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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

DERRICK PRESCOTT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001343

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. CROOM HUNTER
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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INDICTMENTS79

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE)	2010-GS-21-432
)	2010-GS-21-1031
)	2010-GS-21-0064
)	
State of South Carolina))
)	
vs.)	TRANSCRIPT OF RECORD
)	
Derrick Sentel Prescott))
<u>DEFENDANT</u>)	January 27, 2011
)	Florence, SC

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

PATRICIA S. PARR, ASSISTANT SOLICITOR
Attorney for the State

GRAYSON SMITH, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED

Official Court Reporter

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I N D E X

(WHEREUPON, no witnesses were called.)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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1 THE COURT: Yes, ma'am.

2 MRS. PARR: Your Honor, this is as you know
3 Derrick Prescott. He is now before the Court on three
4 indictments. On the case in which we are in trial on, is
5 indictment 2010-GS-432. He is pleading guilty and we have
6 a negotiated sentence of ten years. On indictment
7 2010-1031, he has been indicted for distribution of
8 cocaine base third offense. We have agreed to take it as
9 a second offense for a sentence of five to 30 years and
10 negotiated sentence of ten. And then on indictment
11 2010-64 possession of a stolen pistol zero to five years.
12 And we are recommending this sentence run concurrent with
13 the other state -- with the other charges.

14 THE COURT: Thank you, ma'am.

15 Sir, you're Derrick Prescott?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Prescott, you are before the
18 Court on three indictments, sir. Indictment
19 2010-GS-21-432 is a two count indictment. It is my
20 understanding that you are before the Court on Count 1 of
21 that indictment which is possession of marijuana with
22 intent to distribute that being a third offense. That
23 carries a maximum penalty of not less than five years nor
24 more than 20 years and requires your privilege to drive to
25 be suspended for some period of time. Do you understand

1 that, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And my understanding is Count 2 of
4 that indictment is going to be dismissed pursuant to your
5 plea.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: That's the proximity charge.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And then indictment
10 2010-GS-21-1031 that's an indictment for distribution of
11 cocaine base third offense. However, it is my
12 understanding that on that indictment you are before the
13 Court on the lesser charge of distribution of cocaine base
14 second offense. That charge, sir, carries a penalty of
15 not less than five years, no more than 30 years and a fine
16 of \$50,000. And it is considered a serious offense under
17 our category of laws and requires that your privilege to
18 drive is suspended. You understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And then finally, sir, indictment
21 2010-GS-21-64 is a indictment for possession of a stolen
22 pistol, which carries a maximum penalty of up to five
23 years. Do you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Mr. Prescott,

1 understanding the nature of the charges against you and
2 the possible punishment that's associated with those
3 offenses, how do you plead to those three charges guilty
4 or not guilty?

5 THE DEFENDANT: I plead guilty, sir.

6 THE COURT: All right, sir.

7 And, Mr. Smith, you represent Mr. Prescott on
8 these matters?

9 MR. SMITH: Yes, Your Honor, I do.

10 THE COURT: Have you -- and I know we've already
11 almost concluded a trial on indictment 432, but having
12 said that, have you gone over with Mr. Prescott his
13 Constitutional Rights to a trial and review with him the
14 charges that are before -- that he's before the Court on?

15 MR. SMITH: Yes, sir, I have. At this time the
16 Court please, I'll make this a court's exhibit an
17 affidavit I went over for him for a guilty plea.

18 (WHEREUPON, Court's Exhibit No. 2 was marked for
19 the record.)

20 THE COURT: Okay. All right. And you also
21 shared with Mr. Prescott the significance of having a
22 serious conviction on his record and how that works under
23 South Carolina law?

24 MR. SMITH: Yes, sir.

25 THE COURT: All right. Mr. Prescott, am I

1 correct, sir, you're 31 years of age?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Sir, do you work anywhere or what
4 type of work have you done?

5 THE DEFENDANT: I was working with Tom Brady
6 Construction Company, that building we just completed is
7 off Irby Street right beside Taco Bell in the old China
8 Buffet place. I hang the plaster there.

9 THE COURT: Okay. All right. Are you married
10 or single, sir?

11 THE DEFENDANT: I am single, sir, but I just had
12 my first child.

13 THE COURT: Okay, I was going to ask you if you
14 had any children.

15 THE DEFENDANT: Eight months old, my first
16 child.

17 THE COURT: Did you serve any time in jail on
18 these charges, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Now, Mr. Prescott, I am
21 going to go over just review with you your Constitutional
22 Rights. I know you covered those with, Mr. Smith, but I'm
23 just going to review those with you. If at any time
24 during our conversation if you have any questions about
25 anything that I bring up, if you need to talk with

1 Mr. Smith let me know, I'll stop. I'll give you an
2 opportunity to talk with him. All right.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Now, the first thing let me
5 mention is that the distribution of cocaine base charge
6 second offense is classified as a serious offense under
7 our code of laws and what that means is in other words the
8 significance of that is this, Mr. Prescott, is that under
9 South Carolina law if any person gets convicted of three
10 serious offenses, if they have two prior convictions and
11 they catch another third serious conviction, then the
12 State could seek on that third offense, the State can seek
13 life without the possibility of parole regardless of what
14 the charge carries. The State can seek life on a third
15 serious conviction. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, sir. And I don't have
18 your prior record in front of me.

19 But if I am not mistaken, this will be your
20 first strike; is that correct, Mr. Smith?

21 MR. SMITH: Yes, sir.

22 THE COURT: So this would be a first so called
23 strike, so that in the future you just -- the strike rule
24 doesn't come into play until someone gets that third
25 serious offense. You understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, I'm going to go over with you
3 your Constitutional Rights to a trial. Although, you
4 understand a trial is already begun on the marijuana case.
5 Of course, if your plea goes through, then we will stop
6 that trial and that will be over. And we will just handle
7 the case here. But everyone -- all of us have these
8 Constitutional Rights, everyone has the same rights. We
9 all have the right to remain silent. We have the right to
10 a jury trial. But when you end up pleading guilty, you
11 give up those rights as they relate to your plea and so
12 you want have a jury trial. And the jury trial that's
13 already begun, that will cease and you will handle your
14 cases pursuant to this plea. You understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, associated with your
17 right to a jury trial are numerous rights that you have.
18 For example, you have the right -- if you were to go
19 forward with the jury trial, you have the right to a
20 presumption of innocence, which places the burden of proof
21 on the State. And the way the State would attempt to
22 prove your guilt is they would bring witnesses into court
23 which they done on this case. But if they go forward on
24 the other cases as well, they would bring witnesses into
25 court and those witnesses would testify.

1 The Constitutional of the United States says
2 that any person charged with a criminal offense has the
3 right to face their accusers. And what that means is that
4 during the course of that trial and during the course of
5 the trial that we started yesterday, Mr. Smith on your
6 behalf had the opportunity to cross-examination the State
7 witnesses, to question them about their testimony before
8 the jury. That's your right of confrontation under the
9 Constitution. But when you plead guilty, you give up that
10 presumption of innocence and you give up the right to
11 confront the State's witnesses. Do you understand stand,
12 sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, if you were to have a trial or
15 continue the trial on these matters, you would have the
16 right to call witnesses in your defense if you chose to do
17 that or you yourself could take the witness stand and
18 testify in your own defense. And you can do any of those
19 things you like to. You can do both of them or you could
20 do either one of them, but you also don't have to do any
21 of them.

22 In other words, you have the right to exercise
23 your right to remain silent. And if you did that, I would
24 instruct the jury that they could not hold that against
25 you. I would tell them that they could not even discuss

1 in the jury room the fact that you remain silent because
2 that's your Constitutional Right. And you don't have to
3 prove anything. The burden of proof rest on the State.
4 You understand, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, the State's not the only
7 one excuse me -- the State has to prove your guilt beyond
8 a reasonable doubt and they have to do it to a unanimous
9 verdict. In other words, all 12 members of the jury have
10 to agree that you are guilty or they could not convict you
11 of the charges that you are facing. If you did go forward
12 with the trial and if the jury did convict you, you could
13 appeal that conviction to a higher court if you felt that
14 that was appropriate. And you also, Mr. Prescott, you
15 have an appellate right with regards to today's
16 proceeding. In other words, during the course of your
17 plea here if you wish to file an appeal on the Court's
18 decision here today, you may do that, but you must do that
19 within ten days of today's date. You must file that
20 notice of intent to appeal within ten days of today's
21 date. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right, sir. Now, Mr. Prescott,
24 we all have these rights, but when you go forward with a
25 plea for purposes of your plea, you give up these rights.

1 You want have a jury trial and the trial that is begun
2 will be stopped and your case will be resolved pursuant to
3 your plea. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Understanding that, do you still
6 want to go forward with your plea, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Now, the State has made
9 the following recommendations which you heard Mrs. Parr
10 tell the Court and that is this: That under indictment
11 432 Count 2 of that indictment will be dismissed pursuant
12 to your plea. And the State is making a recommendation
13 that the Court on that charge sentence you to ten years on
14 that charge, ten years on the distribution of crack charge
15 and five years on the pistol charge and to run all of
16 those concurrent or together, that's the recommendation of
17 the State. And, of course, to give you credit for any
18 time that you have served. Is that your understanding of
19 their recommendation?

20 MR. SMITH: Your Honor, may it please the Court,
21 it's our understanding it's a negotiated sentence.

22 MRS. PARR: Negotiated ten.

23 THE COURT: All right. It's marked
24 recommendation but...

25 MRS. PARR: Well, it was ---

1 THE COURT: I'm sorry one of them is marked
2 negotiation. The other ones are marked. Okay, it is a
3 negotiated plea and the reason that's important, Mr.
4 Prescott, is on a recommendation, it is just that, it is a
5 recommendation. The Court can accept it or after hearing
6 the facts, I could reject it and then I could sentence you
7 to anything I think is appropriate. But on a negotiation,
8 that's a little bit different. On a negotiation, if after
9 I hear all the facts I don't agree with the negotiations,
10 then instead of sentencing you to some other sentence, I'm
11 not allowed to do that. I'm simply allowed -- if I can't
12 follow that negotiation, I would allow you to withdraw
13 your plea. You understand, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: In other words, if after hearing the
16 facts, I either have to go along with the negotiations or
17 allow you to withdraw your plea.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Now, other than the
20 negotiations we just talked about, has anybody promised
21 you anything, held out any hope of reward or threatened
22 you in anyway to get you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. Are you satisfied with
25 the representation and the advice that Mr. Smith has

1 provided?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You have any complaints against him
4 or any member of his office or his staff?

5 THE DEFENDANT: No, sir.

6 THE COURT: Mr. Prescott, have you told
7 Mr. Smith everything you know about these charges so that
8 he could look into these matters on your behalf?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you as you stand before the
11 Court today under the influence of any substance that
12 would affect your ability to understand what you are
13 doing?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you pleading guilty on these
16 charges of your own freewill, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And are you guilty of these charges
19 that you are before the Court on?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. I'm going to get
22 Mrs. Parr to give me some of the facts here and ask that
23 you please listen and I will get back with you in a
24 moment.

25 MRS. PARR: Your Honor, in regards to the PWID

1 marijuana, that -- I'm going to go over facts on that one.

2 THE COURT: That's fine we got those facts in
3 the record.

4 MRS. PARR: In regards to 2010-GS-64, this is
5 possession of stolen pistol. The officer from the
6 Florence County Sheriff's office -- the Florence Police
7 Department executed a search warrant. And when they did,
8 this was where the defendant was. And they obtained a
9 40-caliber glock firearm, that weapon had been reported
10 stolen from the police department of Mullins.

11 In regards to indictment 2010-1031, this
12 incident occurred on September 25th 2009. On that
13 particular day, the defendant distribute a quantity of
14 cocaine base to a confidential informant at his residence.
15 And prior to going in, the C.I. was checked. And this was
16 video-audio surveillance. He was captured on
17 surveillance. And upon the -- him selling the amount of
18 crack, which was one rock for \$40. The C.I. was searched
19 again. And the crack was given to the agents and it was
20 sent to SLED and analyzed by Lynn Black and confirmed to
21 be cocaine base.

22 In terms of a prior record, Your Honor, the
23 defendant has a prior conviction for trespassing after
24 notice April 13th 1999, PWID marijuana in which he
25 received a sentence of three years. He also had a PWID

1 cocaine base first offense, which he got a seven year
2 sentence. Then October of '99, he had a conviction for
3 possession of marijuana, trespassing after notice, 2000
4 unlawful pistol, 2004 D.U.S., 2005 simple possession of
5 marijuana, possession of cocaine second offense and
6 resisting arrest, 2007 a blue light, resisting arrest, and
7 another simple possession of marijuana. And in 2008, he
8 had a blue light second offense. And in 2004, he had a
9 parole revocation.

10 THE COURT: All right. Mr. Prescott, the facts
11 that the Solicitor gave the Court regarding these three
12 charges are those facts; correct, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right, sir. I find that the
15 State has provided a substantial factual basis to support
16 the charges that Mr. Prescott has pled to and that his
17 decision to enter that plea I believe has been done
18 freely, voluntarily, and intelligently. He has had the
19 advice of counsel of an excellent attorney in Mr. Smith.
20 And Mr. Prescott has indicated that he is satisfied with
21 representation and the advice that Mr. Smith has provided
22 and I'm going to accept his plea. And pursuant to his
23 plea, we'll cease that trial that was under way. And then
24 I'll hear from you Mr. Smith regarding Mr. Prescott.

25 MR. SMITH: Thank you, Your Honor. Beg the

1 Court's indulgence.

2 (WHEREUPON, a pause in the proceedings.)

3 MR. SMITH: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. SMITH: Your Honor, I stand here today with
6 Derrick Prescott, he's 31 years old. His grown up in
7 Florence all his life, graduated from South Florence high
8 school, tells me he was hanging plaster as employment.
9 He's also had some other trades, he's skilled in plumbing
10 and carpentry. He and Jamie Massey have an
11 eight-month-old young son, Caleb Sentel Prescott.

12 Mr. Prescott's been very forthright with me as
13 he was with law enforcement the entire time this case has
14 been going on, that's why I was shocked when he wasn't
15 here yesterday. He's always made every court appearance.
16 He was, I think, sitting in the back of the courtroom
17 today for the first half of the day not knowing his case
18 had even started until I was able to catch up with him out
19 in the hallway. He's here. He understands he's in a heap
20 of trouble. I've counseled with him regarding PWID
21 marijuana third and a distribution of crack third both
22 being no parole offenses and how that adversely affects
23 his custody status. And also about how both of those have
24 mandatory minimums. I also counsel with him about how the
25 distribution of crack second is a serious offense. And

1 the ramifications of that and how the three strikes rule
2 works here in South Carolina. Just hope that this young
3 man gets out after serving his ten year sentence and is
4 able to head in a different direction. I believe in him
5 and I believe that he can do that.

6 Fortunately, he's got quite a bit of time to
7 think about it. Your Honor, I'd ask if he would like to
8 address the Court, that he does so. I have counsel with
9 him about how a negotiated plea works as oppose to a
10 recommended plea and I don't know how much or what he
11 would have to say. I know he's remorseful. Also, Your
12 Honor, at the conclusion, I would ask that the bench
13 warrant that was issued yesterday be lifted.

14 THE COURT: Sure.

15 MR. SMITH: That's all.

16 THE COURT: Okay. Mr. Prescott, anything
17 further, sir?

18 THE DEFENDANT: Yes, sir, I would just like to
19 say that I know I made a lot of rash decisions in my life.
20 When it came time -- when -- especially with my first
21 child I really realize what I could really be losing even
22 before he got here cause as you can see from the charges,
23 I been coming to court for this since I think October of
24 '09. And I haven't gotten into anything else. I been
25 doing what I was suppose to do. I got a job, I been

1 working. I been trying to support my family and change my
2 life around. I just want to say that I'm sorry to the
3 Court and I'm really more sorry to my family cause if it
4 wasn't for me nobody would be going through this.

5 THE COURT: Yes, sir. Well, thank you, Mr.
6 Prescott, I appreciate that. I commend you for doing the
7 right thing. I commend Mr. Smith on your behalf for
8 basically taking you away from what was a possible
9 exposure of 55 years in prison. And don't get me wrong, I
10 don't minimize ten years. I'm not trying to say that
11 that's not significant, it is. But with this sentence,
12 at least you have a future and you have a future with your
13 children. Where as if it would have gone the other way,
14 you pretty much would not have had that. I certainly
15 understand that this is not easy.

16 On indictment 2010-GS-21-64 the weapons charge,
17 the sentence of the Court is that you be committed to the
18 department of corrections for five years. On
19 2010-GS-21-432 and 1031 on each of those charges, you are
20 to be committed to the state department of corrections for
21 a period of ten years. Those are to run concurrent or
22 together. I'm lifting the bench warrant and you are to be
23 given credit for any time that you have served. Good luck
24 to you, sir.

25 END OF REQUESTED TRANSCRIPT

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Sumter)

2011-CP-21-1662

Derrick Sentel Prescott, 268843)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Wateree River Correctional Institution, Reebert, South Carolina
2. Name and location of Court which imposed sentence Florence County Court of General Sessions, Florence, South Carolina
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010 GS 21 0064; Weapons, Possession of Stolen Pistol
 - (b) 2010 GS 21 0432; PWID Marijuana, 3rd offense and PWID within Proximity

(c) 2010 GS 21 1031; Distribution of Cocaine Base, 2nd offense

5. The date upon which sentence was imposed and the terms of the sentence:

(a) January 27, 2011, Sentenced to 5 years, 10 years, and 10

(b) years for the Indictments 4(a), (b), and (c), all to

(c) be run concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

No

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

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

i. —

ii. —

iii. —

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

i. —

ii. —

iii. —

(c) the date of each such result:

i. —

ii. —

iii. —

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

i. —

ii. —

iii. —

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

(a) Not informed by Attorney about a Direct Appeal

(b)

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

(a) See Attachment 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? No

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

(a) the specific nature thereof:

i. —

ii. —

iii. —

iv. —

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

i. —

ii. —

iii. —

iv. —

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

- (a) No prior (appeal(s)) or (motion(s)) filed
- (b) _____
- (c) _____

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

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

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Gracen Smith Public Defender City-County Complex
1812 N. Erby St. MSC-E Florence, SC 29501
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea Hearing and Sentencing
 - ii. _____
 - iii. _____

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

Correction of Sentence / Reduction in Sentence and for
whatever relief the Court deems just and proper

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

No

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, Derrick Sentel Prescott, 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.

Derrick Prescott

SWORN to and subscribed before me this 22nd
day of June 2011.

Pamela D. Hatfield (L.S.)
Notary Public

My Commission Expires: 3/15/2011

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

I, Derrick Sentel Prescott, 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.

Derrick Prescott
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of June, 2011.

Renee D. Hatfield
Notary Public

My Commission Expires: 3/15/2011

NOTARY PUBLIC
STATE OF MISSISSIPPI
Renee D. Hatfield
Notary Public
Commission Expires 3/15/2011

INEFFECTIVE ASSISTANCE OF COUNSEL Page 1 of 2

The Applicant alleges that he was denied his right to effective assistance of counsel, by counsel, which is a violation of the VI Amendment of the United States Constitution.

The Applicant alleges Public Defender, Gracen Smith, did not investigate, such as interviews with witnesses or potential witnesses. Counsel was ineffective for failure to investigate. Wiggins v. Smith, 123 S.Ct. 2527 (2003). It was alleged by Counsel that there was audio/video evidence lodged against him, but Counsel denied the Applicant's request to listen to any audio, although Counsel stated that the Applicant would be allowed to view pictures.

In regards to the PWID Marijuana, 3rd, Indictment No.: 2010-GS-21-0432, the Applicant was allegedly pulled over for a traffic violation, but no tickets were lodged against the Applicant. The discovery of marijuana following a search was not legal due to an unlawful stop. Searches conducted without a warrant are per se unreasonable unless an exception to warrant requirement is presented and burden is upon the state to justify a

warrantless search. State v. Peters, 248 S.E. 2d 475, 271 S.C. 498.

The Applicant alleges he thought he was pleading to a sentence of 65% (Non-Violent), but learned he is classified by the South Carolina Department of Corrections as an 85% (Violent). The Applicant's guilty plea was obtained without a full understanding of the plea and its consequences. Boykin v. Alabama, 395 U.S. 238 (1965).

The Applicant alleges attorney's performance was "unreasonable under professional norms." Cherry v. State, 300 S.C. at 117, 386 2d at 625 citing Strickland v. Washington. The Applicant alleges that Counsel's deficient performance prejudiced him such that, "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E. 2d. at 625.

The Applicant requests that this Court schedule an evidentiary hearing and grant the relief requested.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Derrick Sentel Prescott,)

Applicant,)

VS.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. NO. 11-CP-21-1662

**RETURN AND MOTION
TO DISMISS**

In response to the post-conviction relief (PCR) application filed July 24, 2011, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the March 2010 term of the Florecne County Grand Jury for Possession of a Stolen Pistol (2010-GS-21-64), Distribution of Cocaine Base, third offense (2010-GS-21-1031), Possession of Marijuana with Intent to Distribute (PWID-marijuana), third offense, and Possession of Marijuana with Intent to Distribute within Proximity of a School or Park (2010-GS-21-432). A. Grayson Smith, Esquire, represented the Applicant. On January 27, 2011, Applicant pled guilty to the pistol charge and PWID-marijuana, as indicted, and further pled guilty to the Distibution of Cocaine Base, reduced to a second offense. The proximity charge was dismissed. The Honorable Thomas A. Russo sentenced Applicant to concurrent sentences of ten years imprisonment on both drug charges and five years imprisonment on the pistol charge. Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein by reference are the records of the Florence

County Clerk of Court regarding the subject convictions and Applicant's records from the Department of Corrections. The guilty plea transcript will be forwarded upon receipt.

Respondent reserves the right to amend its return upon the receipt of further information or materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully based on several allegations of ineffective assistance of counsel. Respondent denies these allegations and demands strict proof.

III.

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

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

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but

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

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

IV.

Applicant requests as relief: "Correction of Sentence/Reduction in Sentence and/or whatever relief the Court deems just and proper." This relief is unavailable in a post-conviction relief action.

After the court which sentenced the Applicant ends its term of General Sessions, neither this Court nor the sentencing court may grant a change in the Applicant's sentence. State v. Best, 257 S.C. 361, 186 S.E.2d 272 (1972). If this Court finds a defect in the original plea proceedings, the only relief available to the Applicant would be a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969).

Therefore, the Court should summarily dismiss the Application. The reviewing court need not pass upon post-conviction relief, if any, that has not been requested. Gilstrap, Id.; Young v. State, 250 S.C. 476, 158 S.E.2d 764 (1968).

V.

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

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCF 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCF Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

WHEREFORE, having made Return, Respondent requests that this Court dismiss this Application with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

September 20, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2011-CP-21-1662

DERRICK SENTEL PRESCOTT, #268843)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

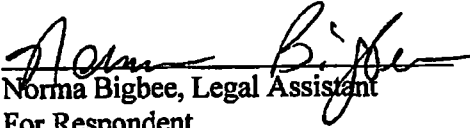
STATE OF SOUTH CAROLINA,)

Respondent.)

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

M. Scott Taylor, Esquire
P.O. Box 5478
Florence, SC 29502

DATED this 20th day of September, 2011


 Norma Bigbee, Legal Assistant
 For Respondent

State of South Carolina)	Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2011-CP-21-01662
)	
Derrick Sentel Prescott,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

April 14, 2015
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Jonathan Waller, Esquire
Attorney for the Plaintiff

Croom Hunter, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 APRIL 14, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 10:27 a.m.)

5 THE COURT: All right. Mr. Hunter?

6 MR. HUNTER: May it please the Court.

7 THE COURT: Yes.

8 MR. HUNTER: Derrick Sentel Prescott versus the State of
9 South Carolina, 2011-CP-21-1662.

10 THE COURT: Hold on a minute, please. Wake him up,
11 please. Thank you. Go ahead. I'm sorry, Mr. Hunter.

12 MR. HUNTER: 2011-CP-21-1662. Mr. Prescott is currently
13 incarcerated with SCDC pursuant to the Florence County Clerk
14 of Court's orders. He was indicted the March 2010 term of the
15 Florence County Grand Jury for possession of a stolen pistol,
16 2010-GS-21-64, distribution of cocaine base, third offense,
17 2010-GS-21-1031.

18 THE COURT: Hold on, Mr. Hunter. Where is Mr. Prescott?

19 MR. WALLER: He is in the holding cell, Your Honor.

20 THE COURT: We need to get him in here. I thought that's
21 what we broke for.

22 MR. HUNTER: I apologize. I was thinking that was Mr.
23 Prescott.

24 THE COURT: That's part of what we broke for anyway.

25 MR. HUNTER: Sorry. That's Mr. Daniels.

1 THE COURT: I looked at Mr. Daniels and I looked at him
2 again and I looked at him. I said that's -- that's Mr.
3 Daniels. Where is Mr. Prescott?

4 MR. HUNTER: I was wondering why you were sitting right
5 there.

6 MR. WALLER: Well, I -- yeah.

7 THE COURT: I thought maybe he was out on bond and wasn't
8 going to be here and he was going to withdraw or whatever, but
9 anyway. Mr. Daniels, if you will, gather your belongings,
10 sir, and sit back over here for me. I would appreciate it.

11 MR. DANIELS: Yes, sir.

12 THE COURT: Thank you.

13 (WHEREUPON, there was a pause in the proceedings until
14 the applicant entered the courtroom.)

15 THE COURT: All right. Let's start this thing over. Mr.
16 Hunter, you're so recognized. Mr. Prescott is now in the
17 courtroom. You're so recognized.

18 MR. HUNTER: Okay. May it please the Court. This is
19 Derrick Sentel Prescott versus the State of South Carolina,
20 2011-CP-21-1662. Mr. Prescott is currently incarcerated with
21 SCDC pursuant to the Florence County Clerk of Court's orders.

22 He was indicted the March 2010 term of the Florence
23 County Grand Jury for possession of a stolen pistol, 2010-GS-
24 21-64, distribution of cocaine base, third offense, 2010-GS-
25 21-1031, possession of marijuana with intent to distribute,

1 third offense, and possession of marijuana with intent to
2 distribute within proximity of a school or park, 2010-GS-21-
3 432.

4 He was represented by A. Grayson Smith. On January 27th,
5 2011, Mr. Prescott pled guilty to the pistol charge and the
6 PWID marijuana as indicted, and he further pled guilty to the
7 distribution of cocaine base, reduced to a second offense.
8 The proximity charge was dismissed as part of his plea.

9 The Honorable Thomas A. Russo sentenced Mr. Prescott to
10 concurrent sentences of ten years' imprisonment on the drug
11 charges and five years' imprisonment on the pistol charge. He
12 did not appeal.

13 He filed this PCR application on July 24th, 2011. He's
14 represented here today by Mr. Waller, and the State is ready
15 to proceed.

16 THE COURT: Mr. Waller, you're so recognized, sir.

17 MR. WALLER: Thank you, Your Honor. Mr. Prescott in his
18 application for post-conviction relief has alleged that Mr.
19 Smith was ineffective as his guilty-plea counsel. At this
20 time, I would call Mr. Derrick Prescott to testify.

21 THE COURT: All right. If you'll bring him around here
22 in front of the --

23 MR. WALLER: Yes, sir.

24 THE COURT: -- witness stand, please.

25 THE CLERK: Please place your left hand on the Bible and
26

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 raise your right hand as much as possible. Do you swear that
2 the testimony you are about to give will be the truth, the
3 whole truth, and nothing but the truth, so help you God?

4 THE APPLICANT: I do.

5 THE CLERK: Please take your seat and state your name for
6 the record.

7 THE APPLICANT: My name is Derrick Sentel Prescott.

8 DERRICK PRESCOTT, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WALLER:

12 Q: Mr. Prescott, how are you this morning?

13 A: Fine.

14 Q: I kind of just want to jump right into it. How did
15 Grayson Smith come to be your attorney?

16 A: Appointed by the Court.

17 Q: Okay. Was he your first attorney?

18 A: Yes.

19 Q: Okay. Were you locked up or were you out on bond?

20 A: I was out on bond.

21 Q: Okay. And now, all these charges did not come from the
22 same incident; is that right?

23 A: That's correct.

24 Q: Was it three separate incidents?

25 A: Three separate incidents.

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 Q: Okay. When -- when were you arrested and when were the
2 warrants served on you in each of those? Is there an issue
3 with one of that -- one of those warrants?

4 A: Yes. The first one they served was September the 3rd,
5 2009, and on the warrant -- the address where I was living at
6 the time was [REDACTED], but on the warrant it has
7 [REDACTED].

8 Q: Okay. And where -- where did they actually search?

9 A: They came to [REDACTED].

10 Q: Okay.

11 A: From the warrant -- the warrant stated they was coming --
12 they was supposed to go to [REDACTED].

13 Q: Are we talking a search warrant or an arrest warrant?

14 A: Search warrant.

15 Q: Okay. Let me ask you -- let me back up a second. Was
16 there -- was there an issue with one of the arrest warrants
17 being served on you?

18 A: Yes.

19 Q: Okay. What happened with that?

20 A: Okay. The issue? Okay. The first warrant they served
21 was September 3rd, and then October 1st is when they -- the
22 marijuana when I was in the car. So -- and the last warrant
23 they served -- that was on -- they said they had a warrant for
24 me from September 25th, but I never knew nothing about it until
25 I was going to court March the 10th for a plea bargain.

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 There was a good chance they said they was going to offer
2 me probation. So I was going to take it, and that's when they
3 stopped that and said they had another warrant for me that I
4 was never aware of. And then they served that warrant and
5 that was from September 25th. Like, they just locked me up
6 October 1st, and they never said anything about a warrant.

7 Q: Okay. So there was a significant period of time between
8 when the warrant was issued and when it was served on you?

9 A: Yes, sir.

10 Q: Okay. Mr. -- Mr. Prescott, if you could, slow down just
11 a little bit. She has to take down everything you say, and
12 you talk a little bit fast.

13 A: All right.

14 Q: Now, when Mr. Smith was representing you, how many times
15 did you and he meet?

16 A: Maybe two or three times.

17 Q: Okay. Now, did y'all discuss all three of the charges
18 against you during those meetings?

19 A: We -- well, the last meeting we did. We had to discuss
20 all three because that's when they served another warrant, but
21 the other two times just the -- we was only aware of two
22 warrants.

23 Q: Okay. So y'all didn't discuss the third one because you
24 didn't know about it? Okay. Did y'all discuss the elements
25 of all the charges?

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 A: Yes.

2 Q: Okay. Did y'all discuss what evidence the State would
3 have to show to prove you guilty?

4 A: Well, after they served me the last warrant, that when we
5 did. So I told him -- I said, well, y'all have a distribution
6 on me. I want to see the video or tape or whatever they
7 claim. They say they have audio and video. And then that
8 when Mr. Smith brought to my attention they said, well, they
9 don't show -- they can't show me the video or whatever, but
10 they can show him.

11 Q: Okay.

12 A: So --

13 Q: Did -- did y'all -- I mean let me back you up just a --
14 just a little bit. Did y'all discuss the elements of the
15 marijuana charge and what the State would have to show to
16 prove you guilty?

17 A: Yes. And that charge, they said I had -- I had a traffic
18 violation, that I ran a red light, but I never received any
19 blue -- blue tickets for that. And they said -- on the
20 warrant, they stated that I had co-defendants, and I was the
21 only one present in the car. So --

22 Q: Okay.

23 A: We discussed -- that's why we was going to trial for that
24 because I knew.

25 Q: Okay. Did you and Mr. Smith discuss that?

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 A: Yes.

2 Q: Okay. Did y'all discuss the elements of the gun charge?

3 A: Yes.

4 Q: Okay. Did y'all discuss the fact that it was obtained
5 via search warrant?

6 A: Yes.

7 Q: Okay. Did y'all discuss the elements of the distribution
8 charge?

9 A: That where it get sketchy at. When we -- we did discuss
10 it, but not in the full detail because when I wanted more
11 information and it was not provided.

12 Q: Okay. Did y'all discuss the potential penalties that
13 each of those charges carried?

14 A: Yes.

15 Q: And you were originally charged with distribution, third
16 offense; is that correct?

17 A: That's correct.

18 Q: Okay. Did y'all discuss what the third offense carried?

19 A: Yes.

20 Q: Okay. You pled guilty to a second offense. Did y'all
21 discuss what the second offense carried?

22 A: Yes.

23 Q: Okay. Now, getting back to the actual evidence that was
24 provided, did you and Mr. Smith discuss what evidence the
25 State actually had for each element of each of the three

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 offenses?

2 A: The first two we did. Then when we got to the
3 distribution part, I asked him -- like I was stating earlier,
4 I said, well, y'all claimed that I was supposed to have sold
5 to an undercover or whatever, then I would like to see proof
6 of said purchase or whatever. And that when he brought to my
7 attention that they don't show the videotape to me -- to the
8 defendant or whatever, to the accused, but they would show it
9 to him.

10 Q: Okay. So does your -- you're under the impression there
11 was a -- there was a video of the sale?

12 A: Of transaction. Correct.

13 Q: Okay. Did you -- you did not see the video?

14 A: No.

15 Q: Okay. Do you know if Mr. Smith saw the video?

16 A: He told me he did.

17 Q: Okay. Did you see any pictures from the -- that might
18 have been taken from the video?

19 A: Never.

20 Q: Okay. Did you hear any audio that might have been from
21 the video?

22 A: No, I did not.

23 Q: Okay.

24 A: And I requested it too.

25 Q: Okay. You were actually in the early stages of a trial

DERRICK PRESCOTT - DIRECT BY MR. WALLER

- 1 when you pled guilty; is that right?
- 2 A: That's correct.
- 3 Q: Okay. Did y'all discuss filing any motions to suppress
4 any drug evidence in your case?
- 5 A: No, we didn't.
- 6 Q: Okay. Do you know if anything was filed on your behalf?
- 7 A: If it was, I wasn't aware of it.
- 8 Q: Okay. Did y'all discuss the search of your vehicle for
9 the marijuana charge?
- 10 A: Yes.
- 11 Q: Okay. What did Mr. Smith tell you about that search?
- 12 A: Like I was stating, I said they never served me a
13 warrant. They said they had -- I had done ran a blue light or
14 whatever -- I mean a red light, but I never had any tickets or
15 anything so we was just -- that's why we was going to trial
16 for that because we had a good chance of feeling like I could
17 beat that.
- 18 Q: Okay. That was the marijuana charge; right?
- 19 A: Yes, sir.
- 20 Q: Okay. When your vehicle was searched, did you ever give
21 your consent to search the vehicle?
- 22 A: No, sir.
- 23 Q: Okay. Was there a drug dog or anything that alerted on
24 the car?
- 25 A: No, sir.

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 Q: Okay. Do you know why your car was searched if you just
2 ran a red light?

3 A: I feel like it was searched because the previous month
4 after they -- they came to the -- to the apartment that I was
5 living at and they didn't find anything. So I feel like I was
6 targeted.

7 Q: Okay.

8 A: Because I was on the way to pick up my daughter.

9 Q: When you said they -- they came to your apartment the
10 previous month, what do you mean?

11 A: That was -- this first warrant they served was September
12 3rd, and they pulled me over October 1st. That's what I mean
13 by that.

14 Q: Okay.

15 A: And at the time, he was telling me -- well, the arresting
16 officer, Kendrick Spears, he was telling me that he knew about
17 my dealings in the street or whatever and, if I worked with
18 him, he could make it go easier or make my charges go away.
19 I'm like, what are you talking about? I don't -- I don't do
20 anything. So I feel like I was targeted after that.

21 Q: Okay. If I could shift gears just a little bit to the
22 gun charge that was obtained by the search warrant, did y'all
23 discuss that search warrant? I mean you mentioned it earlier,
24 but did y'all discuss that search warrant?

25 A: No, we didn't.

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 Q: Okay. Did you bring it to Mr. Smith's attention that the
2 address was incorrect on the search warrant?

3 A: Yes, I did.

4 Q: Okay. What was his response?

5 A: I can't remember exactly, but I think it was something to
6 the effect of, well, that just a -- like a error or something
7 like that. No, that's -- that's not just an error because
8 they got it in black and white.

9 Q: Okay. Now, in exchange for your plea, the State dropped
10 the distribution to a second offense; is that right?

11 A: Correct.

12 Q: They also dismissed the proximity charge?

13 A: Correct.

14 Q: Okay. Y'all were actually in trial when you pled guilty;
15 is that right?

16 A: Correct.

17 Q: Had the trial started -- when the trial started, were you
18 there?

19 A: I didn't even know I was supposed to be in court because
20 if you see from all my -- anytime they told me I had to be in
21 court, I always appeared. So I didn't know.

22 Q: Okay.

23 A: But when I did find out when he got in contact with me, I
24 was there. The day that I took the plea, I was in court all
25 morning.

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 Q: Okay.

2 A: They never called my name and I was about to walk out.
3 That when he seen me. Well, I seen him. He got my attention
4 and told me to come step into the hallway and told me what was
5 going on. That they had a warrant for my arrest and I had no
6 -- I was not aware of that.

7 Q: Okay. Now, had you talked to Mr. Smith and prepared for
8 the trial that was taking place in advance of the trial?

9 A: Yes.

10 Q: Okay. So y'all had met to prep for the trial?

11 A: Yes.

12 Q: Okay. Now, when you -- what charge was the trial on?

13 A: The marijuana.

14 Q: Okay. It wasn't on any of the other two charges?

15 A: No, sir.

16 Q: Okay. Now, when you --

17 A: They wasn't -- they wasn't indicted yet.

18 Q: Okay. Now, when you decided to plead guilty, it was to a
19 negotiated sentence of ten years?

20 A: Yes, sir.

21 Q: Okay. Did y'all discuss how much time of that you would
22 actually do?

23 A: To my knowledge, they said it would have been a non-
24 violent, 65 percent.

25 Q: Okay. Who said -- when you said they said, who is they?

DERRICK PRESCOTT - DIRECT BY MR. WALLER

1 A: Mr. Smith, when I talked to him, and the judge -- I asked
2 the judge. He was like, no, this is going to be a non-violent
3 sentence, and that was marked on my paperwork.

4 Q: Okay. Now, you brought up some issues here today about
5 the search warrant and about the arrest warrant. At the time
6 you pled guilty, were you concerned about Mr. Smith's
7 representation of you?

8 A: Yes.

9 Q: Okay. Did you raise that -- did you raise that to
10 anybody? The judge or anyone else?

11 A: No, I didn't.

12 Q: Okay. Had you known those issues or had you further
13 developed those issues, would you still have pled guilty?

14 A: No, I would not.

15 Q: And what would you have done?

16 A: I'd have continued the trial and I'd have took a trial on
17 the rest of them.

18 Q: Okay. Mr. Prescott, I have asked you all the questions
19 that I have. Is there anything that you think I have left out
20 or that you think the Court needs to be aware of regarding
21 your PCR application?

22 A: I think that's about it.

23 Q: Okay. Please answer any questions Mr. Hunter has.

24 THE COURT: Cross-examination.

25 MR. HUNTER: I beg the Court's indulgence just a moment,

DERRICK PRESCOTT - CROSS BY MR. HUNTER

1 Your Honor.

2 CROSS-EXAMINATION

3 BY MR. HUNTER:

4 Q: Good morning, Mr. Prescott.

5 A: Good morning.

6 Q: So you knew that you were going to be pleading to a
7 negotiated ten-year sentence; is that correct?

8 A: That's correct.

9 Q: Okay. Now, do you -- do you recall when you pled guilty
10 that Judge Russo went over the fact that by pleading guilty
11 you were waiving your right to a trial?

12 A: Yes.

13 Q: And waiving your right to challenge the evidence against
14 you?

15 A: Yes.

16 Q: And that what that essentially means is by pleading
17 guilty, you couldn't challenge the search warrants or the
18 arrest warrants. Do you understand that?

19 A: Now I do. At the time, I didn't.

20 Q: You didn't? But you told him that you did understand?

21 A: Yeah. Because I was going on the advice of my lawyer.
22 He said just agree with everything so we can go ahead and get
23 it forward and get it out the way.

24 Q: Okay. Now, at the time, you pled guilty to get that ten-
25 year sentence to avoid getting a potentially longer sentence

DERRICK PRESCOTT - CROSS BY MR. HUNTER

1 if you had been found guilty at trial; is that right?

2 A: That's correct.

3 Q: Okay. Now, you did tell Judge Russo that you were
4 satisfied with Mr. Smith's services at that time?

5 A: I was doing -- I was going by what he told me to do.

6 Q: Okay. So you weren't actually satisfied with him?

7 A: No, I was not. Because I kept telling him at the time
8 that -- like, he would just ask me about the different
9 addresses they had on the warrants.

10 Q: Right, right, right. But -- so when you told the judge
11 you were not -- that you were satisfied with Mr. Smith, that
12 wasn't the truth?

13 A: That's correct.

14 Q: Okay. And so when you told Judge Russo that you didn't
15 have any complaints about Mr. Smith, that wasn't the truth
16 either?

17 A: That's correct.

18 Q: Okay. Now, do you remember telling Judge Russo that you
19 were, in fact, guilty?

20 A: Yes, I did.

21 Q: Okay. And do you recall apologizing for taking up the
22 Court's time and everyone's time?

23 A: Yeah. I apologized to my family.

24 Q: Okay. Well, you also apologized to the Court, didn't
25 you?

DERRICK PRESCOTT - CROSS BY MR. HUNTER

1 A: Yes, I did.

2 Q: Okay. Did you say that if it wasn't for me, nobody would
3 be going through this?

4 A: Yes, I did.

5 Q: Okay. Do you recall Judge Russo telling you that you
6 were pleading guilty to a serious offense?

7 A: Yes, I do.

8 Q: Okay. And that that could affect your custody status?

9 A: He said that it was, like, my first -- it would be my
10 first strike. He said pleading to that -- it would be two
11 more when -- if I had two more serious strikes, then it would
12 come into play as a three-strike -- well, I think, like, a
13 life sentence or something like that.

14 Q: Right. Okay.

15 MR. HUNTER: I beg the Court's indulgence. That's all I
16 have. Thank you, Mr. Prescott.

17 THE COURT: Mr. Waller, anything further?

18 MR. WALLER: Nothing further, Your Honor.

19 THE COURT: Sir, you may step down. Thank you.

20 MR. WALLER: Your Honor, the applicant is going to rest
21 at this time.

22 THE COURT: All right. Mr. Hunter?

23 MR. HUNTER: The State would call Grayson Smith.

24 THE COURT: All right.

25 THE COURT: Sir, if you would, raise your right hand.

GRAYSON SMITH - DIRECT BY MR. HUNTER

1 THE CLERK: Do you swear or affirm that the testimony you
2 are about to give will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Okay. Please take your seat and state your
6 name for the record.

7 THE WITNESS: Grayson Smith.

8 GRAYSON SMITH, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HUNTER:

12 Q: Mr. Smith, thank you for being here today. How long have
13 you been practicing law?

14 A: Since 2006. What's that? Nine years.

15 Q: Okay. Now, were you appointed to this case?

16 A: I was.

17 Q: Okay. And how did that come about?

18 A: I was working at the Public Defender's Office. I think I
19 started there in August of 2007.

20 Q: Okay.

21 A: I worked there through January of 2012. And we just
22 basically were assigned cases as they came in by -- I think it
23 was Jack. Yeah, Jack Lawson.

24 Q: Okay. So you worked there for about four-and-a-half --
25 five years?

GRAYSON SMITH - DIRECT BY MR. HUNTER

- 1 A: Yeah.
- 2 Q: Okay. By the time this plea came about, you had been
3 working there for a few years I believe; is that correct?
- 4 A: Was this one in 2011?
- 5 Q: Yes.
- 6 A: Yes. I had been working there.
- 7 Q: Okay. Do you recall how many times you met with Mr.
8 Prescott prior to his plea?
- 9 A: I don't. I do remember Mr. Prescott very well.
- 10 Q: Do you -- just generally, do you meet with your clients
11 prior to their pleas?
- 12 A: Yeah.
- 13 Q: Okay. So in all likelihood, you would have met with Mr.
14 -- with Mr. Prescott prior to his plea?
- 15 A: Absolutely.
- 16 Q: Okay. Did you file Rule 5 and Brady motions in this
17 case?
- 18 A: I'm sure I did.
- 19 Q: Okay. Would you have -- once you received that
20 discovery, would you have reviewed it with Mr. Prescott?
- 21 A: Yes.
- 22 Q: Okay. Now, he raised some issues about not being able to
23 see the tape of the CI buy. Could you explain that?
- 24 A: It's my understanding that at the time -- I think there's
25 since been some case law or at least an administrative opinion

GRAYSON SMITH - DIRECT BY MR. HUNTER

1 on it that -- but at the time, I think it was just the
2 Florence County Solicitor's Office. It was their policy that
3 they would not show the videos with the CIs on them to the
4 accused, as Mr. Prescott used that terminology, or to the
5 criminal defendant and, as I understand it, the underlying
6 principle was that they didn't want the defendant to recognize
7 who the CI was.

8 Q: Right.

9 A: And then put a hit out on them or otherwise harm them,
10 which it's my understanding has happened in Florence County.

11 Q: Did you -- did you discuss Mr. Prescott's -- well, let's
12 talk about this for a second. Did -- he raised some issues
13 about the -- the search warrant, his arrest warrants, and some
14 -- I guess erroneous address on there. Did you see that that
15 was any type of issue that was worth pursuing?

16 A: No. And I have a vague recollection of discussing the
17 warrants with him, but when I think of Mr. Prescott, I just
18 think of a young man on the verge or on the edge of making a
19 very poor decision that would affect him for a long time. And
20 we connected I felt like professionally obviously, but also
21 emotionally. I mean we -- we had some heart-to-heart talks,
22 some that I think may have even pushed us to or close to tears
23 because I mean these were major decisions that he was making.
24 And in my professional opinion, he was getting ready to make
25 some -- some poor decisions.

GRAYSON SMITH - DIRECT BY MR. HUNTER

1 Q: Did -- can you recall whether or not you thought there
2 were any -- any merit -- let me rephrase this. He raised an
3 issue that -- that he thinks the search of his vehicle should
4 have been suppressed. Do you recall anything surrounding
5 that?

6 A: Not as I sit here today.

7 Q: Okay. Generally speaking though, you would have looked
8 into that?

9 A: Absolutely.

10 Q: Okay. You spoke that y'all had a lot of heart-to-heart
11 talks. Y'all discussed possible defenses he might have or was
12 this always going to be a plea?

13 A: You know, I'm sure we talked about possible defenses. I
14 just -- sitting here today, I don't recall.

15 Q: Okay. You would have -- you would have discussed the
16 elements of the charges?

17 A: Yeah. I mean -- yeah. My standard approach was to meet
18 with these folks, you know, to talk about the elements of the
19 charges, possible defenses.

20 Q: Time he was facing?

21 A: Yeah. Yeah, I would. I would go over minimum and
22 maximum sentences, you know, offers that the Solicitor's
23 Office would give us, whether recommendations or negotiated
24 sentences, you know.

25 Q: Now, you recall -- you did review the CI buy video; is

GRAYSON SMITH - DIRECT BY MR. HUNTER

1 that correct?

2 A: Yes.

3 Q: Okay. Was -- was it pretty clear that it was Mr.

4 Prescott on there?

5 A: It was.

6 Q: Okay. Did he ever tell you he didn't understand

7 something when y'all were talking that you recall?

8 A: I don't -- I don't -- you know, I just don't know. I

9 don't -- we were -- we were communicating.

10 Q: Okay. So y'all didn't have a problem talking and

11 communicating?

12 A: No. I will not soon forget the emotion in my office the

13 day that he came in after we had already started his trial and

14 we were talking about his options and what he was planning to

15 do.

16 Q: Now, when he decided to -- to enter a plea instead of

17 finishing out the trial, did you review the constitutional

18 rights he'd waive by --

19 A: Yes. I'm sure I did and -- and I read through the

20 transcript and I mean there is a very, very thorough plea

21 affidavit that Judge Ralph King Anderson required us to fill

22 out when entering any guilty plea. And the transcript would

23 suggest that even though I don't think Judge Ralph King

24 Anderson was still on the bench -- I know he wasn't presiding

25 that day.

GRAYSON SMITH - DIRECT BY MR. HUNTER

1 But because of all these extenuating circumstances, I
2 went through that. I went over it with Mr. Prescott. He
3 signed it. I think there was an attorney certification page
4 attached to it that I signed. We made it a Court's exhibit.
5 And I don't know where it is. I don't know if it -- I don't
6 know who keeps those types of things.

7 Q: Okay.

8 A: But we gave it to the Court.

9 Q: Did -- now, this ten-year negotiated offer that he pled
10 to, was that the first plea offer that came about or do you
11 recall if there were offers before that?

12 A: I don't remember sitting here today. I know that Pat
13 Parr was the solicitor on this case, if I recall correctly,
14 and this is not -- this was not a case that I spent a little
15 time on. This is a case that I spent a lot of time working on
16 and negotiating with Pat Parr.

17 Q: Now, whose decision ultimately was it to plead guilty?

18 A: It was -- it was Mr. Prescott's. I will say that I -- I
19 counseled with him strongly that I thought this was in his
20 best interest.

21 Q: Okay.

22 A: But it was ultimately his decision.

23 Q: And I think that's about it.

24 A: And I --

25 Q: I'm not sure.

GRAYSON SMITH - DIRECT BY MR. HUNTER

1 A: And I'll add that I still feel like that was in his best
2 interest and --

3 Q: Did you ever tell him it would be a 65 percent?

4 A: No.

5 Q: Okay.

6 A: No. If -- I'll -- well, let me just say this. I don't
7 specifically remember my conversations with Mr. Prescott about
8 how much time he may or may not have to do on the charges that
9 he was pleading to, but as a matter of course, it was -- it
10 was my practice to tell them what they were facing and then
11 I'd always put a disclaimer on there saying -- but you never
12 know what SCDC is going to do or make you serve or not make
13 you serve, and I stand by that today. Those folks, they're --
14 in my opinion, there's really no rhyme or reason to --

15 Q: Right.

16 A: -- what they do once -- once someone is in their system.

17 Q: Okay. That's all the questions I have. Thank you, Mr.
18 Smith.

19 A: Uh-huh.

20 THE COURT: Mr. Waller?

21 MR. WALLER: Just briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. WALLER:

24 Q: Mr. Smith, you were in trial or at the beginning stage of
25 trial for one of these charges; is that right?

GRAYSON SMITH - CROSS BY MR. WALLER

1 A: Yes.

2 Q: When -- and you mentioned counseling with Mr. Prescott in
3 your office during the beginning of his trial in his absence.
4 How did that come about?

5 A: The conversation that I've testified to today when there
6 was -- when it was so emotional and we were in my office was
7 after the trial started when he came in the day of his plea.
8 So it wasn't -- that particular conversation was not in
9 preparation for his trial. That was after the trial started.
10 As I recall, you know, we prepped for trial and then, you
11 know, Mr. Prescott just didn't show up for his trial and with
12 good reason.

13 He was -- had a lot of anxiety about it as I recall about
14 -- a lot of reluctance. It's never easy, you know, owning up
15 to some of these things. I can't imagine going in front of a
16 judge with a negotiated plea of ten years. So I understand it
17 -- these feelings that he was having, but -- but no, the
18 conversation that I'm talking about was after two or -- two
19 days of trying to get in touch with him by all ways that I --
20 that were known to me, and we finally did get in touch with
21 him and he was I think sitting in the back of the courtroom or
22 something. And as I recall, I kind of went and I thought, you
23 know, if any law enforcement officer sees him right now, he's
24 going to be incarcerated.

25 Q: So he was watching his own trial essentially for briefly?

GRAYSON SMITH - CROSS BY MR. WALLER

1 A: I don't -- no. No. No, I don't think -- I don't recall
2 that being the case.

3 Q: Okay.

4 A: I don't know if they had something else to -- another
5 matter to address that morning. No, I do not recall him
6 watching his own trial.

7 Q: Okay. And maybe I -- I didn't mean to characterize it
8 like that.

9 A: Right.

10 Q: He came up to the courtroom during the time period his
11 trial was taking place; is that right?

12 A: Yes. Yes. Yes.

13 Q: Now, you had prepared -- that was only on the marijuana
14 charge; is that right?

15 A: That's my understanding. It was my understanding that
16 Pat Parr was going to try that one first and continue to try
17 the -- you know, the others if she wasn't successful on the
18 marijuana. That's kind of -- I think was her standard
19 procedure.

20 Q: Had you prepped all of them or just the marijuana?

21 A: For trial?

22 Q: Yes, for trial.

23 A: I don't recall sitting here today, but I would imagine I
24 only prepared the -- the -- for the marijuana charge if that's
25 the only one that was going to trial.

GRAYSON SMITH - CROSS BY MR. WALLER

1 Q: Okay. Speaking of that for just a minute, was there a
2 dash cam video of the stop or anything like that?

3 A: I do not recall sitting here today.

4 Q: Okay. Now, you said you prepped for the trial you were
5 in. Had you had enough time to prepare the other -- I guess
6 at that point three charges to be able to advise him?

7 A: Yeah. To be able to try them or to be able to advise
8 him?

9 Q: To be able to advise him.

10 A: Yeah. Yeah, I feel like I had enough time to do that.

11 Q: Y'all discussed the search warrant, and I know you didn't
12 quite recall. Do you remember a discussion about the search
13 warrant?

14 A: Listening to Mr. Prescott testify here today, I feel like
15 it -- it seems familiar, but I don't have any specific
16 recollection of it. I mean it seems like maybe there was a
17 number off. I think I remember a conversation like that. And
18 when I say I think, for the record I'm speculating. But it
19 jogged -- it seemed familiar when I heard him testify to it
20 today.

21 Q: Do you take notes when you meet with your clients?

22 A: Sometimes I do and sometimes I don't.

23 Q: Did you have an opportunity to review your file before
24 this hearing today?

25 A: I reviewed the transcript of record and that's it.

GRAYSON SMITH - REDIRECT BY MR. HUNTER

1 Q: Okay.

2 MR. WALLER: I beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 MR. WALLER: No further questions.

5 MR. HUNTER: Just one question, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. HUNTER:

8 Q: Mr. Smith, you said you don't really recall, but you only
9 -- likely only prepped the marijuana charge for trial. Is
10 that because Mr. Prescott indicated that he was going to plead
11 on the other charges?

12 A: I don't remember. I think that's because the marijuana
13 charge was the only one going to trial.

14 Q: Okay.

15 A: And so that's the only one I prepared for. I didn't make
16 it a habit of preparing for charges that weren't being tried.
17 I would -- again, I'm testifying now generally about my
18 practice, not specifically about Mr. Prescott, but generally,
19 I wouldn't prepare a charge -- trial prep is something very
20 different than anything else and I just wouldn't have randomly
21 decided to prepare a charge for trial that wasn't in front of
22 the Court.

23 Q: Okay.

24 MR. HUNTER: No further questions, Judge. Thank you.

25 MR. WALLER: Nothing further, Your Honor.

1 THE COURT: All right. Sir, you may step down.

2 THE WITNESS: Thank you, Your Honor.

3 MR. HUNTER: The State doesn't have any further
4 witnesses, Your Honor.

5 THE COURT: All right. Anything by way of argument, Mr.
6 Waller?

7 ARGUMENTS OF COUNSEL

8 MR. WALLER: Yes, sir, Your Honor. Your Honor, Mr.
9 Prescott testified here today he was originally charged with
10 four -- four crimes stemming from three incidents or two
11 incidents and a search warrant. He testified that he -- he
12 believed that he had issues with each and every one of them.

13 The marijuana stop, he thought there was issues with that
14 that he raised to Mr. Smith. There was an issue with the
15 search warrant being incorrect that he also raised to Mr.
16 Smith.

17 And he was never allowed to see the video evidence of the
18 -- the distribution charge. I asked Mr. Prescott if he was
19 able to see still pictures from that. He said no. Mr. Smith
20 did not testify one way or the other. Mr. Smith did not
21 recall a lot of -- of things that took place in this case.

22 Your Honor, one -- one of the charges was going to trial.
23 Mr. -- Mr. Prescott testified that -- that there -- he was
24 prepared to go to -- to trial on the others. Your Honor, I
25 think that there are issues with Mr. Smith's representation

1 and the search of the car, the not properly going over the
2 evidence of the distribution charge with his client, and with
3 the search warrant. I think, but for those errors, Mr.
4 Prescott would not have pled guilty, but would have insisted
5 on going to trial.

6 THE COURT: Thank you, Mr. Waller. Mr. Hunter?

7 MR. HUNTER: Just very briefly, Your Honor. I think it's
8 very clear from the record that Mr. Prescott's plea was
9 knowingly, voluntarily, and intelligently entered. He
10 testified he wanted to plead guilty to avoid getting a longer
11 sentence at trial. Furthermore, he waived any issues
12 regarding the warrants by pleading guilty.

13 I think Mr. Smith's testimony clearly shows that he
14 remembers Mr. Prescott, and that's not necessarily every
15 minute detail of the case, but I think he was very familiar
16 with the overall circumstances. So I don't think that Mr.
17 Prescott has met his burden today.

18 THE COURT: All right.

19 (WHEREUPON, there was a pause in the proceedings.)

20 FINDINGS AND RULING

21 THE COURT: All right. The law requires that the Court
22 in determining whether a guilty plea was taken in accordance
23 with constitutional standards, the Court is required to
24 consider the entire record, including facts presented at the
25 PCR hearing.

1 Furthermore, under the law, a defendant who pleads guilty
2 on advice of counsel may only attack the voluntary and
3 intelligent character of a plea by showing, one, that
4 counsel's representation fell below an objective standard of
5 reasonableness demanded of attorneys in criminal cases and
6 that there is -- and -- and that there is a reasonable
7 probability that but for counsel's errors defendant would not
8 have pled guilty and would have insisted on going to trial.

9 Based upon this Court's review of the plea transcript in
10 its entirety and based upon evidence presented here in the
11 courtroom during the PCR hearing, the Court finds that
12 defendant has failed to -- has failed to present evidence that
13 counsel's representation fell below an objective standard of
14 reasonableness demanded of attorneys in criminal cases and,
15 therefore, denies such relief.

16 Mr. Hunter, if you will, prepare me an order.

17 MR. HUNTER: Yes, sir.

18 THE COURT: I'd appreciate it. All right. And I didn't
19 address the second prong of that because I don't believe he's
20 satisfied the first prong of the requirements under
21 *Strickland*.

22 MR. HUNTER: Your Honor, if you'd like, I'm going to take
23 a couple minutes and get everything set back up for Ms.
24 Blanchette and her case.

25 THE COURT: All right. All right. Anything further at

1 this time, Mr. Waller?

2 MR. WALLER: Nothing, Your Honor.

3 THE COURT: All right. We'll stand down for just a
4 minute.

5 (WHEREUPON, the proceedings ended at 11:07 a.m.)

6

7 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 35 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 14th day of April, 2015.

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

/s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

August 5, 2015

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2015 JUN -1 PM 2:24

Derrick S. Prescott, #268843,

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Case No. 2011-CP-21-1662

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 24, 2011. Respondent made a Return on or about September 20, 2011. The Court convened an evidentiary hearing into the matter on April 14, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, A. Grayson Smith, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the March 2010 term of the Florence County Grand Jury for possession of a stolen pistol (2010-GS-

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

21-0064), distribution of cocaine, third offense (2010-GS-21-1031), possession of marijuana with intent to distribute, third offense (PWID), and possession of marijuana with intent to distribute within proximity of a school or park. Applicant was represented by A. Grayson Smith, Esquire. On January 27, 2011, Applicant pled guilty as indicted to PWID and the pistol charge. Applicant also pled guilty to the lesser included offense of distribution of cocaine base, second offense. The proximity charge was dismissed. The Honorable Thomas A. Russo sentenced Applicant to concurrent terms of ten years on the drug charges and five years on the pistol charge. Applicant did not appeal.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. "Correction of sentence/Reduction in sentence and/or whatever relief the Court deems just and proper."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The 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).

A. Summary of Testimony

Applicant testified at the PCR hearing that Grayson Smith (Counsel) was appointed to

represent him. Applicant testified he was out on bond at the time, and the charges he pled to stemmed from three separate incidents. Applicant testified he had issues with the validity of the arrest and search warrants. Applicant testified he only met with Counsel two or three times, and they discussed all three charges to which he pled. Applicant testified Counsel would not let him watch the video of the confidential informant (CI) buying drugs from him. Applicant testified Counsel discussed the elements of the charges but not in great detail, as well as the potential penalties Applicant was facing. Applicant testified Counsel never discussed suppressing the evidence, but that he did not consent to a search. Applicant testified he discussed with Counsel that the address on the search warrant resulting in the recovery of the pistol was wrong. Applicant testified he did not know he was supposed to go to court the day his trial was scheduled to start, but that he did meet with Counsel and prepare for trial on the PWID charge. Applicant testified he pled guilty to a negotiated ten year sentence. Applicant testified Counsel told him he was pleading to a nonviolent offense and would have to serve 65% of the sentence. Applicant testified he had concerns about Counsel's representation, but he did not notify the plea judge. Applicant testified he wishes he had gone to trial.

On cross-examination, Applicant recalled the plea judge explaining the constitutional rights he was waiving by pleading guilty. Applicant recalled telling the plea judge he was satisfied with Counsel's performance and had no complaints. Applicant recalled telling the plea judge no one promised him anything or forced him to plead guilty. Applicant recalled telling the plea judge he was guilty. Applicant recalled going over the fact that he was pleading to a serious offense and the consequences that carried with regard to the two strikes-three strikes law. Applicant acknowledged that he apologized to the Court at the end of his plea.

Counsel testified he was assigned to Applicant's case during the course of his employment with the Public Defender's Office. Counsel testified he did not specifically recall how many times he met with Applicant prior to his plea, but he did meet with him on multiple occasions because he remembered he and Applicant had some very emotional conversations. Counsel testified he received Rule 5 and *Brady* materials and reviewed everything with Applicant except the video of the CI buy. Counsel testified Florence County had a policy that restricted defendants from watching videos that revealed the identities of their confidential informants. Counsel testified he did watch the video, and Applicant was clearly the person selling drugs. Counsel testified he discussed the elements of the charges Applicant was facing and reviewed Applicant's constitutional rights prior to the plea. Counsel testified he went over and had Applicant sign a plea affidavit. Counsel testified he never had any trouble communicating with Applicant. Counsel testified he spent a great deal of time on the case, and that he did not think there were any meritorious issues to argue regarding the search and arrest warrants. Counsel testified it was his practice to tell his clients what they would likely have to serve, but to tell them SCDC is unpredictable. Counsel testified he would not guarantee a client anything with regard to prison time.

On cross-examination, Counsel testified Applicant did not show up for trial when it was scheduled. He recalled having a conversation with Applicant after the PWID trial began regarding entering a guilty plea. Counsel testified Applicant was not in the courtroom when the trial began, despite what Applicant may have claimed at the PCR hearing. Counsel testified he only prepped the PWID charge for trial because that was the only charge Applicant was planning to go to trial on at that time. Counsel testified he had plenty of time to prepare and was prepared

for trial. Counsel testified it was Applicant's decision to plead guilty.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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.

This Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case, and he was prepared to take Applicant's case to trial. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Counsel testified that after reviewing the warrants, in his professional judgment suppression was unlikely. This Court further finds that based upon the solicitor's recitation of the facts at the plea colloquy, combined with Counsel's testimony at the PCR hearing, the evidence against Applicant was such that it was in Applicant's best interest to go forward with the plea. As such, Applicant has failed to show ineffectiveness of counsel, and the allegation is without merit.

C. Involuntary Guilty Plea

Although not specifically alleged, this Court finds Applicant's allegations could be construed as alleging his plea was involuntary. This Court finds the allegation to be without merit.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant 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 Applicant 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) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

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. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

This Court has had the opportunity to review the testimony from the PCR hearing, as well as the guilty plea transcript and finds Applicant knowingly, intelligently, and voluntarily entered his guilty plea. Applicant has presented no credible evidence to the contrary. Applicant's testimony that he wishes he had proceeded to trial does not undermine the validity of his plea. As such, this Court finds the allegation is without merit.

D. All Other Allegations

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

IV. CONCLUSION


Based on the foregoing, the Court finds and concludes 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.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15th day of May, 2015.


 D. CRAIG BROWN
 Presiding Judge
 Twelfth Judicial Circuit

Florence, South Carolina

FILED
 2015 JUN -1 PM 2:24
 CONNIE REEL-SHEARIN
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Kendrick Spears Florence Police Department

PATRICIA S. PARR

ARREST WARRANT NUMBER

M270423

ACTION OF GRAND JURY

Demise Pansa
Foreperson of Grand Jury
Date: 2/25/10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-21-0064

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH TERM 2010

THE STATE

vs.

DERRICK SENTEL PRESCOTT

Indictment for

POSSESSION OF STOLEN PISTOL

2010 FEB 25 PM 1:19
CONNIE PEEL-SHEARIN
CLERK
C.G.S. & G.S.
FLORENCE COUNTY, SC

FILED

35

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

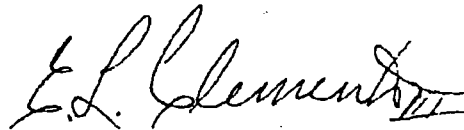
INDICTMENT FOR
POSSESSION OF STOLEN PISTOL

At a Court of General Sessions, convened on FEBRUARY 25, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- POSSESSION OF STOLEN PISTOL

That DERRICK SENTEL PRESCOTT did in Florence County on or about September 3, 2009 knowingly possess a pistol, to wit: a 40 caliber Glock firearm reported stolen from the Mullins Police Department, that the serial number had been obliterated beyond recognition, in violation of Section 16-23-0030,0050(A)(1), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

C

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WITNESSES

William Nida Florence Police Department

PATRICIA S. PARR

ARREST WARRANT NUMBER

M270599 M270600

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 4/1/10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-21-0432

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

APRIL TERM 2010

THE STATE

vs.

DERRICK SENTEL PRESCOTT

Indictment for

POSSESSION MARIJUANA WITH INTENT TO DISTRIBUTE 3RD

AND

POSSESSION MARIJUANA WITH INTENT TO DISTRIBUTE W/PROX.

2010 APR -1 PM 1:07
CORRE REEL-SH/L/NH
CONF & GS
FLORENCE COUNTY, SC

2010 APR -1 PM 1:07

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
POSSESSION MARIJUANA WITH INTENT TO
DISTRIBUTE 3RD
AND
POSSESSION MARIJUANA WITH INTENT TO
DISTRIBUTE W/PROX.

At a Court of General Sessions, convened on APRIL 1, 2010 the Grand Jurors of FLORENCE County present upon their oath:

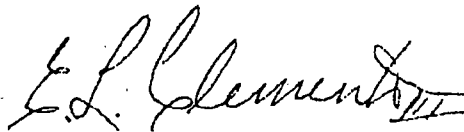
COUNT ONE- POSSESSION MARIJUANA WITH INTENT TO DISTRIBUTE 3RD

That DERRICK SENTEL PRESCOTT, along with other co-defendants, did in Florence County, on or about October 9, 2009, conspire to distribute, dispense or deliver a quantity of marijuana, to wit: more than 1 oz Marijuana, a controlled substance under the provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(b)(2), S. C. Code of Laws, 1976, as amended.

COUNT TWO- POSSESSION MARIJUANA WITH INTENT TO DISTRIBUTE W/PROX.

That DERRICK SENTEL PRESCOTT did in Florence County, on or about October 9, 2009, unlawfully possess with intent to distribute a quantity of , a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half mile radius of the grounds of a public or private school, college, or university, public playground or park, or a public vocational or trade school or technical education center, to wit: one half mile Vista Elementary School, in violation of Section 44-53-445(B)(1), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Kendrick Spears Florence Police Department

DOCKET NO. 2010-GS-21-1031

The State of South Carolina

County of

FLORENCE

FILED

2010 JUL 22 PM 12:01

COMBEE REEL-SHEARIN
CCP & GS
FLORENCE COUNTY, SC

COURT OF GENERAL SESSIONS

JULY TERM 2010

THE STATE

Vs.

DERRICK SENTAL PRESCOTT

PATRICIA S. PARR

ARREST WARRANT NUMBER

M271559

ACTION OF GRAND JURY

TRUE BILL

Domine Parr
Foreperson of Grand Jury

Date: 7/22/10

VERDICT

Indictment for

DISTRIBUTION OF COCAINE BASE 3RD

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

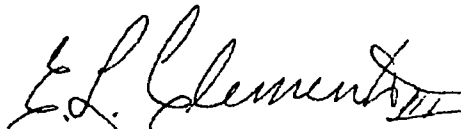
INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE 3RD

At a Court of General Sessions, convened on JULY 22, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- DISTRIBUTION OF COCAINE BASE 3RD

That DERRICK SENTAL PRESCOTT did in Florence County on or about September 25, 2009, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, to wit: Cocaine Base to a Confidential Informant, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR