his guilty pleas with the knowledge of his probation violation (Tr. 18:23–25:23–26:21). The Applicant agreed with the facts of his underlying probationary case; agreed that he was still on probation at the time he committed the instant offenses; and agreed that his plea would be a violation of his probation (Tr. 26:8–21).

Counsel likewise affirmed to the plea court that he discussed the plea and probation matter with the Applicant; that the Applicant understood that his plea was a violation of his probation; that he was satisfied the Applicant understood their discussions; that the Applicant was able to assist in his defense; and that he agreed with the Applicant's decision to plead guilty (Tr. 19:19–20:24). Further, Counsel affirmed that he and the Applicant agreed to dispose of the Applicant's probationary case concurrently with his plea hearing (Tr. 27:1–4). Counsel also told the court that the Applicant agreed that he had willfully violated the terms of his probation (Tr. 20:4–7).

The Applicant failed to present any testimony or evidence to support a claim that he would not have pled, but for the handling of the probation revocation matter. Likewise, the Applicant failed to meet his burden of proving that his plea was involuntary.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not

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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.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, 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 her representation, and that Counsel's conduct did not fall below the 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 her 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. 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.

2015 APR -6 AM 11:29
M. HENNINGSEN
CLERK OF COURT

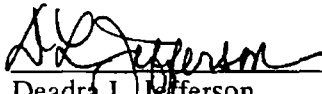
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[Signature]

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:

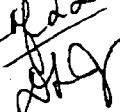
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31st day of March, 2015.


 Deadra L. Jefferson
 Presiding Judge
 Seventh Judicial Circuit

Charleston, South Carolina
 At Chambers

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 14. HOFFE BLANCHET

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DOCKET NO. **11-GS-42-6813**
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

2011 DEC 6

TERM

THE STATE
vs.

KENDRICK ALLEN GUDE

Indictment for
POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA

SC Code: 44-53-370

WITNESSES

SPTBG CITY PUBLIC SAFETY

1. SENTENCES

2. REPORTED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANT NUMBER

6. CHECKED SIGNATURE

7. ASSESSMENT

8. FINE CARD MADE

M754766

9. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC -6 AM 9:26
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

July 22 2011

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Kendrick Allen Gude did in Spartanburg County on or about July 8, 2011, 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 Marijuana, a schedule I controlled substance or controlled substance analogue, in violation of § 44-53-370, *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.



SOLICITOR

DOCKET NO.

11-GS-12-6814

The State of South Carolina

SPTBG CITY PUBLIC SAFETY

WITNESSES

[Signature]

1. SENTENCE MADE

2. REPORTED

3. CARD PULLED

4. INDEXED

5. CHECKED

ARREST WARRANT NUMBER

M754767 7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

County of

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 28 2011

TERM

THE STATE
vs.

KENDRICK ALLEN GUDE

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA WITHIN
ONE-HALF MILE OF SCHOOL
SC Code: 44-53-445

CLERK OF COURT
KING COUNTY
2011 DEC -6 AM 9:27
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF)

At a Court of General Sessions, convened on NOV 22 2011 the

Grand Jurors of County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA WITHIN ONE-HALF MILE

That Kendrick Allen Gude did in Spartanburg County on or about July 08, 2011, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Marijuana, a schedule I controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Duncan Park under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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


 ASSISTANT SOLICITOR

DOCKET NO. **12-GS-42-3192**

The State of South Carolina
County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 7 5 2017

TERM

THE STATE
vs.

KENDRICK ALLEN GUDE

Indictment for
DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370

WITNESSES

SPTG CO SHERIFF'S OFFICE

1. SENTENCE MADE
2. REPORT ENTERED
3. CHARGED WARRANTS
ARREST WARRANT NUMBER
7. ASSESSMENT
FINE CARD MADE
M129719
8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY
True Bill
Foreperson of Grand Jury JUN 14 2012
Date:

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 14 2012 the

Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF MARIJUANA

That Kendrick Allen Gude did in Spartanburg County on or about November 14, 2011, 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 Marijuana, a schedule I controlled substance or controlled substance analogue, in violation of § 44-53-370, *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

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WITNESSES

SPTG CO SHERIFF'S OFFICE

4. SENTENCE MADE

2. REPORT END

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT MADE
FINE CARD MADE

ARREST WARRANT NUMBER

DIRECT INDICTMENT

The State of South Carolina

County of

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 25 2012

TERM

THE STATE
vs.

ACTION OF GRAND JURY

KENDRICK ALLEN GUDE

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

DISTRIBUTION OF MARIJUANA
WITHIN ONE-HALF MILE OF SCHOOL
SC Code: 44-53-445

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF)

INDICTMENT

JUN 14 2012

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

DISTRIBUTION OF MARIJUANA
WITHIN ONE-HALF MILE

That Kendrick Allen Gude did in Spartanburg County on or about November 14, 2011, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Marijuana, a schedule I controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school, a public playground or park, a public vocational or trade school or a technical educational center, or a public or private college or university, to wit: Duncan Park, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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



ASSISTANT SOLICITOR

DOCKING 3509

WITNESSES

SPTG CO SHERIFF'S OFFICE

1. SENTENCES MADE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

CHECKED WARRANTS
ARREST WARRANT NUMBER
6. CHECKED SIGNATURE

computer

7. ASSESSMENT
M758338 FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

KENDRICK ALLEN GUDE

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA

SC Code: 44-53-370
CDR Code:
Class MIS/A

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

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

POSSESSION WITH INTENT TO DISTRIBUTE

That Kendrick Allen Gude did in Spartanburg County on or about March 15, 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 Marijuana, a schedule I controlled substance or controlled substance analogue, in violation of § 44-53-370, *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