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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Guilty Plea Judge
The Honorable Eugene C. Griffith, Jr., Post-Conviction Relief Judge

Appellate Case No. 2015-001439

Frank Daniel Simpson, ...Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX

ALAN WILSON
~~Attorney General~~

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331
Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

E. CHARLES GROSE, JR.

~~Grose Law Firm~~

404 Main Street
Greenwood, S.C. 29646

ATTORNEY FOR RESPONDENT

INDEX

INDEX.....	i
GUILTY PLEA TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF.....	36
RETURN.....	41
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING.....	46
AMENDED ORDER OF DISMISSAL	83
RULE 59(E), SCRCP MOTION.....	91
RETURN TO MOTION TO ALTER OR AMEND THE ORDER OF DISMISSAL.....	108
TRANSCRIPT OF RULE 59(E) HEARING.....	111
ORDER GRANTING APPLICANT'S RULE 59(E), SCRCP MOTION AND POST-CONVICTION RELIEF	135
CLERK OF COURT RECORDS.....	143
S.C.D.C. RECORDS.....	147

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .: 2012GS2306403,
	)	2013GS2306404
-VS-	)	
	)	
Patrick Jennings,	)	
	)	
Defendant.	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .: 2013GS230645A,
	)	2012GS2309951
-VS-	)	
	)	
Melissa Smith,	)	
	)	
Defendant.	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .: 2011GS2302752
	)	
-VS-	)	
	)	
Richard Lindsey,	)	
	)	
Defendant.	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .: 2011GS2302755
	)	
-VS-	)	
	)	
Billy Johnson,	)	
	)	
Defendant.	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .: 2011GS2309272
	)	
-VS-	)	
	)	
Frank Simpson,	)	
	)	
Defendant.	)	

X

February 13, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

JAMES H. PRICE, Esquire
JOYCE L. MONTS, Esquire
Assistant Solicitors

ALEX STALVEY, Esquire
Attorney for Defendant Jennings

ROBERT E. IANAURIO, Esquire
Attorney for Defendant Smith & Lindsey

JOHN CRANGLE, Esquire
Attorney for Defendant Johnson

CAMERON G. "BOZZIE" BOGGS, Esquire
Attorney for Defendant Simpson

Teresa B. Johnson
Circuit Court Reporter

I N D E X**DIRECT CROSS REDIRECT RECROSS**

Recitation of Facts

of Patrick Jennings 12

of Melissa Smith 13

of Richard Lindsey 16

of Billy Johnson 17

of Frank Simpson 18

Certificate of Reporter 35

EXHIBITS PAGENO.DESCRIPTIONID EV**PLAINTIFF EXHIBITS**

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 13th day of February, 2013 at approximately 11:23 a.m.)

THE COURT: All right. Yes, ma'am.

THE CLERK: Your Honor, this is -- Your Honor, this is 2012-GS-23-6403, Patrick Victor Jennings indicted for Possession of Marijuana. Pleading to the same and it is a waiver. And it's an order of conditional discharge. 2012-GS-23-6404, indicted for Possession of a Controlled Substance with Intent to Distribute. It is a waiver, and it is an order for conditional discharge.

2013-GS-23-645A, Melissa Louise Smith indicted for Assault and Battery second degree. Pleading to the same, and it is a waiver. 2012-GS-23-9951, indicted for Felony DUI resulting in Great Bodily Injury. Pleading to DUI .16 percent and above first, and it is a waiver.

2011-GS-23-2752, Richard Lindsey indicted for Possession of Methamphetamine. Pleading to the same. It is a true bill.

2011-GS-23-2755, Billy Thomas Johnson indicted for Possession of a Narcotic Drug. Pleading to Possession of Heroine. It's a true bill.

1 2011-GS-23-9272, Franklin Daniel Simpson
2 indicted for Trafficking Methamphetamine. Pleading
3 to Trafficking Methamphetamine 28 grams or more but
4 less than 100 second offense. It is a true bill.

5 Raise your right hand.

6 (WHEREUPON, each defendant is first duly sworn.)

7 THE COURT: All right Mr. Jennings, you are
8 here today to plead to Possession of a Controlled
9 Substance first offense that carries up to six
10 months and Possession of Marijuana first offense
11 that carries up to 30. And they are recommending a
12 conditional discharge. Is that your understanding?

13 MR. JENNINGS: Yes, ma'am.

14 THE COURT: All right. Uh, Ms. Smith, you
15 are here today to plead to Assault and Battery in
16 the Second degree that carries up to three years
17 and, uh, DUI first offense with a BAC of .16 or
18 above. What does that carry?

19 MR. PRICE: Uh, 30 days to 90 days, Your
20 Honor.

21 THE COURT: 30 days to 90 days. Is that
22 your understanding?

23 MS. SMITH: Yes.

24 THE COURT: Mr. Lindsey, you are here today
25 to plead to Possession of less than one gram of

1 Methamphetamine first offense. Is that your under
2 -- and that carries up to three years. Is that
3 your understanding?

4 **MR. LINDSEY:** Yes, ma'am.

5 **THE COURT:** Mr. Johnson, you are here today
6 to plead to Possession of Heroine. That carries up
7 to two years. Is that your understanding?

8 **MR. JOHNSON:** Yes.

9 **THE COURT:** And Mr. Simpson, you are here
10 today to plead to Trafficking in Methamphetamine
11 less than 100 grams, but greater than 28 grams
12 second offense. That carries a minimum sentence of
13 seven years up to 30 years and it's a violent
14 offense and a serious offense. Is that your
15 understanding?

16 **MR. SIMPSON:** Yes, ma'am.

17 **THE COURT:** Okay. And a violent offense
18 means that any active jail sentence you receive,
19 you'll serve a greater percentage than it if were
20 non-violent. You understand that?

21 **MR. SIMPSON:** Yes, ma'am.

22 **THE COURT:** And serious means that if you
23 were to get two other serious offenses, on the
24 third, the State could seek life without the
25 possibility of parole against you. You understand

1 that?

2 MR. SIMPSON: I do.

3 THE COURT: Have you discussed these charges
4 with your attorney, Mr. Jennings?

5 MR. JENNINGS: Yes, ma'am.

6 THE COURT: Ms. Smith?

7 MS. SMITH: Yes.

8 THE COURT: Mr. Lindsey?

9 MR. LINDSEY: Yes, ma'am.

10 THE COURT: Mr. Johnson?

11 MR. JOHNSON: Yes, ma'am.

12 THE COURT: And Mr. Simpson?

13 MR. SIMPSON: Yes, ma'am.

14 THE COURT: Are you happy with what your
15 attorney's done for you, Mr. Jennings?

16 MR. JENNINGS: Yes, ma'am.

17 THE COURT: Ms. Smith?

18 MS. SMITH: Yes, ma'am.

19 THE COURT: Mr. Lindsey?

20 MR. LINDSEY: Yes, ma'am.

21 THE COURT: Mr. Johnson?

22 MR. JOHNSON: Yes, ma'am.

23 THE COURT: And Mr. Simpson?

24 MR. SIMPSON: Yes, I am.

25 THE COURT: Are you under the influence of

1 drugs or alcohol here today, Mr. Jennings?

2 MR. JENNINGS: No, ma'am.

3 THE COURT: Ms. Smith?

4 MS. SMITH: No, ma'am.

5 THE COURT: Mr. Lindsey?

6 MR. LINDSEY: No, ma'am.

7 THE COURT: Mr. Johnson?

8 MR. JOHNSON: No, ma'am.

9 THE COURT: And Mr. Simpson?

10 MR. SIMPSON: No, ma'am.

11 THE COURT: Has anybody forced you to plead
12 guilty or promised you anything to get you plead
13 guilty here today, Mr. Jennings?

14 MR. JENNINGS: No, ma'am.

15 THE COURT: Ms. Smith?

16 MS. SMITH: No, ma'am.

17 THE COURT: Mr. Lindsey?

18 MR. LINDSEY: No, ma'am.

19 THE COURT: Mr. Johnson?

20 MR. JOHNSON: No, ma'am.

21 THE COURT: And Mr. Simpson?

22 MR. SIMPSON: No, ma'am.

23 THE COURT: When you plead guilty, you give
24 up certain constitutional rights. One is your
25 right to remain silent about these charges. Do you

Guilty Pleas

1 know that, Mr. Jennings?

2 MR. JENNINGS: Yes, ma'am.

3 THE COURT: Ms. Smith?

4 MS. SMITH: Yes, ma'am.

5 THE COURT: Mr. Lindsey?

6 MR. LINDSEY: Yes, ma'am.

7 THE COURT: Mr. Johnson?

8 MR. JOHNSON: Yes, ma'am.

9 THE COURT: And Mr. Simpson?

10 MR. SIMPSON: Yes, ma'am.

11 THE COURT: You also give up your right to a

12 jury trial. At that trial, your attorney could

13 call witnesses for you, cross-examine witnesses

14 against you. You would not be compelled to testify

15 against yourself and the State would have to prove

16 your guilt beyond a reasonable doubt. But when you

17 plead guilty, you give up your right to a jury

18 trial. Do you know that, Mr. Jennings?

19 MR. JENNINGS: Yes, ma'am.

20 THE COURT: Ms. Smith?

21 MS. SMITH: Yes, ma'am.

22 THE COURT: Mr. Lindsey?

23 MR. LINDSEY: Yes, ma'am.

24 THE COURT: Mr. Johnson?

25 MR. JOHNSON: Yes, ma'am.

1 **THE COURT:** And Mr. Simpson?

2 **MR. SIMPSON:** Yes, ma'am.

3 **THE COURT:** Uh, Mr. Jennings and Ms. Smith,

4 you each have charges that have not yet been

5 indicted. You've got a right to have those charges

6 indicted before you go forward on them. You want

7 to give up that right and plead guilty today

8 anyway, Mr. Jennings?

9 **MR. JENNINGS:** Yes, ma'am.

10 **THE COURT:** And Ms. Smith?

11 **MS. SMITH:** Yes, ma'am.

12 **THE COURT:** How do you plead, guilty or not

13 guilty, Mr. Jennings?

14 **MR. JENNINGS:** Guilty.

15 **THE COURT:** Ms. Smith?

16 **MS. SMITH:** Guilty.

17 **THE COURT:** Mr. Lindsey?

18 **MR. LINDSEY:** Guilty.

19 **THE COURT:** Mr. Johnson?

20 **MR. JOHNSON:** Guilty.

21 **THE COURT:** And Mr. Simpson?

22 **MR. SIMPSON:** Guilty.

23 **THE COURT:** You have 10 days from today's

24 date to appeal this plea if you so choose, but you

25 must do so in writing to this court.

1 Yes, sir.

2 **MR. PRICE:** May it please the Court, Your
3 Honor. In regards to Mr. Jennings, on May 29th,
4 2012, this defendant was stopped at the
5 intersection of West Butler and Main Street in
6 Mauldin in Greenville county for an improper turn.
7 When the officer approached the vehicle, he smelled
8 an odor of marijuana and the defendant was acting
9 very nervous. The officer observed a bulge in the
10 defendant's pocket and could see a ziplocked bag
11 sticking out of the defendant's pocket. He
12 admitted that it was marijuana in the bag. The
13 plastic bag contained green leafy substance that
14 lab tested positive as seven grams of marijuana.

15 During the search incident to arrest, the
16 officer also located in the defendant's pocket a
17 pill bottle that contained a Xanax, Scheduled IV
18 controlled substance, for which the defendant did
19 not have a prescription for. Your Honor, there's a
20 recommendation of conditional discharge and the
21 defendant does have a prior record.

22 **THE COURT:** I'll go along with the
23 conditional discharge, Mr. Stalvey.

24 **MR. STALVEY:** Thank you, Judge.

25 **THE COURT:** All right. And I'll put you on

1 probation for 12 months, 40 hours of community
2 service. Of course, they will be drug testing you
3 and drug counseling is involved and you'll have to
4 pay \$350 fee at some point. But I know Mr.
5 Stalvey's gone over all this with you. If you
6 successfully complete, then you'll have these
7 charges wiped off your record. If you don't
8 successfully complete, you have to come back in
9 front of a judge and be sentenced. But I know that
10 won't happen.

11 **MR. JENNINGS:** Yes, ma'am.

12 **THE COURT:** Good luck to you.

13 **MR. STALVEY:** Thank you, Your Honor.

14 **THE COURT:** Thank you.

15 **MR. PRICE:** May it please the Court, Your
16 Honor. In regards to Ms. Smith, on June 26th,
17 2012, South Carolina Highway Patrol responded to a
18 single car collision on Bethel Road in Greenville
19 county. This defendant was on the scene and
20 smelled of alcohol beverage. Passenger was in an
21 ambulance with a severe gash to her foot. This
22 defendant performed poorly on the standard field
23 sobriety test and provided a breath sample of .21.
24 Passenger received 20 stitches to her foot and
25 ankle and was on crutches for several weeks. Your

1 Honor, the does have a -- does not have a prior
2 criminal history. There is a recommendation, Your
3 Honor.

4 THE COURT: Okay. What's the
5 recommendation?

6 MR. PRICE: Thirty days HIP and probation
7 including alcohol treatment. And probation may be
8 transferred to Texas.

9 MR. IANAURIO: Your Honor, if I may, I think
10 if you went along with the recommendation, we
11 wouldn't have to worry about transferring that to
12 Texas not until later in this year.

13 THE COURT: Okay. But the recommendation
14 was some probation at the end?

15 MR. IANAURIO: Thirty days HIP, Your Honor.

16 MR. PRICE: Thirty days HIP and probation.

17 THE COURT: The recommendation on, I guess,
18 the DUI was the 30 days HIP. But on the Assault
19 and Battery was probation, right? Ms. Bentley's
20 here in the courtroom. Do y'all want to stand it
21 back and talk to her about it?

22 All right. You want to go on to the next one
23 and we'll -- and we'll come back.

24 Oh, okay. And you say she doesn't have any
25 prior record?

1 **MR. IANAURIO:** That's correct, Your Honor.

2 **THE COURT:** Okay. I'll do a short term of
3 probation. (Pause.)

4 I don't have to tell you, I'm sure your
5 attorney's already told you this could have been
6 very bad. This could have been very bad. A
7 minimum year in jail up to -- I can't remember how
8 many years. How many years, Ms. Bentley?

9 **MS. BENTLEY:** Up to 25, Your Honor.

10 **THE COURT:** Up to 25 in jail. I think
11 that's a violent offense too. If somebody had been
12 killed in this accident, your life would be over,
13 not to mention what would happen -- how horrible it
14 would be for that person in the family.

15 On the DUI, 30 days HIP. Concurrent with
16 that, three years provided upon the service of 30
17 days HIP. The balance is suspended with probation
18 for 12 months. Substance abuse counseling. Random
19 drug and alcohol testing. Transfer the probation
20 to Texas if they will accept you. They may not
21 will accept you on probation. It just depends.
22 Good luck to you.

23 **MR. PRICE:** Thank you, Your Honor.

24 **THE COURT:** Thank you.

25 **MR. PRICE:** Please the Court. In regards to

1 Mr. Lindsey, on January 31st, 2011, a deputy with
2 the Greenville County Sheriff's Office responded to
3 a call about a suspicious person in Greenville
4 county. When the defendant [sic] arrived, he found
5 the defendant to be acting extremely nervous.

6 The deputy asked the defendant if he had
7 anything illegal on him. He told the deputy that
8 he had a syringe containing meth in his sweatshirt.
9 The deputy found the syringe and a clear plastic
10 baggy containing the substance which later lab
11 tested positive as .41 grams of meth. The
12 defendant does have a prior record, Your Honor.
13 There's a recommendation of probation.

14 **THE COURT:** Mr. Ianaurio, I'll certainly go
15 along with that recommendation.

16 **MR. IANAURIO:** If I may, Your Honor, Mr.
17 Lindsey is from Georgia. We'd like to get that
18 transfer. He's expecting a child in May and would
19 like to be there for that.

20 **THE COURT:** I'll put it in there, Mr.
21 Lindsey. I hope they will take you. Chances are
22 they will, but you actually -- probation has to ask
23 Georgia to let you back. Okay. Three years
24 suspended with probation for two. Substance abuse
25 counseling. Random drug and alcohol testing and

1 transfer to Georgia if they will take you. Good
2 luck and congratulations on your child.

3 MR. LINDSEY: Thank you.

4 THE COURT: All right.

5 MR. PRICE: Thank you, Your Honor.

6 May it please the Court. With regards to Mr.
7 Johnson, on January 30th, 2011, Greenville county
8 sheriff's deputies were taking this defendant into
9 custody for Possession of Drug Paraphernalia at
10 Lee's Bar on Wade Hampton Road in Greenville
11 county. During the search incident to his arrest,
12 the deputy discovered a baggy of grayish-white
13 powderlike substance in the defendant's front pants
14 pocket what turned out to be .04 grams of heroine.
15 Your Honor, there is a recommendation for a time
16 served sentence. And the defendant does have a
17 prior criminal history.

18 THE COURT: How long has he served?

19 MR. PRICE: Uh, 52 days.

20 THE COURT: I'll go along with it.

21 MR. CRANGLE: Thank you, Judge.

22 THE COURT: 52 days credit for time served.

23 Good luck to you.

24 MR. PRICE: Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

1 **MS. MONTS:** Your Honor, regarding Mr.
2 Simpson, this occurred on March 24th of 2011. The
3 defendant was stopped while driving a Ford F350
4 pickup truck on I-85 in Greenville county for
5 traffic violations. The officer approached the car
6 and found the defendant was the driver and only
7 occupant of the vehicle. The officer asked for the
8 defendant's driver's license. The defendant said
9 it was suspended in the state of South Carolina.
10 Also, the defendant could not find the pickup
11 truck's registration. He did say that the vehicle
12 did belong to him.

13 In addition to these two violations, uh, the
14 officer developed reasonable suspicion of criminal
15 activity. He did mirandize the defendant and asked
16 if he had any needles on him as the defendant had
17 stated that there were several inside the truck.
18 The defendant said yes and that it was loaded with
19 meth. The officer took control of the hypodermic
20 needle that was full of a clear substance. The
21 defendant was arrested.

22 The truck was searched prior to being towed.
23 Officers found needles, spoons, scales,
24 paraphernalia, uh, which did test positive for
25 cocaine, as well as methamphetamine. Inside a

1 large yellow mailing envelope in the center console
2 was a clear plastic bag which was analyzed as 34.20
3 grams of methamphetamine. The defendant said it
4 was supposed to contain an ounce of meth. There
5 was also another loaded needle, other small bags
6 containing meth inside a black shaving kit. The
7 defendant did admit that he was delivering the meth
8 from Atlanta to North Carolina.

9 The defendant does have a prior record. There
10 is a recommendation.

11 **THE COURT:** All right. Let's hear the prior
12 record and the recommendation.

13 **MS. MONTS:** Your Honor, prior record, in
14 1983, in Massachusetts, Larceny; 1999, in North
15 Carolina, Possession of Drug Paraphernalia, three
16 counts; in Vermont, in 2005, Reckless Driving; New
17 Jersey, 2005, Possession of Crack Cocaine and
18 Paraphernalia; Tennessee in 2007, DUI, Failing to
19 Submit to Breathalyzer; in South Carolina in 2010,
20 Possession of Methamphetamine. The defendant was
21 on probation for that charge when this offense
22 occurred, Your Honor. The recommendation is for a
23 cap of 15.

24 **PROBATION AGENT:** And he's on probation in
25 Anderson. That will have to be handled by Anderson

1 county. It is a violation.

2 MR. BOGGS: Judge, he has Austin McDaniel
3 for that. Austin from Anderson probation. They
4 are just waiting on what's going on here. We
5 realize that's not handled today.

6 THE COURT: Sure. No problem.

7 MR. BOGGS: Okay.

8 THE COURT: All right. Yes, sir.

9 MR. BOGGS: May it please the Court, Judge.
10 Previously, I handed up what's been titled
11 Defendant's Pre-sentencing Memo. Also I handed up
12 -- and I'm sure the court has that. And also I
13 handed up another document which is titled --
14 entitled Mitigating Factors and Extenuating
15 Circumstances. Judge, just to summarize the
16 sentencing memo, it talks about his background.
17 Frank's probably one of the most educated people
18 I've ever represented.

19 THE COURT: I mean it's absolutely amazement
20 -- I mean, it's absolutely amazing.

21 MR. BOGGS: It is. And that does not even,
22 uh, -- that's the tip of the iceberg of actual
23 knowledge. I'm not talking -- his school education
24 is incredible, but his working -- his working
25 knowledge that he doesn't have a degree for is

1 incredible. I think that's why he's such a special
2 circumstance. Because at his age, he's 49, almost
3 50, and uh, I don't want to say he's gotten away
4 with his drug addiction but he has gotten away with
5 his drug -- he's been able to mask it through
6 treatment where he's had, uh, periods of sobriety.
7 Extended periods of sobriety.

8 But he's always had possession charges and
9 things like that. He's not a drug dealer. Never
10 has been. In fact, in this, he's charged with
11 Trafficking because of the weight. There were four
12 packages, one of which was for personal use. As
13 the -- as Joyce, or Ms. Monts, related to the
14 court, he had a full needle. Because of the
15 severity of the -- he's -- he had a needle ready to
16 shoot up because that's the way, that's where he
17 was. This was two years ago, Judge.

18 I mean, he previously had Chip Price. Chip
19 thought that maybe his addiction interfered with
20 his ability to understand a competency issue or his
21 ability to assist his defense. Frank was living in
22 North Carolina. Made bond. Didn't show up for a,
23 uh, -- for the, uh, evaluation. You supposed to
24 self report to the evaluation. So the Solicitor's
25 office got a bench warrant. He's been in jail ever

1 since. So that's why he's incarcerated. He's been
2 in jail over nine months or approximately nine
3 months. Obviously, he's clean now.

4 Uh, and just in speaking with him, uh, I just
5 -- this is my file. This part that I'm holding up
6 right here are letters from Frank. It's not a
7 manifesto in any way. It's just a testament of
8 what he's going through his realization of what's
9 going on. He's a twin, identical twin. His
10 brother's here in the courtroom seated with his
11 mother, who is a retired professor -- from Chapel
12 Hill?

13 **DEFENDANT'S MOTHER:** At Duke.

14 **MR. SMITH:** His mother's at Duke and his
15 father was a professor at Chapel Hill. Uh, the
16 all-American family. I've gotten to know his
17 mother, who's now in her 80's. His father isn't
18 here. He suffered a broken ankle. He has to keep
19 it -- just because of his advanced age, he's got
20 his leg evaluated. He's obviously here in spirit.
21 Speaking with her, she has her professor point of
22 view and, obviously, mother point of view. She
23 didn't raise these boys any different.

24 His brother, Bob, lives in Delaware and is
25 quite successful in business in the pharmaceutical

1 industry. So, he -- he and, uh, -- he has
2 testimony that he would like to read about Frank.

3 I know this is, you know -- you hear it all
4 the time, Judge, but I would just ask that, one,
5 specifically, the reason I did this mitigating
6 factor is, while incarcerated, Frank has become
7 what I call the Dr. Phil down there. I think it's
8 because of his caring heart, his lack of violent
9 nature, his intelligence and people seek him out.
10 He's help -- he's had his brother mail books to
11 some of these people that have gone down the road.

12 He's had -- but he's become privy to things
13 that have -- that are referenced in section number
14 five of my list. I just call your attention, you
15 know, immediately upon arrest, A was implemented.
16 5A. I personally was involved sitting down with
17 him in section 5B. He also -- I was involved with
18 5C at the meeting and D. They arose out of that
19 same first meeting.

20 Later, he learned the information that's in E
21 which is -- I feel like we're talking in code, but
22 this is all for confidentiality purposes and to
23 protect everybody involved. But 5E has resulted in
24 two arrests recently. 5F, uh, they didn't know
25 where their prime person was. He did, just through

1 people telling him. You know, I know it's easy for
2 someone to help when they are facing 25 to 30,
3 which has been reduced now to 7 to 30 but, Your
4 Honor, you have the ability to treat each person
5 individually.

6 I don't know that Frank is, uh, -- I don't
7 know. He's never faced jail time. Well, he's
8 faced it, but he's never faced it. Now, he's been
9 sitting there honoring what's going on. Since that
10 time, his mother's fell ill. His father's ill.
11 They are in their 80s. Their brother can't travel
12 to North Carolina from Delaware. Frank is needed
13 at home. Of course, that's the way it always works
14 out when they are here before you. I know you've
15 heard that before.

16 I also call your attention to number 4 about
17 his health which we won't get into because I know
18 you can read. Number 3 is one of the rare
19 occurrences where it is true. I only put that
20 because it's rare that that can occur, but there
21 can be substantial, uh, provisions made which
22 comply with one of the penalties that's in our
23 statute.

24 I -- you know, it's funny. In a different
25 time, a guy driving from Atlanta muling drugs to

1 North Carolina who has information about where it's
2 going in North Carolina, I couldn't say federal
3 court out loud without the case being consumed.
4 But it's a different era. Now in the federal
5 system, there's more white collar crime. I only
6 say that because in the federal system, there is a
7 mechanism by which these charges -- he wouldn't be
8 facing 7 to 30 years, if you know what I mean.

9 THE COURT: Uh-huh.

10 MR. BOGGS: I think the State law is headed
11 that way with the new Substantial Assistance
12 statute. But we're in the infancy stage. I don't
13 know how -- I know what the statute says but
14 really, you know, it's the chicken before the egg.
15 If you offered information, you're supposed to get
16 rewarded.

17 The Solicitor's office, I've met with -- I've
18 talked to Joyce several times. I've met with Walt,
19 or excuse me, Solicitor Wilkins on several
20 occasions. And their position is that they reduced
21 it from a third even though he's had two prior
22 possessions and now it's a trafficking from a third
23 to a second. We appreciate that because his
24 exposure went from 25 to 30 way down. They wanted
25 to do 15 as a negotiated, but now they are

1 recommending a cap of 15 understanding that I'm
2 going to argue all this mitigation.

3 THE COURT: Right.

4 MR. BOGGS: His family needs him. His mom
5 is naive to this proceed -- these proceedings but
6 she would like to be heard if Your Honor would
7 grant her that courtesy. And -- and I told her not
8 to focus on the mom things but on the aspects of
9 Frank that would make you hopefully take a chance
10 on him.

11 Judge, I know there's a statutory minimum, but
12 just as a point of reference, as you know, there's
13 an annotated statutory provision that said any
14 sentence can be suspended by a judge even though
15 this says no suspended sentence. I'm not -- I'm
16 not trying to insult your intelligence in any way,
17 Judge. He can do house arrest, Judge. He can make
18 it. He would want it. Obviously, who wouldn't.

19 But I mean, now that he sat there -- and one
20 of the most pointed things on all these things, he
21 said, you know, we've talked about religion. He
22 hadn't found religion. It's always been with him.
23 But he sees all these young people and they worship
24 meth, they worship heroine. They are still in jail
25 facing 20 years, 30 years. They are talking about

1 what they're going to do when they get out. It's
2 almost like an unordained minister. But I mean,
3 it's interesting dynamic. I would ask if you would
4 here from, definitely him, but his mother if you
5 wouldn't mind, Judge.

6 **THE COURT:** All right.

7 **MR. BOGGS:** And his brother would like to
8 speak but I don't to waste the --

9 **THE COURT:** I'll hear from his family, and
10 not in any way to be rude, but briefly.

11 **MR. BOGGS:** Yes, ma'am. Yes, ma'am.

12 **DEFENDANT'S MOTHER:** Ida Harper Simpson.

13 **THE COURT:** All right. Yes, ma'am.

14 **DEFENDANT'S MOTHER:** I am the mother of twin
15 boys. One is here. One is right there. From
16 birth, they were very different boys even though
17 they were identical, they are different in many
18 ways and very similar in many ways.

19 When they began school, we had -- we wanted
20 our children to do well. I'm a bit hoarse.

21 **THE COURT:** You're fine. You're fine.

22 **DEFENDANT'S MOTHER:** Thank you. We had a
23 psychiatric evaluation on them. The psychiatrist
24 said they were very intelligent young boys. And
25 Frank is exceptionally creative. Bob is very

1 deliberate in his actions. I think she well
2 captured the nature of our sons, their differences
3 and also their similarities. She also indicated
4 that they are caring and personal people. They are
5 not solitary.

6 That being the case, uh, Frank has had a lot
7 of joy. He's also had a lot of pain. The pain
8 comes from his impulsivity almost totally. He has
9 been very fortunate. And he lived in a monastery,
10 Episcopal monastery.

11 **THE COURT:** Okay.

12 **DEFENDANT'S MOTHER:** He also did volunteer
13 work with the cemetery. That's the type of work
14 that gives him real --

15 **MR. BOGGS:** Excuse me, Judge.

16 **DEFENDANT'S MOTHER:** Now, with us --

17 **(WHEREUPON, Mr. Boggs consults with the defendant's**
18 **mother.)**

19 **DEFENDANT'S MOTHER:** Now, with respect to
20 Frank, my observation is this, he's had a lot of,
21 uh, drug rehabilitation. They are based on
22 conditioning. What has been most effective on
23 Frank has been psychiatric care. Psychiatric care
24 enables Frank to deal with the sensations that
25 cause the interruptions in his life. Interruptions

1 of long range plans. And that, uh, -- we are not
2 wealthy people but we can afford to give him that.

3 **THE COURT:** Sure.

4 **DEFENDANT'S MOTHER:** And we will, if the
5 opportunity is available. He was doing
6 exceptionally well with his psychiatric care. He
7 then wanted to go to treatments. That was
8 recommended and we did what was recommended and
9 what he wanted. The psychiatric care has been most
10 efficacious.

11 **THE COURT:** Thank you so much, ma'am.

12 **DEFENDANT'S MOTHER:** One more thing briefly.
13 We are in our second childhood. We know that care-
14 giving with family affection is much more -- it
15 does more for this period. We know that it has a
16 great affect on what happens. He also would like
17 for the court to know -- my husband would like for
18 the court to know that he would like very much to
19 be here, but he has to keep his feet elevated.

20 **THE COURT:** Well, and I hope he feels
21 better.

22 **DEFENDANT'S MOTHER:** Thank you.

23 **THE COURT:** Thank you, ma'am.

24 **DEFENDANT'S MOTHER:** And if --

25 **MR. BOGGS:** No, that's good. Bob. Anything

1 you want to add briefly?

2 **DEFENDANT'S BROTHER:** Uh, we're fraternal
3 twins. We're not identical.

4 **THE COURT:** I kind of guessed that.

5 **MR. BOGGS:** I apologize.

6 **THE COURT:** That's okay.

7 **DEFENDANT'S BROTHER:** Again, I was exposed
8 to the same temptations that Frank was exposed to
9 growing up. But for one little misregulated
10 protein, I could be standing there in front of you
11 as well. We've been very, very fortunate in what
12 I've been given by my parents. Growing up, uh,
13 I've always thought that Frank would do much better
14 than I would. I think all of this is just
15 extremely sad.

16 You know, right now -- in the past, I had my
17 life to live. Right now, my wife and I have a
18 small daughter. I can't help my parents as they
19 grow older. I really need Frank to help out. If
20 this had happened 10 years ago, I would not be here
21 today. I would let him do the time and let him
22 live in his own debt. But right now, he's -- I
23 really need help. Thank you.

24 **THE COURT:** Thank you, sir, for being here.

25 **MR. BOGGS:** Thank you for that indulgence,

1 Judge.

2 **THE COURT:** All right. Yes, sir. You need
3 a couple of minutes? That's okay.

4 **MR. SIMPSON:** Uh, what can I say? I'm just
5 throwing myself on the mercy of the court. I have
6 a friend who once said that justice is getting what
7 you deserve, mercy is not getting what we deserve
8 and grace is getting what we can't deserve at all.
9 The graceful and difficult thing about, uh, about
10 this whole experience, I've had to look at myself
11 in a mirror with the men around me. You get
12 soberer and soberer and it's uglier and clearer
13 every day. I stand. I'm an addict, ma'am. I'm
14 not a dealer.

15 **THE COURT:** I understand.

16 **MR. SIMPSON:** I was able to go to an ATM to
17 buy more dope. I passed quickly up through the
18 supply ranks. It just takes over your life and
19 you're in so deep before you know what you're
20 doing. The one thing -- addicts -- you can always
21 tell an addict. The first thing they'll do is
22 guard their supply whether it's buying an ounce of
23 methamphetamine to save \$1000 or, uh, to, uh, you
24 know hide it in a bottle or a toilet tank. It's
25 the same deal. It looks -- It makes perfect sense

1 to the addict but not to anyone else. You --
2 Greenville county through its intervention has
3 given me this tremendous gift of -- through the
4 intervention and incarceration.

5 Both of my parents were hospitalized while I
6 was in jail. I -- you know, I really need to be
7 home. I think the one thing -- I have a rotten
8 record. I'm -- statistically, very few addicts or
9 alcoholics that ever achieve like perfect
10 abstinence. You know? Even the A.A. literature
11 says that on the first page. It also promises you
12 will get better. You can't get better if you don't
13 quit.

14 I've gotten grace even in this terrible
15 setting. You know, that, I don't have to worry
16 about. I'm asking you for justice and mercy. I
17 think the State and I are on the same side
18 actually, that we're trying to achieve the same
19 goal. You know, the mitigators that Bozzie, Mr.
20 Boggs, mentioned are very much my own attempt to --
21 it's so hard to cut it from your life. I got
22 arrested. The only people that -- I run off
23 everyone. The only people that showed up were my
24 dealers.

25 **THE COURT:** Right.

1 **MR. SIMPSON:** I'm, uh, -- you know, --

2 **THE COURT:** You are certainly a very
3 introspective person. You certainly, I think, have
4 done one of the goals of the criminal justice
5 system, that is, that you take a hard look at
6 yourself and for you to regret your past mistakes.
7 Your record is not terrible. In the scheme of
8 things, your record is not terrible.

9 **MR. SIMPSON:** Thank you.

10 **THE COURT:** There are some mitigating
11 factors that I take into account. Those are ones
12 that we won't go into. I take those into account.
13 You were facing certainly an incredible amount of
14 time. Anybody would pretty much say you would die
15 in prison would probably be the best guess. Mr.
16 Boggs has worked you out the opportunity to be able
17 to be here and everyone speak on your behalf. I'm
18 going to take everything into consideration -- oh,
19 yes, ma'am.

20 **MS. MONTS:** I just want to put one more
21 thing. The defendant did go to the Department of
22 Mental Health after he was arrested and did receive
23 an evaluation and was found competent.

24 **THE COURT:** All right. You don't have any
25 concerns about his competency, Mr. Boggs?

1 MR. BOGGS: Not at all.

2 THE COURT: I certainly don't.

3 MR. BOGGS: No.

4 THE COURT: He's here in front of me today

5 and is extremely intelligent.

6 MR. BOGGS: I think Chip's concern was when

7 he was out of jail when the unknown about his

8 addiction.

9 THE COURT: Sure.

10 MR. BOGGS: It's no ill-will towards Chip by

11 Mr. Simpson. He just needed a new start, a new

12 lawyer. That's all that happened.

13 THE COURT: I'm glad it's all -- I'm glad

14 that that's all settled and situated now. The

15 sentence of the court is nine years and I give you

16 credit for the time, of course, that you served. I

17 wish you the best of luck. Do you want to take

18 this back?

19 MR. BOGGS: Yes, Judge. I just don't -- not

20 that -- I don't want any documents --

21 THE COURT: I understand.

22 MR. BOGGS: And Joyce was provided with a

23 copy.

24 (WHEREUPON, the proceedings conclude at

25 approximately 12:01 p.m.)

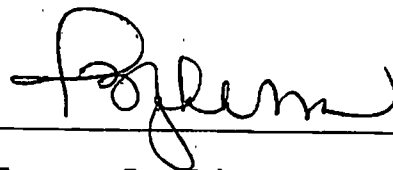
CERTIFICATE

35

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 13th day of March, 2014.

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



Teresa B. Johnson

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)

Frank Daniel Simpson, SCDC #354338)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23- 00 531

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. NICKENSIMER
2014 JUN 8 PM 2 43INSTRUCTIONS - 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 Kirkland Correctional Institute
2. Name and location of Court which imposed sentence The Honorable Letitia H. Verdin
imposed sentence in the Greenville County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-GS-23-09272 (trafficking in ice, crank, or crack - 28g or more but less than 100 g - first offense.
5. The date upon which sentence was imposed and the terms of the sentence:
(a) February 13, 2013
6. Check whether a finding of guilty was made:

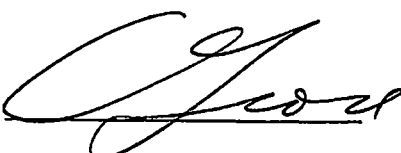
- (a) after a plea of guilty Yes
 - (b) after a plea of not guilty No
 - (c) after a plea of nolo contendere No
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed: n/a
 - (b) the result in each such Court to which you appealed: n/a
 - (c) the date of each such result: n/a
 - (d) if known, citations of any written opinion or orders entered pursuant to such results: n/a
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Plea counsel did not inform Applicant of the right to appeal.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant was denied the right to effective assistance of counsel during his guilty plea, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a)(i) Plea counsel failed to prepare for Applicant's guilty plea;
 - (ii) Plea counsel inaccurately advised Applicant about entering his guilty plea, the applicable penalties, and the authority of the sentencing judge; and
 - (iii) Plea counsel failed to present accurately available mitigation during the guilty plea and sentencing proceedings.
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: n/a
 - (b) the name and location of the Court in which each was filed: n/a
 - (c) the disposition thereof: n/a
 - (d) the date of each such disposition: n/a
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: n/a
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: n/a
 - (b) the proceedings in which each ground was raised: n/a
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:
This application is the first opportunity to raise these grounds.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? Yes (guilty plea)
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.
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. Camerson G. Boggs, P.O. Box 65, Greenville, SC 29602-0065, represented Applicant during the guilty plea.
 - iii. The undersigned counsel assisted Applicant in preparing this application.
 - (b) the proceedings at which each such attorney represented you: Please see above.

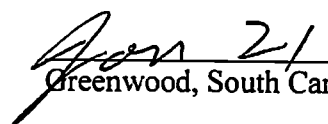
19. State clearly the relief you seek in filing this application:
New trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

Respectfully submitted,

By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 20646
(864) 538-4466

Counsel for Applicant

 21, 2014
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

)

VERIFICATION

)

County of Richland

)

I, Frank Daniel Simpson, 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.

SWORN to and subscribed before me this 17th
day of May, 2014

[Signature] (L.S.)
Notary Public

My Commission Expires: 5/31/2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-0531
COUNTY OF GREENVILLE	)	
	)	
Frank Daniel Simpson,	)	
S.C.D.C. No. 354338,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed January 28, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the December 2011 term of General Sessions for trafficking methamphetamine (2011-GS-23-9272). Cameron G. Boggs, Esquire represented the Applicant.

On February 13, 2013, the Applicant pled guilty to trafficking methamphetamine (28-100 grams), first offense. The Honorable Letitia H. Verdin sentenced the Applicant to nine years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel:
 - a. "Plea counsel failed to prepare for Applicant's guilty plea.
 - b. "Plea counsel inaccurately advised Applicant about entering his guilty plea, the applicable penalties, and the authority of the sentencing judge."
 - c. "Plea counsel failed to present accurately available mitigation during the guilty plea and sentencing proceedings."

III.

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

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

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

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

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

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the PCR application.

Respectfully submitted,

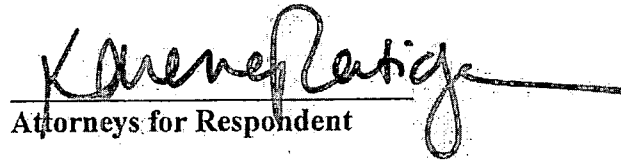
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

March 26, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2014-CP-23-0531

FRANK DANIEL SIMPSON, 354338)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

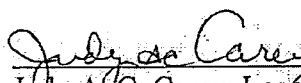
STATE OF SOUTH CAROLINA,)

Respondent.)

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

E. Charles Grose, Jr., Esquire
 404 Main Street
 Greenwood SC 29646

DATED this 26th day of March, 2014.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2014-CP-23-00531

FRANK DANIEL SIMPSON,
APPLICANT,

vs.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.

ORIGINAL

December 17, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JUDGE.

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

E. CHARLES GROSE, JR., ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Senior Assistant Deputy Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

<u>(AW) CAMERON GRANT BOGGS:</u>	
Direct Examination by Mr. Grose.....	5
<u>(AW) FRANK DANIEL SIMPSON:</u>	
Direct Examination by Mr. Grose.....	20
Cross-Examination by Ms. Ratigan.....	28
<u>(AW) ROBERT DONALD SIMPSON:</u>	
Direct Examination by Mr. Grose.....	33

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(Applicant's Exhibits)

A-1	Defendant's Presentencing Memorandum....6		
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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

THE COURT: Ms. Ratigan.

MS. RATIGAN: May it please the Court, Your Honor.

THE COURT: Yes, ma'am.

MS. RATIGAN: This is the case of Frank Simpson v.
the State of South Carolina. The docket number is
2014-CP-23-0531. Mr. Simpson was indicted for trafficking
methamphetamine. He was represented on this charge by
Mr. Boggs.

On February 13th, 2013, he pled guilty to trafficking
meth 28 to 100 grams first offense. He pled guilty in
front of Judge Verdin, who sentenced him to nine years
imprisonment.

He did not file an appeal. And the State is ready to
proceed.

THE COURT: All right. Mr. Grose, are you ready?

MR. GROSE: I am, Your Honor.

THE COURT: All right. Let's go.

MR. GROSE: We would call Cameron Boggs.

THE COURT: Mr. Boggs, come around and be sworn.

THE CLERK: Mr. Boggs, place your left hand on the
Bible and raise your right hand.

WHEREUPON,

CAMERON GRANT BOGGS,

after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please state your full name for the record.

3 THE WITNESS: My name is Cameron Grant Boggs.

4 DIRECT EXAMINATION

5 BY MR. GROSE:

6 Q Mr. Boggs, did you represent Frank Simpson?

7 A I was his second lawyer, yes.

8 Q Okay. And were you his lawyer at the time of the
9 guilty plea that we're here for today?

10 A Yes.

11 Q And who was -- which judge did you plead guilty in
12 front of -- or did Frank plead guilty in front of?

13 A I believe it was Judge Verdin.

14 Q Okay. I have a --

15 A I mean, I'm sure --

16 Q -- copy of the transcript.

17 A Yeah.

18 Q The last page might be missing, but it looks like
19 there was a number of people that pled at the same time.

20 But --

21 A Yes. Judge Verdin, Letitia Verdin.

22 Q All right. And, as part of preparing for that guilty
23 plea, did you prepare a sentencing memorandum?

24 A I believe I did, yes, sir.

25 MR. GROSE: Will you mark this?

1 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
2 identification only.)

3 BY MR. GROSE:

4 Q Mr. Boggs, I'm going to hand you what's been marked
5 as Applicant's Exhibit No. 1. Do you recognize that?

6 A Yes, sir.

7 Q Okay. And what is that?

8 A It's what I titled, Defendant's Presentencing
9 Memorandum.

10 Q Okay. And did you provide that to Judge Verdin?

11 A I believe I did, yes, sir.

12 Q If I show you Page 20 of the transcript looking at
13 lines -- it looks like Lines 9 through 18.

14 A Yes, sir.

15 Q Okay.

16 A And there was another document as well.

17 Q All right. And what was that document?

18 A It's in the transcript. I think I called it a
19 mitigating factors or -- do you have that, or do you need
20 me to pull it out?

21 Q I have it.

22 A Okay.

23 Q I'm not going to ask any questions about it.

24 A Okay.

25 Q Now, in the sentencing memorandum, did you ask the

1 Judge for house arrest?

2 A I'm sure I did.

3 Q Okay. And, on the record in the transcript, did you
4 ask the Judge for house arrest?

5 A I may have even asked for time served, but, yes.

6 Q Okay. And you were aware that the charge carried
7 a --

8 A A mandatory minimum.

9 Q -- a mandatory minimum of seven years?

10 A Yes, sir. In fact, because it was a second
11 offense -- and when he had fired Chip, I think the best
12 offer -- I think is still -- they were still offering a
13 second -- a plea to a second. And we got it negotiated
14 down to the first that would give him a chance for seven
15 to 25, even though they never offered seven. I think that
16 -- I mean, it may have been seven to 30. I can't
17 remember.

18 Q As I understand it, you -- in the memorandum and in
19 what you told Judge Verdin, you were asking for that
20 sentence to be suspended below the seven?

21 A Oh, for sure.

22 Q Okay. And you believed it could be suspended?

23 A I believe the statute says it cannot. But in the
24 real world, I believe it has been before. And I know that
25 the only way you get something that's not on the books, so

1 to speak, is to ask for it.

2 Q Okay. Well, in fact, in your memorandum, you cite to
3 a federal case, a United States Supreme Court case; right?

4 A I prepared this memorandum. I think this may be the
5 second memorandum I've done for state court.

6 Q Okay.

7 A Typically, I do them for all federal cases, unless
8 there's an agreed upon sentence.

9 All right. So -- but go ahead and finish your
10 question.

11 Q Well, you cited to a United States Supreme Court case
12 in your memorandum?

13 A Yes, I did.

14 Q All right. And that case has to do with downward
15 departures under the federal sentencing guidelines?

16 A Yes. It's my -- I'm sorry. Ask the question.

17 Q No. I'm just asking if that's what the case has to
18 do with.

19 A Oh, yeah.

20 And may I tell you why?

21 Q Sure.

22 A Or do you have a follow-up?

23 Q You can tell me why.

24 A Okay. At this time, I believe Frank -- Frank was
25 arrested in 2012. And this plea occurred in early 2013,

1 because we delayed it as long as we could.

2 The State had established -- or a new statute had
3 come out akin to the federal variance statute or akin to
4 the cooperation -- I guess downward departure that you
5 would seek in federal court. To my knowledge, at the time
6 of his plea, there had been no case law established where
7 you could cite a case where a judge had invoked the new
8 state statute.

9 So I merely provided this to get in the Judge's mind,
10 hey, federal courts do it all the time. Here is why they
11 do it. This particular judge had done it before. I don't
12 have the case or -- but I know it's happened.

13 Q Okay.

14 A And so it's sort of here is why you should make an
15 exception to the statute.

16 Q Okay.

17 A Not I think you ought to, or I think you -- or, well,
18 I know a judge can do what they want. Okay. And I told
19 Frank that. All right.

20 Q All right. And then when you say a judge --

21 A I wasn't finished. I'm sorry.

22 Q Go ahead. I'm sorry.

23 A And so I'll just tell you, to base all my testimony
24 about Frank, this guy -- I met with him more than any
25 other client that I didn't go to trial with. Okay.

1 Q Okay.

2 A We formed a -- more than your normal attorney-client
3 relationship. I have letters from him about his
4 dissertation or whatever -- something -- I've got
5 something he wrote in 1990, Sensation Seeking as a
6 Predictor of Drug Use and Television Viewing Motivations.
7 I've never had a client with the mental or intellectual
8 ability to write this. Okay.

9 At no point in time did Frank Simpson ever think --
10 or excuse me, did he ever hear from me that he was getting
11 house arrest or that he was not going to prison.

12 Q All right. But you told Frank Simpson that house
13 arrest was possible?

14 A I told him I was going to ask for it, and this judge
15 had done it before. But that the mandatory minimum was
16 seven years.

17 Q Okay.

18 A And that the statute said it couldn't be suspended.

19 Q But you told -- you told Frank that -- well, earlier,
20 I think you said a judge can do anything they wanted;
21 right? That was your testimony?

22 A I've never been a judge, but I've had a judge tell me
23 they can do what they went. Okay.

24 Q All right. I'm not going to ask you who that was.

25 A Okay.

1 Q But so you told Frank, essentially, that a judge
2 could ignore the mandatory minimum?

3 A I told him that a Judge had ignored a mandatory
4 minimum. I told him that he is an abuser. He is not a
5 dealer. I told him that with his family support, with
6 their monetary capabilities, if ever a judge wanted to let
7 him not go to prison where he wouldn't get the inpatient
8 treatment, if ever there was someone who could afford to
9 go to Betty Ford, fill in the blank, which he had gone to,
10 he was the guy.

11 Q Okay. I want to show you the guilty plea transcript,
12 Page 26 beginning at Line 11 going to Line 18. Could you,
13 please, read that into the record?

14 A Judge, I know there's a statutory minimum. But just
15 as a point of reference, as you know, there's an annotated
16 statutory provision that said any sentence can be
17 suspended by a judge, even though this says no suspended
18 sentence. I'm not trying to insult -- I'm not -- I'm not
19 trying to insult your intelligence in any way, Judge. He
20 can do house arrest, Judge. He can make it. He would
21 want it, obviously. Who wouldn't?

22 Is that where you want me to stop?

23 Q Yes.

24 A Okay.

25 Q All right. So, in that paragraph, you told the Judge

1 that she had authority to suspend the sentence; correct?

2 A There is a -- yes. I told the Judge that she had the
3 authority to suspend the sentence.

4 Q Okay. And you requested house arrest?

5 A Yes.

6 Q And that would be under the Home Detention Act?

7 A Anything other than prison for my client.

8 Q All right. And you referred to the fact that Frank's
9 family has means?

10 A If I didn't, there --

11 Q I mean, in your testimony earlier?

12 A Oh, in my testimony, yes. They have means, yes.

13 Q Okay. And even though the fines are substantial for
14 trafficking, was it your understanding that they had the
15 means, that they could have paid those fines?

16 A Yes. I even, I think, went to the Solicitor
17 and/or -- the Solicitor on the case or maybe even
18 Solicitor Wilkins himself to see if that was a possibility
19 of paying a fine.

20 Q And you were aware that Frank's twin brother, Robert
21 Simpson, was in the courtroom that day?

22 A Yes, sir.

23 Q And you're aware that he was prepared to pay a fine,
24 if that was the ruling by the Judge that day?

25 A I asked him, I said, if we can negotiate a fine,

1 could you pay it -- or would you pay it? Because -- just
2 because you have money doesn't mean you want to spend it.

3 Q Right.

4 A And they indicated they would. But it never -- it
5 was never negotiated. I mean, I would have had the check
6 in my hand if I thought it was a done deal.

7 Q All right. But that was something that you thought
8 that might be a possibility from the Judge?

9 A I think anything is a possibility that's -- I mean,
10 yeah. I thought it was a possibility. Was it realistic?
11 No. I mean, that's two different things.

12 Q Well --

13 A I didn't tell him he was getting house arrest.

14 Q But you told him that it was a possibility?

15 A I told him I was going to ask for it.

16 Q All right. And that it was possible that the Judge
17 would do it?

18 A I told him that the only person that could do it was
19 the Judge that we were in front of.

20 Q All right. And does it surprise you to know that the
21 Judge had no authority to do that?

22 A It doesn't surprise me that there's no authority --
23 no.

24 Q Okay. And so, essentially --

25 A But -- let me -- I apologize. But it's, also, true

1 that certain judges -- or judges who are still on the
2 bench have done it.

3 Q Okay.

4 A And I told Frank that.

5 Q And so, basically, you told Frank to rely on the
6 possibility that a judge might give an illegal sentence?

7 A No. No, I never did that.

8 Q All right. And --

9 A I told Frank from day one, Frank, are you guilty?
10 And do you want to proceed to trial, or do you want to
11 plead? And all along it was never a trial because it was
12 a second offense.

13 I think it was -- again, you know the -- I haven't
14 looked at the statute. But the mandatory minimum would
15 have gone up substantially. If he had gone to trial and
16 been convicted, he could have got the maximum, which, I
17 think, was 30 for a second violent.

18 And so for the seven plus months that I represented
19 him, maybe more, it was always talking about mitigation
20 and trying to work out the best deal possible.

21 Q All right. And you would agree, though, that when
22 Frank stood in the courtroom in front of Judge Verdin that
23 he believed there was a possibility that he would get less
24 than seven years in prison. You would agree with that?

25 A I would agree -- well, I never know what's in a

1 client's mind. But I agree that there was hope.

2 Q There was hope that he would get less than seven
3 years; correct?

4 A There was hope that if any Judge was going to do it
5 out of our choices leading up to that day, Judge Verdin
6 might.

7 Q Okay. And that he could get a suspended sentence.
8 There was hope of a suspended sentence?

9 A I don't know -- well --

10 Q I mean, a minute ago, you said --

11 A -- what do you mean by "suspended sentence"?

12 Q Well, a minute ago --

13 A Do you mean like 15 suspended to -- I don't know that
14 a suspended sentence would have -- I think a suspended
15 sentence would have caused more problems than a straight
16 below minimum sentence.

17 Do you see what I'm saying?

18 Q But you said earlier that you might have even asked
19 for time served.

20 A Well, I might have. I mean, I knew that wasn't
21 coming. I mean, I just -- listen, man, how -- anyway, you
22 don't -- Frank never expected anything other than a
23 chance. Okay.

24 Q Okay.

25 A He knew, his mother knew, the PhD that she is, his

1 brother, the chemical -- the engineer that he is. I went
2 and met with them at their hotel room right over here at
3 the Hyatt. Okay. We sat down. We talked. I don't know
4 what they wanted to hear. But I know what they heard from
5 my mouth. And that is that I will ask for anything, but
6 we need to expect -- we need to expect what the statute
7 says. And that I think we ended up with a cap -- I didn't
8 reread this, but they offered a cap of 12 maybe by the
9 time we pled, or maybe it was a cap of 15. I don't
10 remember.

11 But when I stood up there, I was hoping that he would
12 get less than seven. But he was not expecting to get less
13 than seven. If he was, then that's his fault, not mine.

14 Q Okay. If you turn to Page 2 of Applicant's Exhibit
15 No. 1, the -- section two is -- what is the title of that?

16 A Section two?

17 Q Yes.

18 THE COURT: Where are you, Mr. Grose? Tell me.

19 THE WITNESS: On Exhibit No. 1 right here?

20 BY MR. GROSE:

21 Q On Exhibit No. 1.

22 A Sentencing minimum -- presentence -- I said -- I
23 called it a federalesqe variance is appropriate in this
24 case.

25 THE COURT: I don't have that in front of me. That's --

1 MR. GROSE: Do you want it? It's attached to the
2 memorandum, if you want a paper copy of the --

3 THE COURT: I've got the one you handed the law
4 clerk.

5 MR. GROSE: Okay. It's Page 2 --

6 THE WITNESS: I called it a federalesqe variance --
7 variance in quotes -- is appropriate in this case.

8 BY MR. GROSE:

9 Q Okay.

10 A And I don't know if federalesqe is a word, but it was
11 in my title.

12 Q All right. It's something that you used?

13 A Yes, sir.

14 Q And in that document, you say, In the federal system,
15 a variance reduction from a statutory sentence is
16 available to defendants based on various factors set forth
17 in 18 USC Section 3553(a); right?

18 A Yes, sir. Those -- that's the statute by which
19 federal judges determine whether a variance is appropriate
20 in a case, or to satisfy that a sentence is appropriate in
21 a case.

22 Q Okay. And if you turn to Page 5 of Applicant's
23 Exhibit No. 1, right before the conclusion, can you read
24 that last sentence?

25 A Therefore, Frank respectfully submits --

1 Q No. I'm sorry. Before the -- we'll get to the
2 conclusion.

3 A All right.

4 Q But right before the conclusion, that last sentence.

5 A The last sentence?

6 Q Yeah.

7 A I said, Here, a sentence of house arrest would be
8 just as much of a deterrent as incarceration.

9 Q Okay. And the conclusion, could you read that entire
10 paragraph into the record?

11 A Even when mandatory sentencing levels exist, which
12 shows that they're mandatory, this Court like the federal
13 courts across this country and in this very state should
14 be able to treat those before them as individuals. See
15 Koon v. United States, end of cite.

16 And, in that particular case, it's been uniform and
17 constant that federal jurisdiction -- this is quoting that
18 Koon v. U.S. It has been uniform and constant in the
19 federal judicial tradition for the sentencing judge to
20 consider every convicted person as an individual and every
21 case as a unique study in the human failings that
22 sometimes mitigate, sometimes magnify the crime and the
23 punishment to ensue, closed quote.

24 If federal laws in cases dictate that a court should
25 impose a sentence that is "sufficient but not greater than

1 necessary," then all sentencing courts should have greater
2 latitude to impose a sentence that fits not only the crime
3 but the person before the Court.

4 Therefore, Frank respectfully submits that a sentence
5 of house arrest would be a sentence that is "sufficient
6 but not greater than necessary."

7 Q Okay. So there's really more than one thing going on
8 there. One thing that's going on is you're asking for a
9 sentence of less than seven years, what you asked the
10 Judge for; correct?

11 A Yes.

12 Q All right. And you're, also, asking the Judge that
13 if any sentence is imposed beyond probation that Frank
14 Simpson be allowed to serve that on house arrest under the
15 Home Detention Act; correct?

16 A Yes.

17 MR. GROSE: That's all the questions I have at this
18 time, Your Honor.

19 THE COURT: Ms. Ratigan.

20 MS. RATIGAN: I don't have any questions for
21 Mr. Boggs, Your Honor.

22 THE COURT: All right. Mr. Boggs, you may step down.

23 THE WITNESS: Thank you.

24 MR. GROSE: Your Honor, I would call Frank Simpson.

25 THE COURT: Mr. Simpson, come around and be sworn.

1 THE CLERK: Mr. Simpson, please, place your left hand
2 on the Bible and raise your right hand.

3 WHEREUPON,

4 FRANK DANIEL SIMPSON,
5 after first having been duly sworn, testified as follows:

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

8 THE WITNESS: Frank Daniel Simpson.

9 THE CLERK: Thank you.

10 You may be seated.

11 THE COURTROOM DEPUTY: If you'll just speak loud and
12 clear.

13 THE WITNESS: Is this -- can you hear me?

14 THE COURTROOM DEPUTY: She's the one that matters.

15 THE COURT REPORTER: A little louder.

16 THE WITNESS: Okay.

17 DIRECT EXAMINATION

18 BY MR. GROSE:

19 Q Frank, you're the Applicant in this case?

20 A Yes, sir.

21 Q And, if you would, can you tell the Judge a little
22 about your background. Where are you originally from?

23 A I'm from North Carolina. I was born in Chapel Hill.
24 I'm a horticulturist by trade, interested in preservation.
25 I've been to a lot of -- as Mr. Boggs alluded to, I'm very

1 well educated. My parents are university professors,
2 retired. I have a twin brother.

3 Q Okay. Are your parents in the courtroom today?

4 A Yes, they are. They're on the back row.

5 Q All right. And what are their names?

6 A Dr. Richard and Dr. Ida Simpson.

7 Q Okay. And the gentleman sitting to their right as we
8 look at them, is that your brother?

9 A That's my twin brother, Robert.

10 Q All right. And y'all are fraternal twins?

11 A Yes, sir.

12 Q Okay. And do you have -- Mr. Boggs alluded to your
13 education. Do you have some education?

14 A Yes, sir.

15 Q And what is that?

16 A My highest degree completed is a masters at the
17 University of North Carolina. I have a technical degree
18 in horticulture from NC State, a BA from Williams College
19 with distinction. And I was -- before I came down and got
20 strung out, I was doing course work at the Landscape
21 Institution at Harvard University Arnold Arboretum for
22 landscape preservation.

23 Q Now, you had charges in South Carolina that are the
24 subject of why we're here today?

25 A Yes, sir.

1 Q And I'm not going into any of the details, but what
2 was that charge?

3 A It was trafficking methamphetamine.

4 Q All right. 28 to 100 grams?

5 A Yes, sir.

6 Q And, now, there was some reference to Chip Price
7 having been your original lawyer. But, at the time of the
8 guilty plea, who was your lawyer?

9 A Mr. Boggs.

10 Q Okay. And did you and Mr. Boggs meet?

11 A Yes, often. And I -- yes. I met with him
12 frequently. Do you want me to go through the whole --

13 Q No. I -- what I want to ask you is, during those
14 discussions, was there any discussions with Mr. Boggs
15 about what role a -- your family's ability to pay a fine
16 might play in the outcome of your case?

17 A Well, the first time I met Mr. Boggs after I was put
18 in the Greenville jail, he met me in the Pro V section of
19 the old jail. And he said, I've got good news. Walt
20 Wilkins doesn't think you belong in prison. And he asked
21 me can my family pay fines of \$50,000 to a \$100,000.

22 Q Okay. And --

23 A That was in May of 2012.

24 Q And is your family -- does your family have the means
25 to do that?

1 A Yes, sir.

2 Q All right. And was there any discussion with
3 Mr. Boggs about receiving a sentence less than the
4 mandatory minimum of seven years?

5 A Frequently, yes, sir.

6 Q And tell the Judge about that, please.

7 A Well, one persist theme in our discussions was what
8 Mr. Boggs called creative sentences. And that was the --
9 he'd brought up that he thought an appropriate sentence to
10 ask for would be a split sentence with three years house
11 arrest and three years on a GPS monitor. We discussed
12 that kind of thing at length.

13 I remember asking him would we have to buy a place
14 for me to be arrested in in Greenville County or for the
15 GPS to work. The GPS is nationwide.

16 As late as -- the case was, originally, set for a
17 hearing on December 12th, 1912 -- 2012. And it was pushed
18 back. We didn't go that day. There was some meetings
19 with law enforcement going on. So I don't know, but it
20 was postponed.

21 And then I was very anxious to go to court when it
22 resumed in January with -- I think Judge McIntosh was
23 sitting. But I don't remember the other judge. But I met
24 with Bozzie in Pro V at the jail. I said, Can we go
25 this -- can we go with this time in January?

1 He said, Well, I want you to wait for Judge Verdin.

2 I said, Why?

3 He said, It's the difference between seven to nine
4 years with McIntosh and three to five with Verdin.

5 Let's see. The other -- we went over -- we discussed
6 this kind of thing a lot.

7 Q Okay. So he discussed -- Mr. Boggs -- when you said
8 Bozzie, you're talking about Mr. Boggs --

9 A Yes, sir. I'm sorry.

10 Q -- that's his nickname?

11 A Yes.

12 Q And he discussed with you that Judge Verdin could
13 have the authority to sentence you -- or could sentence
14 you, if she wanted to, to less than seven years?

15 A Yes. He several times referred to an item in your
16 rules of court that would make any sentence suspendible by
17 a General Sessions judge.

18 Q Okay. And he talked about a split sentence?

19 A Yes, he did.

20 Q And when you say that, we're talking about Mr. Boggs?

21 A Yes, sir.

22 Q And Mr. Boggs talked about home detention?

23 A Yes, he did.

24 Q And I don't know where our exhibit went.

25 MR. GROSE: It's got it attached.

1 You don't have it?

2 THE COURT REPORTER: No. I don't have it.

3 BY MR. GROSE:

4 Q While we're looking for the exhibit, I want to just
5 show you what's another copy of the document that's
6 entitled Defendant's Presentencing Memorandum.

7 A Yes, sir.

8 Q And did you provide me with a copy of that?

9 A Yes, I did.

10 Q All right. And it's, actually, handwritten on the
11 top. It says, Please copy and return. Is that --

12 A That's my handwriting.

13 Q All right. Other than that, this is a copy of the
14 document that Mr. Boggs prepared for your sentencing?

15 A Yes, it is.

16 MR. BOGGS: Mr. Grose.

17 MR. GROSE: Okay. Thank you.

18 MR. BOGGS: Sorry.

19 BY MR. GROSE:

20 Q And I'll put in your hand Defendant's -- or
21 Applicant's Exhibit No. 1, which is what we were just
22 talking about. Did -- when did you receive a copy of that
23 document?

24 A I believe this one I first saw in February of 2013.

25 Q All right. Around the time of your plea?

1 A Yes.

2 Q Okay. And does that document support what you were
3 being told about the possibility of home detention?

4 A Yes, it does.

5 Q Okay. And, of course, the transcript will reflect
6 what happened at the hearing.

7 But, during the hearing, did Mr. Boggs ask for house
8 arrest?

9 A Yes, he did.

10 Q Okay. And so is it fair to say that you went into
11 that plea in front of Judge Verdin with the belief that
12 she could sentence you to less than seven years?

13 A Yes.

14 Q Is it fair to say that you went into that plea with
15 the belief that she could give a split sentence?

16 A Yes, or a creative sentence is what Mr. Boggs kept
17 calling it that she -- that we could get -- that we would
18 seek a creative sentence. So I thought that was
19 definitely on the table, yeah.

20 Q And was it your belief when you went into that that
21 any time that you were given could be served on home
22 detention?

23 A Yes.

24 Q In fact, you were even looking into having a place in
25 Greenville County to serve home detention?

1 A Yes.

2 Q And, at the time of the plea, this whole concept of a
3 fine and your family's ability to pay the fine, was that,
4 also, in play in your mind?

5 A Yes, it was.

6 Q All right. And had you discussed that with anybody
7 in your family?

8 A I asked my brother. And my brother made arrangements
9 to be able to pay a substantial fine that day -- or both
10 days. Actually, he came down on December 1st and then
11 again in February.

12 Q So if Judge Verdin had imposed a sentence where you
13 could have gone home or have served on house arrest and a
14 six-figure fine, your family would have been able to pay
15 that that day?

16 A Yes, they would. Yeah. And they all had arranged
17 for that.

18 There was one -- if -- may I add --

19 Q Go ahead.

20 A The one thing I left out was back in December, I
21 think December 10th or December 11th, when I signed the
22 sentencing sheet, it was blank except for the charge with
23 the -- and there was a negotiated cap of 15. I knew that
24 was the only offer from the Solicitor.

25 But I, specifically, asked, Am I taking 15 years if I

1 plead to this?

2 Bozzie said, No. It's just to get you in front of
3 Judge Verdin.

4 Q All right. And when Mr. Boggs told you that you
5 could potentially pay a fine, get less than the minimum,
6 serve it on house arrest, did you rely on that advice?

7 A Indeed, I did, yes.

8 Q And did that influence you to plead guilty?

9 A Yes, sir.

10 Q Would you have pled guilty knowing that that was not
11 a possibility?

12 A No.

13 Q And does that mean you would have gone to trial?

14 A I would.

15 MR. GROSE: Please answer any questions that the
16 Attorney General's Office has.

17 THE WITNESS: Yes, sir.

18 CROSS-EXAMINATION

19 BY MS. RATIGAN:

20 Q How long -- when did you retain Mr. Boggs? How far
21 in advance of your plea was that? Do you remember?

22 A Nine -- a little over nine months in advance.

23 Q Okay. And were you at the detention center, or had
24 you bonded out?

25 A I had bonded out and then had been -- had come in. I

1 retained Mr. Boggs on the date of my initial court
2 appearance.

3 Q Okay. And did you have meetings with Mr. Boggs at
4 his office?

5 A I had one meeting at his office, yes.

6 Q And did you have meetings with him at the jail?

7 A Yes, frequently -- fairly frequently.

8 Q Okay. Did he review the State's evidence with you?

9 A Yes, he did. He -- I know he went to the SLED
10 warehouse and obtained a picture of the evidence.

11 Q Okay. Did y'all talk about the traffic stop?

12 A Not much, no.

13 Q Did y'all discuss the fact that you had some loaded
14 syringes in the car -- or in the truck?

15 A Yes. We did discuss that.

16 Q And that there was a bag of meth in the console,
17 y'all talked about that, too?

18 A Yes.

19 Q Did he tell you that all of this meant the State had
20 a strong case against you?

21 A Yes, he did.

22 Q And did y'all go over your prior criminal record?

23 A Not at length, but some.

24 Q Okay. But you knew this was going to be more than a
25 first offense, technically?

1 A Well, actually, it was -- I had hoped not. I was --
2 it's my only felony.

3 Q But you did have a prior drug conviction?

4 A Yes, I did.

5 Q Okay.

6 A Which it surprised me that Bozzie said it was
7 trafficking first. Because it wasn't trafficking first,
8 although he seemed to think it was.

9 Q Okay. And Mr. Boggs had told you that the range for
10 this trafficking first would be seven to 25 years?

11 A Yes.

12 Q Okay. And you knew when you went to court that day
13 that -- I believe you said it was a negotiated 15-year
14 cap?

15 A Yes.

16 Q But you could still get anything in between the seven
17 and the 25?

18 A Yes. I -- yes.

19 Q Okay. And Mr. Boggs told you he was going to ask for
20 the house arrest?

21 A Yes, he did. Yeah.

22 Q Did he ever promise you that you would receive the
23 house arrest, or just that he'd ask for it and argue for
24 it?

25 A He said -- I, certainly, had the impression that it

1 was doable.

2 Q "Impression that it was doable," what do you mean by
3 that?

4 A That I could get it.

5 Q That you could get it --

6 A Yeah.

7 Q -- or that you would get it?

8 A Not that I would.

9 Q Okay.

10 A But...

11 Q And your testimony today is that if you had known
12 that house arrest was not possible, you would not have
13 pled guilty?

14 A No, ma'am.

15 Q You would have gone to trial?

16 A Yes, I would.

17 Q Even though there was loaded syringes of meth and a
18 bag of meth in the console of your truck, you would have
19 gone --

20 A Yeah. I would have gone.

21 Q Even though you gave a statement admitting the meth
22 was yours?

23 A Yeah.

24 Q Okay.

25 A There's other things at trial that, you know, might

1 have been available to me if I had explored that.

2 Q So you're unhappy with Mr. Boggs's performance?

3 A Yes.

4 Q You're unhappy with the way that he handled your
5 case?

6 A Yes.

7 MS. RATIGAN: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MS. RATIGAN:

10 Q I'm handing you up some items. Can you identify
11 those, please --

12 A Oh, that's a thank you card, yeah.

13 Q Okay.

14 A Yes. It's a card I sent Bozzie from prison.

15 Q Okay. And when did you send that?

16 A This was after -- I sent it Easter 2012.

17 Q Was it 2012?

18 A 2013. I'm sorry.

19 Q 2013? Are you -- check the postmark.

20 A Oh, 2014. Yeah. I'm sorry.

21 Q Okay. So it was this year?

22 A It was this year, yeah.

23 Q Okay.

24 A That was in response, if I may, to a card I got from
25 Mr. Boggs.

1 Q So even though you were unhappy with Mr. Boggs, you
2 still sent him an Easter card?

3 A Yeah. I carry on a huge correspondence.

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

5 THE COURT: Mr. Grose, anything else?

6 MR. GROSE: No, sir.

7 THE COURT: All right. You may step down.

8 THE WITNESS: Do I leave --

9 THE COURT: Just leave it right there. The court
10 reporter will get it.

11 MR. GROSE: I call Robert Simpson.

12 THE CLERK: Mr. Simpson, step over here to the Bible.

13 Place your left hand on the Bible and raise your
14 right hand.

15 WHEREUPON,

16 ROBERT DONALD SIMPSON,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please state your full name for the record.

20 THE WITNESS: Robert Donald Simpson.

21 THE CLERK: Thank you.

22 You may be seated.

23 DIRECT EXAMINATION

24 BY MR. GROSE:

25 Q Are you related to Frank Simpson?

1 A Yes.

2 Q And how are you related?

3 A I'm his twin brother.

4 Q And y'all are fraternal twins?

5 A Yes.

6 Q All right. And Frank's already testified to this,
7 but your parents are in the courtroom today?

8 A Yes, they are.

9 Q Okay. And when Frank was awaiting to go to court on
10 these charges in Greenville, did you and he communicate?

11 A Yes.

12 Q And would you talk by phone?

13 A Frequently.

14 Q All right. And did he talk to you about what role a
15 fine -- being able to pay a fine might play in the outcome
16 of his case?

17 A Yes. He brought that up several times.

18 Q And what did he tell you?

19 A That -- he frequently asked me to make sure I had a
20 check that I could write for potentially six figures.

21 Q Okay. And did you attend Frank's guilty plea?

22 A I did.

23 Q In fact, you were here several times when it was
24 coming up, but didn't come up?

25 A Twice.

1 Q All right. And so the third time that you were here
2 was the day that it, actually, went?

3 A Yes.

4 Q And on the day that the -- that Frank's guilty plea,
5 actually, went, did you have -- were you prepared and did
6 you have the ability to pay a fine if that had been the
7 decision of Judge Verdin?

8 A Yes.

9 Q And you would have done that?

10 A Yes.

11 MR. GROSE: That's all the questions I have.

12 THE WITNESS: May I add something to the record?

13 MR. GROSE: Yes.

14 THE WITNESS: I'm not an engineer. I have a PhD in
15 chemistry.

16 BY MR. GROSE:

17 Q Okay. And I meant to ask you that. Where are you
18 employed?

19 A I'm a research fellow at Vijay [phonetic]
20 Pharmaceuticals.

21 MR. GROSE: Thank you.

22 MS. RATIGAN: I don't have any questions for
23 Mr. Simpson.

24 MR. GROSE: With that, we would rest, Your Honor.

25 THE COURT: All right.

1 MS. RATIGAN: The State has no witnesses to call,
2 Judge. So we'd rest.

3 THE COURT: My intent is to read the transcript and
4 everything submitted, and let y'all know my decision.

5 Anything else you want me to consider?

6 MR. GROSE: I would just put on the record that it
7 doesn't look like I filed the original of that sentencing
8 memorandum. I'll either do it on the way out or mail it
9 in.

10 THE COURT: Okay. And I have a copy of it --

11 MR. GROSE: Not the -- I mean, the -- not the
12 memorandum, but the memorandum of law that I submitted to
13 you.

14 THE COURT: I've got that --

15 MR. GROSE: And that summarizes our position.

16 THE COURT: Very well.

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

CERTIFICATE OF REPORTER

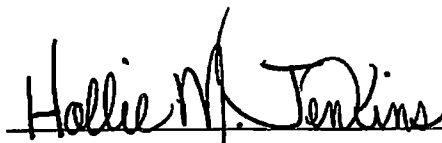
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 17th day of December, 2014.

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

August 28, 2015



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-0531

Frank Daniel Simpson,
S.C.D.C. No. 354338,

Applicant,

v.

State of South Carolina,

Respondent.

**AMENDED
ORDER OF DISMISSAL**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 19 AM 11:37

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 28, 2014. The Respondent made its return on March 26, 2014. An evidentiary hearing was held on December 17, 2014 at the Greenville County Courthouse. The Applicant was present and represented by E. Charles Grose, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified at the PCR hearing. Also testifying were Robert Simpson and the Applicant's plea counsel, Cameron G. Boggs, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

The Applicant's attorney, Charles Grose, sent correspondence to the Court regarding a factual finding in the order and that he intended to file motion pursuant to Rule 59(e) SCRCP to alter or amend the final order. The court without hearing amends its findings of facts.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2011 term of the Greenville County Grand Jury for trafficking methamphetamine (2011-GS-23-9272). He was represented by Cameron G. Boggs, Esquire.

On February 13, 2013, the Applicant pled guilty to trafficking methamphetamine (28-100 grams), first offense. The Honorable Letitia H. Verdin sentenced the Applicant to nine years imprisonment. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Plea counsel failed to prepare for Applicant's guilty plea.
 - b. "Plea counsel inaccurately advised Applicant about entering his guilty plea, the applicable penalties, and the authority of the sentencing judge."
 - c. "Plea counsel failed to present accurately available mitigation during the guilty plea and sentencing proceedings."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action,

"[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had numerous meetings with plea counsel. The Applicant stated he and plea counsel reviewed the State's evidence and his prior criminal record. The Applicant stated plea counsel told him the State had a strong case against him. The Applicant stated plea counsel asked if his family could pay any of his fines (the Applicant stated his brother could do so). The Applicant stated he knew the sentence to which he was pleading guilty carried a mandatory minimum seven-year sentence. The Applicant stated plea counsel said he would ask for a sentence of house arrest and GPS monitoring. The Applicant stated he was under the impression this was a possibility but not that he would receive such a sentence. The Applicant stated he would not have pled guilty if he had known he would not receive house arrest. The Applicant stated he was unhappy with plea counsel's performance but admitted he sent him an Easter card after the plea hearing.

Robert Simpson, the Applicant's twin brother, stated the Applicant had asked him

whether he would be able to pay a fine on his behalf. Simpson stated he was at the Applicant's plea hearing.

Plea counsel testified he was the Applicant's second attorney. Plea counsel testified he met with the Applicant more than any other client that he did not take to trial. Plea counsel testified the Applicant was extremely intelligent and a drug abuser, not a dealer. Plea counsel testified this case was never going to trial and that his role was to obtain the best deal possible and make a mitigation argument. Plea counsel testified he was able to negotiate a reduction of the second offense to a first offense. Plea counsel testified he prepared a sentencing memorandum for the plea judge (as well as another document listing mitigating factors) in which he requested a sentence of house arrest. Plea counsel testified both he and the Applicant were aware the Applicant's charge carried a mandatory minimum sentence of seven years but that he had seen sentences suspended before and that he would have to make this request if he had any hope for such a suspension. Plea counsel testified he never told the Applicant he would receive house arrest and that the Applicant would not have expected to receive a sentence of less than seven years. Plea counsel testified he did not tell the Applicant to rely upon the possibility of an illegal sentence and that the Applicant never expected anything other than a chance. Plea counsel testified the Applicant's family had the financial ability to pay any fines.

Initially, this Court notes the Applicant acknowledged to the plea judge that he was aware the sentence range for this offense was 7-30 years. (Plea transcript, p.7). The Applicant did not dispute the facts recited by the assistant solicitor. (Plea transcript, pp.18-19). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced. (Plea transcript, pp.8-11). Specifically, the Applicant stated he was not made any promises in exchange for his guilty plea. (Plea transcript,

p.9). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he had been misadvised (or made any promises) about the sentence he would receive; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. Plea counsel testified he had more contact with the Applicant than with any other guilty plea client. Plea counsel testified the Applicant was extremely intelligent and aware of the sentence he was facing. Plea counsel testified he explained to the Applicant that he would request the plea judge suspend his sentence to house arrest and that the Applicant understood this was merely a request. Plea counsel testified the Applicant knew not to expect to receive a sentence of less than seven years. This Court finds plea counsel's testimony is credible. This Court finds plea counsel explained the sentencing scheme to the Applicant, as well as his strategy to ask the plea judge to depart from that scheme (as happens in federal court) in order to receive a sentence of house arrest. This Court finds plea counsel articulated a valid reason that he asked for a departure from the mandatory minimum sentence in this case. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court finds the Applicant was aware of this strategy – as well as the fact that he must assume he would still receive a sentence of at least seven years. This Court finds plea counsel was a zealous advocate for his client and presented a compelling mitigation

argument to the plea judge. (Plea transcript, p.20-27). While the Applicant may have hoped for a sentence of house arrest, plea counsel did not promise that he would receive such. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citation omitted) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

This Court finds the Applicant's testimony that he would have gone to trial if he had realized he would not receive house arrest is not credible. The Applicant was aware of the sentence range (including the mandatory minimum sentence of seven years) for his offense. The Applicant also admitted that, while house arrest was presented as a possibility, it was never promised that he would receive this sentence. The Applicant failed to present any credible evidence or testimony that he would have chosen to proceed to a jury trial. See Hill v. Lockhart, 474 U.S. at 58-59, 106 S. Ct. at 370.

This Court also finds the Applicant cannot prove he was prejudiced as a result of plea counsel's representation. Plea counsel's strategy to request a departure from the mandatory minimum sentence (in favor of house arrest) cannot be viewed as having prejudiced the Applicant because the State had overwhelming evidence¹ of the Applicant's guilt. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

¹ Plea transcript, pp.18-19.

that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

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

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

7 SEP 7/8

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 6th day of March, 2015.



Eugene C. Griffith, Jr.
Presiding Judge
Thirteenth Judicial Circuit

Newberry, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Frank Daniel Simpson, SCDC #354338

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Rule 59(e), SCRPC Motion

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 APR 14 PM 3 18

To: The Honorable Eugene C. Griffith, Jr. Presiding Judge, Thirteenth Judicial Circuit

Pursuant to Rule 59(e), SCRPC, the applicant, Frank Daniel Simpson, moves the Court to reconsider its amended order of dismissal filed March 19, 2015,¹ alter and amended the judgment, and grant post-conviction relief.

I. Introduction.

Mr. Simpson plead guilty to trafficking methamphetamine, 28-100 grams, second offense because his lawyer advised him he could receive a fine, house arrest, and a suspended sentence. Plea counsel advocated for this result in a Sentencing Memorandum and during the guilty plea presentation. Plea counsel's advice and arguments are contrary to our state's law. This Court, accordingly, should grant Mr. Simpson's application for post-conviction relief, vacate Mr. Simpson's conviction and sentence, and order a new trial. The amended order of dismissal, however, not only denies relief but also endorses criminal defense lawyers advocating for judicial nullification of statutory sentencing schemes, despite the fact that circuit court judges are ethically bound to follow the law.

¹ Counsel for Mr. Simpson received written notice of entry of the order after the Clerk of Court mailed a copy.

II. Procedural History.

As a result of a traffic stop on March 24, 2011, the State charged Mr. Simpson with trafficking methamphetamine, 28-100 grams, second offense. On February 13, 2013, the State called Mr. Simpson's case before the Honorable Letitia H. Verdin for a guilty plea.² Joyce L. Monts represented the State. Cameron G. "Bozzie" Boggs represented Mr. Simpson. Judge Verdin sentenced Ms. Simpson to nine (9) years imprisonment.

On January 28, 2014, Mr. Simpson filed this application for post-conviction relief.

By written order dated March 18, 2014, the Honorable Edward W. Miller reduced Mr. Simpson's sentence "from a term of nine (9) years to seven (7) years" pursuant to S.C. Code Ann. §17-25-65.

This Court convened a PCR hearing on December 17, 2014. By email dated January 15, 2015, the Court informed counsel:

The Post-Conviction Relief application regarding the above styled case is respectfully denied. Please prepare an order denying the applicants request for relief and copy the opposing counsel for review.

A copy of this email is attached. The Court did not provide any rationale for its decision.

By email dated February 9, 2015, the Attorney General's Office submitted a proposed order. Copies of this email and the proposed order are attached. On February 10, 2015, the Court signed the Attorney General's proposed order. This order was filed on March 16, 2015. Counsel received notice that this order had been signed after it was mailed by the Clerk of Court.

Prior to receiving notice of the written order signed on February 10, 2015 and filed on March 16, 2015, by email dated February 12, 2015, counsel for Mr. Simpson objected to the proposed order:

² At the same time, the State called four other unrelated cases for guilty pleas.

I have had a chance to review the proposed order, which appears to address the issues raised at the PCR hearing. Because we plan to appeal, I will have to make a Rule 59(e) motion.

I also want to make sure this order really reflects Your Honor's view of the facts. Specifically, I call your attention to this portion of page five:

This Court finds plea counsel explained the sentencing scheme to the Applicant, as well as his strategy to ask the plea judge to depart from that scheme (as happens in federal court) in order to receive a sentence of house arrest. Plea counsel testified he had seen this particular judge depart from mandatory sentences in the past and that he prepared a sentencing memorandum to help persuade the plea judge to do so in this case. Plea counsel testified that you cannot receive such a sentence unless you request it. The Court finds plea counsel articulated a valid reason that he asked for a departure for the mandatory minimum sentence in this case.

This portion is essentially a finding of fact that Judge Verdin violated in the past (and might do so again in the future) Rule 501, Canon 3(B)(2) of the Code of Judicial Conduct, which provides, "A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism."

I am concerned this finding of fact might have consequences for Judge Verdin. I want to be on record as objecting to this finding because I don't think there is any credible evidence to support a belief that she would ignore enactments of the General Assembly.

On March 5, 2015, the Court, through its administrative assistant, made the following request of the Attorney General's Office:

Judge Griffith is requesting an Amended order for the above styled case. Please remove the following language, located on page 5, from the proposed order:

Plea counsel testified he had seen this particular judge depart from mandatory sentences in the past and that he prepared a sentencing memorandum to

help persuade the plea judge to do so in this case. Plea counsel testified that you cannot receive such a sentence unless you request it.

If you should have any questions please contact me.

By email dated March 15, 2015, the Attorney General's Office submitted a second proposed order. Copies of the Court's email of March 15, 2015, the Attorney General's response of March 15, 2015, and the proposed order are attached.

The written order filed on March 19, 2015 is identical to the Attorney General's proposed order, except that the Court added the final paragraph on page one of the order.

III. Statement of Facts.

This section will summarize the facts contained in the guilty plea record and the evidence presented during the evidentiary hearing.

A. Guilty Plea Record.

The following occurred during the guilty plea colloquy:

The Court: And Mr. Simpson, you are here today to plead to Trafficking in Methamphetamine less than 100 grams, but greater than 28 grams second offense. That carries a minimum sentence of seven years up to 30 years and it's a violent offense and a serious offense. Is that your understanding?

Mr. Simpson: Yes, ma'am.

The Court: Okay. And a violent offense means that any active jail sentence you receive, you'll serve a greater percentage than it [sic] if were non-violent. You understand that?

Mr. Simpson: Yes, ma'am.

The Court: And serious means that if you were to get two other serious offenses, on the third, the State could seek life without the possibility of parole against you. You understand that?

Mr. Simpson: I do.

Guilty Plea Transcript (hereinafter "Tr.") 7, line 9 – 8, line 2. Judge Verdin never advised Mr. Simpson that state law prohibited her from suspending the minimum sentence.

Ms. Monts summarized the factual background, provided Mr. Simpson's prior record, and recommended "a cap of 15" years. Tr. 18, lines 1 – 19, 23.

Mr. Boggs provided Judge Verdin the Defendant's Sentencing Memorandum and another document "entitled Mitigating Factors and Extenuating Circumstances." Tr. 20, lines 9-18. During his presentation to the Court, Mr. Boggs argued:

Judge, I know there's a statutory minimum, but just as a point of reference, as you know, there's an annotated statutory provision that said any sentence can be suspended by a judge even though this says no suspended sentence. I'm not – I'm not trying to insult your intelligence in any way, Judge. He can do house arrest, Judge. He can make it. He would want it. Obviously, who wouldn't.

Tr. 26, lines 11-18. Judge Verdin neither advised Mr. Simpson that house arrest was not an available sentencing option nor corrected plea counsel's assertion that the minimum sentence could be suspended.

Mr. Simpson's mother, Ida Simpson who is "in her 80s" addressed Judge Verdin. Tr. 22, lines 14-23; 27, line 14 – 29, line 22. Mr. Simpson's fraternal twin, Robert Simpson, addressed the plea judge and requested:

Right now, my wife and I have a small daughter. I can't help my parents as they grow older. I really need Frank to help out. If this happened 10 years ago, I would no be here today. I would let him do the time and let him live his own debt. But right now, he's – I really need help.

Tr. 30, lines 17-23. Mr. Simpson addressed Judge Verdin. Tr. 31, line 4 – 33, line 9.

Judge Verdin sentenced Mr. Simpson to nine (9) years imprisonment and returned the Sentencing Memorandum to Mr. Boggs. Tr. 34, lines 13-23.

B. Evidence Presented during the Evidentiary Hearing.

Section II of the Sentencing Memorandum, a copy of which was attached to Mr. Simpson's Memorandum in Support of his Application for Post-conviction Relief, at p. 2, is captioned, "A Federal-esque 'Variance' is appropriate in this case." The memorandum argues, "In the federal system, a variance, or reduction, from a statutory sentence is available to the defendants based on various factors set forth in 18 U.S.C. §3553(a)." After reviewing a number of justifications for treating Mr. Simpson with mercy, the Sentencing Memorandum, at p. 5, concludes:

Even when mandatory sentencing levels exist, this Court, like the federal courts across the country and in this very state, should be able to treat those before them as individuals. . . . If federal laws and cases dictate that a Court should impose a sentence that is "sufficient, but not greater than necessary," then all sentencing courts should have greater latitude to impose a sentence that fits not only the crime, but the person before the court. Therefore, Frank [Simpson] respectfully submits that a sentence of house arrest, would be a sentence that is "sufficient, but not greater than necessary."

During the PCR hearing, plea counsel identified this document as the Sentencing Memorandum he submitted to Judge Verdin.

Mr. Simpson testified he expected to receive a fine, a suspended sentence, and that any active sentence could be served through home incarceration. He also testify that he would not have plead guilty but for his plea counsel's erroneous legal advice.

Robert Simpson corroborated this expectation. He testified he was present in the courtroom and prepared to pay a fine in excess of \$100,000.00 the same day as his brother's guilty plea.

IV. Argument.

For the following reasons, the Court should reconsider the order filed on March 19, 2015, alter and amend the judgment, and grant post-conviction relief.

A. The findings of fact and conclusions of law are those of an advocate and not the Court.

As a threshold matter, the procedure followed by the Court denied Mr. Simpson an opportunity to have his post-conviction relief claims adjudicated by a judicial officer. "S.C. Code Ann. §17-27-80 (1976), requires the PCR court to 'make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.'" *McCray v. State*, 305 S.C. 329, 330, 408 S.E.2d 241, 241 (1991). *See also Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992). This Court did not do that, but rather delegated that responsibility to the Attorney General's Office. Because the Court's email of January 15, 2015 and subsequent email of March 2, 2015, do not contain any findings of fact or conclusions of law, Mr. Simpson does not know the Court's reasons for denying his post-conviction relief application. The Court's emails, therefore, are "insufficient for appellate review." *McCray*, 305 S.C. at 330, 408 S.E.2d at 241. Although the Attorney General addressed the merits of each issue presented during the hearing, the reasoning in the order is entirely that of an advocate and not an independent judicial officer, which violates the separation of powers. S.C. Const. Art. I, §8. Addressing section 17-27-80 in the context of a capital post-conviction relief case, our Supreme Court "strongly encourage[d] PCR judges to draft their own findings of fact and conclusions of law." *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004).

The right to have the Court make its own findings of fact and conclusions of law takes on added significance in this case as the Court's order of dismissal endorses counsel requesting and sentencing judges nullifying law enacted by the General Assembly. As seen, the Attorney

General's first proposed order, which was signed and filed, included a finding of fact that the sentencing judge in this case might be inclined to violate that oath. Although the amended order removes this particular finding of fact, it continues to endorse criminal defense lawyers asking circuit court judges to violate their oaths and nullify statutory sentencing schemes. Justifying plea counsel's performance in this manner seems more like the rationale of an advocate trying to "save" the conviction that a judicial officer "safeguard[ing] the rights of litigants." *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012)

The Court, therefore, should withdraw this order and make its own findings of fact and conclusions of law.

B. Contrary to the original order's findings of fact, there is no evidence that the plea judge would intentionally violate enactments of the South Carolina General Assembly.

Page 5 of the written order filed on March 16, 2015 states:

Plea counsel testified he had seen this this particular judge depart from mandatory sentences in the past and that he prepared a sentencing memorandum to help persuade the plea judge to do so in this case. Plea counsel testified that you cannot receive such a sentence unless you request it.

Initially, counsel for Mr. Simpson craves reference to the PCR hearing testimony to determine whether plea counsel actually testified that Judge Verdin had ignored the law in other cases. Counsel for Mr. Simpson recalls plea counsel saying he had seen *other unnamed judges* had departed from the law and thought that that Judge Verdin was the most likely judge—of the judges appearing on the Greenwood calendar at the time—to intentionally ignore the law. Regardless of whether plea counsel made this general statement, there was no testimony in the record pointing to any specific incident where Judge Verdin intentionally ignored the law and

imposed an illegal sentence. Counsel, therefore, presented these concerns to the Court, and the Court removed this language from the amended order of dismissal.

C. Counsel's strategy to ask the sentencing court to violate the law cannot be considered reasonable.

In his application for post-conviction relief, Mr. Simpson contends he "was denied the right to effective assistance of counsel during his guilty plea, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution" because "[p]lea counsel failed to prepare for Applicant's guilty plea" by "inaccurately advis[ing him] about entering his guilty plea, the applicable penalties, and the authority of the sentencing judge." PCR Application ¶¶ 10 and 11.

Page 5 of the written, amended order of dismissal states:

This Court finds plea counsel explained the sentencing scheme to the Applicant, as well as his strategy to ask the plea judge to depart from that scheme (as happens in federal court) in order to receive a sentence of house arrest. The Court finds plea counsel articulated a valid reason that he asked for a departure for the mandatory minimum sentence in this case.

The order then cites to *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1995) in support of this finding. In *Roseboro*, our Supreme Court actually found trial counsel ineffective for not requesting an alibi instruction despite trial counsel testifying "[h]e made a tactical decision to focus the jury's attention on the State's failure to meet its burden of proof rather than place more emphasis on the alibi testimony by requesting an alibi charge." *Id.* 317 S.C. at 294, 454 S.E.2d at 313. Our Supreme Court held "counsel's professed strategy in this case invalid under an objective standard of reasonableness." *Id.* See also *Freiburger v. State*, Case No. 2010-177147, 2015 WL 543119, at 2 (S.C. Ct. App. Feb. 11, 2015) ("If the State contends the alleged

deficiency resulted from a strategic decision made at trial, counsel "must articulate a valid reason for employing a certain strategy.").

Here, plea counsel's advice to Mr. Simpson and strategy cannot be valid under an objective standard of reasonableness because the advice and strategy are contrary to law. Trafficking methamphetamine, 28-100 grams, second offense,³ carries "a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars." S.C. Code Ann. §44-53-375(C)(2)(b). Because of this specific prohibition, the plea court's general power to suspend sentences, pursuant to S.C. Code Ann. §24-21-410, does not apply. *Compare State v. Tisdale*, 321 S.C. 153, 467 S.E.2d 270 (Ct. App. 1996) (by using language "the service of the minimum sentence is mandatory," legislature intended for someone convicted third-offense DUI to serve actual imprisonment of at least 60 days) *with State v. Thomas*, 372 S.C. 466, 642 S.E.2d 724 (2007) (held that statute prohibiting distribution of controlled substance within proximity of school contained no provision prohibiting the suspension of a sentence imposed pursuant to the statute, and thus, trial judge had the general authority to suspend the minimum sentence). Plea counsel, therefore, was ineffective for advising Mr. Simpson to seek a fine and suspended sentence, which is not available under state law for this offense.

Additionally, the sentencing court was without authority to impose house arrest. Our General Assembly has enacted a "Home Detention Act." S.C. Code Ann. §24-13-1510, *et. seq.* The "Home Detention Act," however, does not apply to "charges of violating, the illicit narcotic drugs and controlled substances laws of this State which are classified as Class A, B, or C

³ The order, at p. 4, states, "Plea counsel testified that he was able to negotiate a reduction of the second offense to a first offense." This statement is simply not accurate. Ms. Simpson plead guilty to a second offense.

felonies.” S.C. Code Ann. §24-13-1590. Trafficking methamphetamine, 28-100 grams, second offense is a Class A felony. S.C. Code Ann. §16-1-90(A). Plea counsel, therefore, was ineffective for advising Mr. Simpson to seek house arrest, when the “Home Detention Act” expressly excludes that sentence in the situation.

For a plea to be voluntary, intelligent, and knowing, “a 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) (emphasis added). Here, trial counsel did not advise Mr. Simpson that the minimum sentence is *mandatory*. The plea judge did not correct trial counsel’s erroneous advice.

A strategy of advocating for a judge to nullify valid statutes enacted by the General Assembly can *never* be reasonable. In addition to violating the law, this strategy violates Rule 501, Canon 3(B)(2) of the Code of Judicial Conduct, which provides, “A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.” By amending the order of dismissal, the Court obviously agreed with counsel for Mr. Simpson that there is no credible evidence to support a belief that Judge Verdin would ignore enactments of the General Assembly. The absence of any credible evidence that any circuit court judge would intentionally ignore the legislatively enacted sentencing requirements makes the objectively unreasonable strategy appear even more unreasonable.

The Court, therefore, should reconsider the order, alter and amended the judgment, and grant post-conviction relief.

D. Federal law relied on by plea counsel and adopted by the amended order of dismissal is not applicable in South Carolina state court proceedings.

Plea counsel, furthermore, was ineffective for advising Mr. Simpson to seek "a federal-esque variance," when no such variance is available under our state's law. The Sentencing Memorandum incorrectly relies on federal authority. The memorandum, at p. 3, cites 18 U.S.C. §3553(a), which lists facts for a federal court judge to consider prior to imposing sentence. *Koon v. United States*, 518 U.S. 81 (1996), at p. 5 of the memorandum, reviewed a downward departure under the Federal Sentencing Guidelines and *not* a state court judge's authority to ignore statutory, mandatory minimum sentences.

This Court's order errs in two aspects. First, the authority cited in the memorandum does not authorize even the federal court to ignore mandatory minimum sentences. The memorandum, at p. 3, cites 18 U.S.C. §3553(a), which lists facts for a federal court judge to consider prior to imposing sentence. *Koon v. United States*, 518 U.S. 81 (1996), at p. 5 of the memorandum, reviewed a downward departure under the Federal Sentencing Guidelines and *not* a state court judge's authority to ignore statutory, mandatory minimum sentences.

Second, the Court, without explanation, applies federal law to state court proceedings to justify plea judges nullifying enactments of the General Assembly. In our state, it is well settled, "A trial judge is allowed broad discretion in sentencing within statutory limits." *Brooks v. State*, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997).

The Court, therefore, should reconsider the order, alter and amended the judgment, and grant post-conviction relief.

E. By limiting review to the guilty plea transcript, the order applies an incorrect standard of review.

The order, at p. 6, states, "This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he had been misadvised (or made any promises) about the sentence he would receive; therefore the transcript refuted this allegation." Including this statement in the order is curious for three reasons.

First, it is contrary to the standard of review of guilty pleas. "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 PCR hearing." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624-25. Consideration of the PCR record supports granting relief. Mr. Simpson's uncontradicted PCR testimony was that he would not have plead guilty but for the incorrect advise from counsel. Mr. Simpson's brother was present in the courtroom prepared to pay a fine in excess of \$100,000.00. Trial counsel acknowledged his strategy was to convince the plea judge to impose an illegal sentence. The sentencing memorandum, which was reviewed by the plea judge but not placed in the record during the guilty plea, verifies this strategy.

Second, this finding is not supported by the record. Plea counsel asked Judge Verdin to suspend the sentence and impose house arrest. The plea judge never clarified that the minimum sentence is mandatory and cannot be suspended. Nor did she inform Mr. Simpson that hosue arrest is not available for this offense. The amended order of dismissal does not address these points at all.

Third, this portion of the order is inconsistent with other portions of the order. The order, at p. 5, actually finds that plea counsel adopted a strategy to seek an illegal sentence and discussed this strategy with Mr. Simpson. The order, at p. 6, also finds that Mr. Simpson "hoped

fore a sentence of house arrest.” This “wishful thinking” was created by plea counsel’s deficient advice. There is no justification for plea counsel creating such and unrealistic expectation.

The Court, therefore, should reconsider the order, alter and amended the judgment, and grant post-conviction relief.

F. By considering the weight of the evidence, the order applies the wrong standard for prejudice when evaluating counsel’s ineffectiveness in guilty pleas.

The order, at p. 6, states, “Plea counsel’s strategy to request a departure from the mandatory minimum sentence (in favor of house arrest) cannot be viewed as having prejudiced the Applicant because the State had overwhelming evidence of Applicant’s guilt.” The order then cites *Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) for the proposition that “concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt.” *Geter*, however, was a trial case, not a guilty plea case.

“In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered.” *Taylor v. State*, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). As discussed above, for a plea to be voluntary, intelligent, and knowing, “a 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*, 337 S.C. at 599, 524 S.E.2d at 624 (emphasis added). Here, trial counsel did not advise Mr. Simpson that the minimum sentence is *mandatory*. The plea judge did not correct trial counsel’s erroneous advice.

Mr. Simpson’s memorandum in support of granting post conviction relief sets forth the correct standard:

In *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), the Supreme Court applied the two part standard adopted in *Strickland* to guilty

plea challenges bottomed on ineffective assistance of counsel. The Court reiterated that the defendant must show first that counsel's representation fell below the standard of reasonableness; and, that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. 106 S.Ct. at 370. Specifically, the Court stated that the defendant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 106 S.Ct. at 370.

Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). See also *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000) ("A defendant who pleads guilty on advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases and there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty and would have insisted on going to trial.").

The Court, therefore, should reconsider the order, alter and amended the judgment, and grant post-conviction relief.

G. The Court erred by considering trial counsel's testimony that his role was as plea counsel and not trial counsel.

The amended order of dismissal, at p. 4, states, "Plea counsel testified that this case was never going to trial and that his role was to obtain the best deal possible and make a mitigation argument." Respectfully, plea counsel and the amended order confuse the roles of attorney and client. "A lawyer shall abide by a client's decision whether to make or accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify." Rule 407, SCACR, Rule 1.2, RPC. These rights are fundamental and essential to due process. *State v. Lawton*, 382 S.C. 122, 128, 675 S.E.2d 454, 457 (Ct. App.

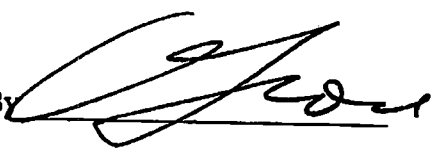
2009); 128 *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 243, 616 S.E.2d 431, 436 (Ct.App.2005).

The Court, therefore, should reconsider the order, alter and amended the judgment, and grant post-conviction relief.

V. Conclusion.

The Court, therefore, should reconsider the order, alter and amended the judgment, and grant post-conviction relief. Failure to grant relief would set a dangerous precedent by recognizing, as a reasonable strategy, criminal defense lawyers seeking judicial nullification of statutory sentencing schemes. Surely, our state's criminal justice system is more principled that that.

Respectfully submitted,

By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 20646
(864) 538-4466

Counsel for Applicant

March 30, 2015
Greenwood, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 Frank Daniel Simpson, SCDC #354338

v.

State of South Carolina

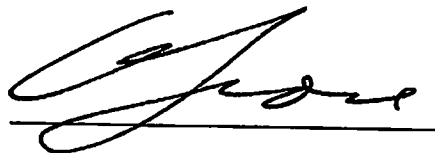
IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Rule 59(e), SCRCP Motion

I certify that I have served a copy of this pleading on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on date reflected below, addressed as follows:

Karen C. Ratigan, Esquire
 Office of the Attorney General
 P.O. Box 11549
 Columbia, SC 29211

By



E. Charles Grose, Jr.
 The Grose Law Firm, LLC
 404 Main Street
 Greenwood, SC 29646
 (864) 538-4466

March 30, 2015
 Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-0531
COUNTY OF GREENVILLE	)	
	)	
Frank Daniel Simpson,	)	
S.C.D.C. No. 354338,	)	
	)	
Applicant,	)	
	)	RETURN TO MOTION TO ALTER OR
v.	)	AMEND THE ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, by and through undersigned counsel, making its Return to Applicant's Motion to Alter or Amend, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief (PCR) application filed January 28, 2014.
2. An evidentiary hearing was held on December 17, 2014 at the Greenville County Courthouse.
3. Applicant was present at the hearing and represented by E. Charles Grose, Jr., Esquire. Applicant testified in his own behalf. Also testifying were Robert Simpson and the Applicant's plea counsel, Cameron G. Boggs, Esquire.
4. After a full review of the evidence presented at the evidentiary hearing, the post-conviction relief court issued an order dated February 10, 2015 and filed March 16, 2015 denying the PCR application.
5. This Court requested Respondent submit an amended order of dismissal with one specific change – the removal of two sentences from the original order. Respondent did so and this Court issued an amended order dated March 6, 2015 and filed March 19, 2015.

6. Applicant – through counsel – filed a Motion to Alter or Amend Judgment dated March 30, 2015 (which was received by Respondent on the same date).

7. Respondent submits Applicant's Motion to Alter or Amend Judgment should be denied. Applicant is not requesting either an alteration or amendment to the final order. Rather, Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e), SCRPC motion is to preserve issues raised to but not ruled upon by the trial court).

8. Respondent submits the post-conviction relief court fully reviewed and properly ruled upon all issues and that the Motion to Alter or Amend should be denied.

Respectfully submitted,

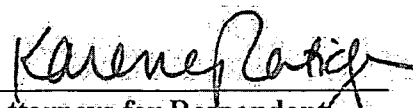
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

April 1, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2014-CP-23-0531

FRANK DANIEL SIMPSON, 354338)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

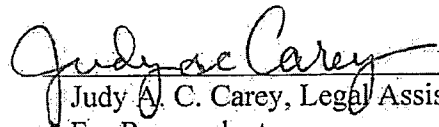
STATE OF SOUTH CAROLINA,)

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 to Motion to Alter or Amend the Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire
 Grose Law Firm
 404 Main Street
 Greenwood SC 29646

DATED this 1st day of April, 2015.


 Judy A. C. Carey, Legal Assistant
 For Respondent

In the Court of Common Pleas
Thirteenth Judicial Circuit
2014-CP-23-0531

Frank Daniel Simpson,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

May 7, 2015
Newberry, South Carolina

B E F O R E:

The Honorable Eugene C. Griffith, Jr., Judge

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

E. Charles Grose, Jr., Esquire
Attorney for Applicant

Joshua L. Thomas, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

Proceedings	4
Certificate Page	24

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits marked or admitted during this proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:13 a.m.)

THE COURT: All right. We're on the record with *Frank Daniel Simpson v the State*. PCR Case No. is 14-CP-23-531. Originally, the case was heard ---

MR. GROSE: It was in December ---

THE COURT: --- back ---

MR. GROSE: --- I think.

THE COURT: --- in January or ---

MR. GROSE: --- December ---

THE COURT: --- December?

MR. GROSE: --- 17th.

THE COURT: --- December 17th, 2014, in Greenville County. Order was issued after that in the spring.

Subsequent to that order, counsel for Mr. Simpson's filed a Rule 59(e) motion.

MR. GROSE: Uh-huh.

THE COURT: Mr. Grose, your ---

MR. GROSE: Right.

THE COURT: --- your motion and record's open and you can sit if you like.

MR. GROSE: Oh, I was going to ask you that, since we're in a ---

THE COURT: Not ---

MR. GROSE: --- yeah, sort of an informal setting.

1 Thank you ---

2 THE COURT: Not ---

3 MR. GROSE: --- Your Honor.

4 When -- when we went to the hearing, I was kind of
5 expecting to prove that Mr. Simpson's plea counsel was
6 misinformed about the law and -- and had made an error.
7 And what we actually, if -- if you accept his testimony, he
8 contended that he knew that there was a mandatory minimum
9 that couldn't be suspended, but yet he advised Mr. Simpson
10 that it was possible to have it suspended. And we know
11 this from the guilty-plea transcript because he asked for
12 house arrest and probationary -- suspended sentence.

13 But we know it from the sentencing memorandum that did
14 not make it into the trial court record but did make it
15 into the PCR record where not only did he ask for the
16 suspended sentence, you know, he asked for essentially to
17 apply some federal law, which I contend wasn't even
18 correctly stated in the memorandum. We know from his trial
19 counsel -- plea counsel's testimony that he was trying to
20 get Judge Verdin to suspend his sentence. We know from Mr.
21 Simpson's testimony that -- that he was told that he could
22 get a suspended sentence that could be served on house
23 arrest.

24 We also know from Mr. Simpson's brother who testified
25 that it was anticipated that a fine would be part of the

1 suspended sentence and house arrest and that not only -- it
2 was undisputed that they -- you know, family does have the
3 ability to pay and -- and that Mr. Simpson's brother was
4 there, prepared to pay a fine if -- if this came to -- to
5 -- to pass.

6 And there's a finding in your order that Mr. Simpson
7 had a hope that there would be a -- a suspended sentence.

8 And essentially, a lot of these facts are -- are not
9 disputed. I mean, when you go through the factual finding
10 of the order, it's clear that the only evidence at the
11 hearing was Mr. Simpson was under that impression. The --
12 you know, we put the memorandum into evidence.

13 And, you know, the -- the -- the plea counsel had
14 testified that -- and then, this is in the order, your
15 order, Judge, that if a -- a sentence is going to be
16 suspended, that you would have to make the request for --
17 for any hope of that happening.

18 The problem in this case is -- is -- is that that
19 strategy looks over -- overlooks two statutes. It
20 overlooks the specific statute for trafficking, which says
21 that that sentence cannot be suspended. It overlooks the
22 specific statute involving house arrest, which excludes
23 drug cases like this from something that -- that -- that
24 can -- where the mandatory minimum can be suspended.

25 And it also overlooks Judge Verdin's canon of ethics,

1 where she has an obligation to follow the law. And I think
2 you might recall trial counsel had testified that a
3 general-sessions judge can do anything that he or she wants
4 to. And, well, we just know that that's not true, that the
5 -- the -- the circuit-court judges, while they have a lot
6 of discretion in certain areas, also have limits that are
7 placed on them by the General Assembly. And that was
8 clearly the case here.

9 And so -- so one concern I have is, you know, that --
10 that there -- there are minimum sentences that can be
11 suspended. If the specific statute is -- is silent -- for
12 instance, I know we've changed how we do the proximity
13 statute. We don't see that anymore because they required
14 -- in the 2010 amendments, they required some different
15 intent than what it used to be.

16 That requires, you know -- distribution in proximity
17 of a playground would require a 10-year sentence. But that
18 can be suspended because there's no prohibition in the
19 statute for suspending it. And the general statute that
20 gives the judge the discretion to suspend a sentence
21 controls.

22 We know that there are sentences like burglary first-
23 degree that can't be suspended. The 15 years can't be
24 suspended -- there's a case on point -- because the statute
25 that prohibits suspending the possible life sentence

1 controls.

2 We know that there are statutes like the CDVHAN and
3 the CDV third offense that actually require a day-for-day
4 serving of the year-minimum sentence. I was involved in
5 the litigation with the Department of Corrections that
6 ultimately determined that it was interpreted that way.
7 And again, it was because that specific statute controlled.

8 Now, what you have in the transcript here is -- is you
9 have Mr. Simpson's counsel suggesting to the judge that she
10 can suspend the sentence, either because of the general
11 statutory scheme that allows for suspended sentence or
12 because he purported believed that the federal government
13 could do that, whereas the law he cites just deals with
14 interpreting the sentencing guidelines but not when a
15 mandatory provision applies.

16 So part of me still contends that plea counsel was
17 just misinformed about the law because he clearly created
18 the belief in Mr. Simpson that the mandatory seven years
19 could be suspended. And that's not the case. He clearly
20 created the belief in Mr. Simpson that house arrest was a
21 possibility.

22 It's in the memorandum. He asked for that on the
23 record. That is contrary ---

24 THE COURT: Question on that.

25 MR. GROSE: Yes, sir.

1 THE COURT: Greenville County has a home-incarceration
2 program, which I believe is slightly different than a home-
3 detention-act house-arrest-type sentence. And I don't know
4 whether that played into or not. And it wasn't in the
5 record. I looked for it.

6 MR. GROSE: Well ---

7 THE COURT: And I wasn't sure because the home-
8 incarceration program in Greenville is a slightly different
9 version of serving time, as opposed to house arrest. It's
10 just supervised differently. I -- I don't know whether
11 that was an issue. But it -- I could not find it in the
12 record, and it was never called "HIP," which is how it's
13 done on sentencing sheets in Greenville when I've presided
14 there.

15 MR. GROSE: Well, they -- they -- the -- in order to
16 have a home-detention program where you can serve a
17 sentence, you have to follow the requirements of the
18 statute. And, you know, they may have their own way of
19 supervising it. But my impression has always been that the
20 program in Greenville is pursuant to the -- the -- the
21 legislative act and includes the limitations on -- on what
22 the eligibility for the home incarceration is.

23 THE COURT: And you ---

24 MR. GROSE: All right.

25 THE COURT: --- may be right. I ---

1 MR. GROSE: Yeah.

2 THE COURT: --- I don't know. And that wasn't in the
3 record so it ---

4 MR. GROSE: Yeah.

5 THE COURT: --- still not an issue, but it's something
6 I was looking for.

7 MR. GROSE: Well, and I -- I -- I just -- I -- I can't
8 find anything -- you know, it -- and I looked. I mean,
9 when we initially filed the application, I was focusing on
10 the fact that the statute does not allow for a trafficking
11 sentence to be suspended. Then, as we were progressing
12 along, you know, I was also looking at the statutory scheme
13 for serving a sentence on home incarceration. And it's --
14 it's very strict. It -- it does not apply for this.

15 I have found nothing that would authorize a judge, in
16 Greenville or anywhere else, to order a sentence like this
17 be served on home incarceration. And even so, assuming
18 arguendo that it could be, you -- you still couldn't
19 suspend the sentence and go below the seven years. I mean,
20 you couldn't do twenty suspended on seven. You -- you'd
21 have to give a number because the statute, you know,
22 prohibits doing that.

23 And so, you know, the -- the -- the advice -- you
24 know, we -- we feel that the advice that plea counsel gave
25 to Mr. Simpson was legally deficient for three reasons: It

1 -- it violated the penalty under the drug-trafficking
2 statute. It violated the Home Detention Act. And it
3 violated -- it would require the judge to violate her canon
4 of ethics and not follow the law.

5 And so with -- with that, we feel like, number one,
6 the order errs in saying that Mr. Simpson was not
7 misadvised because, you know, I contend that he was. And I
8 think the -- the law supports that. And then, the order
9 specifically finds -- (as read): "This Court finds plea
10 counsel articulated a valid reason that he asked for a
11 departure from the mandatory minimum sentence in this
12 case."

13 And if -- if my interpretation of the law is -- is
14 correct, then plea counsel was asking for an illegal
15 sentence. And our contention is -- is that, you know,
16 advising somebody to plead guilty and with the hopes a
17 judge who's obligated to follow the law is going to issue a
18 illegal sentence is -- is not reasonable.

19 And, you know, obviously, I've raised in the pleadings
20 the fact that this order was drafted by opposing counsel.
21 And I understand our practice in South Carolina allows
22 that.

23 This is going be potentially kind of a significant
24 issue on appeal. Because, you know, were the appellate
25 courts to find -- were they to affirm you in -- in a

1 unpublished opinion on this case, this -- this has the
2 potential of changing, you know, how we practice criminal
3 defense law. Sort of taking some of the, you know,
4 principles out of it, you know, we -- we would then -- it
5 -- it would kind of turn into a sort of a free-for-all, you
6 know, if mandatory minimums can be ignored and -- and --
7 and that sort of thing.

8 And so what -- what I would like to do is -- is I
9 would like for the record to be little bit more developed
10 so that the appellate court can review sort of the analysis
11 as to why this particular strategy, under the statutes in
12 play here, is a -- a reasonable strategy for a criminal
13 defense lawyer to adopt and -- and recommend and -- and
14 pursue in the sentencing hearing.

15 THE COURT: How do you propose that?

16 MR. GROSE: Huh?

17 THE COURT: How do you propose doing that?

18 MR. GROSE: Well, I would like for either you or the
19 attorney general's office to explain that, because I -- I
20 think it's just objectively unreasonable to -- to put a
21 client in a situation where they're expecting to get an
22 illegal sentence and no reasonable -- no reason to believe
23 that a judge either (a) has the authority to do it or would
24 do it.

25 THE COURT: All right. How do you get around Prong 2?

1 MR. GROSE: Well, I -- and I think ---

2 THE COURT: I mean ---

3 MR. GROSE: --- the -- I think the order errs in Prong
4 2 analysis. And -- and that's set forth in the memorandum.

5 The -- the -- the test on a guilty plea is -- is not
6 the sufficiency of the evidence that the state might have.
7 Because anytime somebody pleads guilty, you kind of get
8 past that because you have to make a factual finding and --
9 and it's considered to be beyond a reasonable doubt.

10 The test for a guilty plea is whether or not the
11 decision to plead guilty was rendered involuntary or not
12 and that but for the advice of counsel, would the client
13 have continued to proceed to trial. And you don't look at
14 the sufficiency of the evidence in that situation like you
15 might if it had been a -- if -- if it had been a jury
16 trial. So that's how I think that we -- we get around, you
17 know, Prong 2.

18 There -- there's a lot of case law, for example, in
19 the dealing with collateral consequences and particularly
20 parole eligibility that says, for example, that a criminal
21 defense lawyer is under no affirmative duty to advise a
22 client about parole eligibility. But once you undertake to
23 do that, you have to do it correctly. Because then, that's
24 something that they're relying on. And -- and were you to
25 advise a client that they were eligible for -- for parole

1 when they weren't, that would render the plea involuntary.

2 You have -- you know, now, while our Supreme Court
3 hasn't really focused on collateral consequences outside of
4 that scenario where you would misadvise somebody, you now
5 have *Padilla v. Kentucky*, which puts a duty on the lawyer
6 to correctly advise about possible immigration consequences
7 or that can render, you know, a plea involuntary.

8 Here, there's case law that says that when somebody is
9 pleading to a mandatory minimum, the judge has to determine
10 on the record that they are aware of the sentencing range
11 and the mandatory minimum. And this record admittedly does
12 contain evidence that the range was -- that there was ---

13 THE COURT: Seven to twenty-five or -- seven ---

14 MR. GROSE: --- seven to ---

15 THE COURT: --- to thirty?

16 MR. GROSE: I -- well, I think it was seven to thirty
17 because it was a second offense. But ---

18 THE COURT: And she references that in the -- in the
19 -- her question was you -- has a mandatory minimum of
20 seven.

21 MR. GROSE: Right. But she never determines on the
22 record that this is something that cannot -- that the seven
23 cannot be suspended. And we get back to that whole
24 situation where there's a whole host of -- of mandatory
25 minimum sentences that can be suspended. So there was

1 never a colloquy on the record about what Mr. Simpson
2 understood about whether the judge had the -- the
3 discretion to suspend the sentence or not.

4 And so when you look at the whole record, including
5 the PCR record, I -- I think it's undisputed that he was
6 led to believe that the seven could be suspended. I mean,
7 trial counsel testified to that. Mr. Simpson testified to
8 that. Mr. Simpson's brother testified that they had taken
9 steps -- the family had taken steps in case there was a
10 fine and a suspended sentence and -- and that sort of
11 thing.

12 And, you know, essentially, what we're wanting to do
13 is go back to the point before the plea was entered and put
14 him back at that point and let him proceed with, you know,
15 counsel who is -- is -- is not going pursue that strategy
16 and see where it goes.

17 Now, I don't want to be too presumptuous, okay? And I
18 -- I -- I get in trouble when I try to read judges' minds.
19 But I'm thinking about that case, that capital case out of
20 Anderson, where the Supreme Court said, you know, when
21 Judge Macaulay refused to allow that capital defendant to
22 testify because his testimony was going to be damaging,
23 that, you know, the judge was trying to look out for him.

24 And -- and Mr. McGuire, who I know you know was his
25 lawyer, he was trying to keep him off the stand. I -- I

1 feel confident that they were all trying to look out for
2 his best interests. And granted, that -- that was a
3 fundamental right. But the decision to plead guilty or go
4 to trial is also a fundamental right.

5 And I don't want to be presumptuous. But I think
6 you're probably having some concerns about, you know, when
7 -- if we go back to square one, what could happen to him
8 there. And he's aware of that. And, you know, one of the
9 -- you might recall that there was a -- a -- a number of
10 lawyers other than me that were at the hearing, including
11 Chip Price. And, you know, Chip is the one that's going be
12 representing Mr. Simpson if we get him back to square one
13 on this.

14 THE COURT: Did he have some involvement prior in that
15 case or was it ---

16 MR. GROSE: It ---

17 THE COURT: --- another case? Because there ---

18 MR. GROSE: No. He ---

19 THE COURT: --- was a similar ---

20 MR. GROSE: --- he -- he did -- he did have some
21 involvement in that. And -- and he -- he -- he had some
22 prior involvement. And what you might remember is -- is
23 that Mr. Simpson was kind of in a messed up state of mind
24 because of his drug addiction. And, you know, he made some
25 decisions about his lawyers.

1 And there has actually been a -- a downward departure
2 under the new -- the newer South Carolina statute that
3 allows for that to happen. And -- and Mr. Price was the
4 one who represented him on that.

5 So the -- these are the -- if -- if I'm reading you
6 right, you're concerned about what happens when he goes
7 back to square one. That's already been factored into ---

8 THE COURT: Okay.

9 MR. GROSE: --- you know, the -- this is -- this is
10 not the situation ---

11 THE COURT: It was a ---

12 MR. GROSE: --- where ---

13 THE COURT: --- good read, and thank you for that.

14 MR. GROSE: Right. Well -- well, this -- this -- this
15 -- this is -- this is not the situation where, you know,
16 the pro se inmate asked for something and gets a -- not to
17 be too down on the court appointed system, but gets a court
18 appointed lawyer that doesn't meet with him until the week
19 before the hearing and then they figure out, hey, it -- I
20 -- I might not want to ask for this. We -- we've already
21 been through all of that.

22 THE COURT: Okay. Mr. Thomas, you want to be heard?

23 MR. THOMAS: Just briefly, Your Honor. As far as the
24 -- I guess the -- the issues about whether the strategy was
25 reasonable or not, I -- from it looks -- from the review of

1 everything, it looks like Mr. -- Mr. Boggs' testimony at
2 the PCR was very clear that he told him that, you know,
3 seven is the mandatory minimum. That's what the statute
4 says. We'll ask her to come below it, but don't expect her
5 to come below it.

6 And I think even Mr. Simpson sort of acknowledged that
7 he understood that it was a distinct possibility that that
8 wasn't going to get suspended and he was going to have to
9 do at least the seven. So we would just submit that --
10 that the testimony and the record here is clear that, you
11 know, regardless of whether the -- I don't think we even
12 need to reach the -- the issue of whether that was a valid
13 trial strategy to ask her to go below the seven.

14 As Mr. Boggs said, it never hurts to ask, you know,
15 especially if you ask, knowing that it's -- it's not a
16 likely possibility, which we think is what the record
17 demonstrates here. And again, all that was cleared up at
18 the plea colloquy.

19 As far as the test for prejudice on the guilty plea,
20 it -- it -- Mr. Grose is right that it's a test of whether
21 he would have pled guilty but for the misadvice. In this
22 case, obviously, we submit there's no misadvice. He told
23 him what the sentence would be.

24 And again, there's some case law in our -- in South
25 Carolina. It's *State v.* -- or -- *Stalk v. State*. It's not

1 the one that's cited in your order. That's the Court of
2 Appeals opinion. But when the Supreme Court affirmed it,
3 they basically said that the prejudice analysis -- to prove
4 the prejudice on a guilty plea, you have to show something
5 that says that -- that's going to demonstrate that
6 counsel's advice would've been different; that he would've
7 basically told the defendant don't plead guilty/do plead
8 guilty, or it would've affected the defendant's decision to
9 accept the plea.

10 In this case the overwhelming evidence plays into the
11 fact that if he had gone to trial on a third, he would've
12 been facing more exposure. This got negotiated down. I
13 mean, this was obviously the best counsel could do, as far
14 as the negotiations go, to get it down to that -- that
15 second offense to the -- the mandatory minimum of the
16 seven.

17 And it doesn't look -- there -- there's no evidence in
18 the record that there was a better result that was going to
19 happen. And so we would just submit that the -- you know,
20 the -- the order is correct when it says that no evidence
21 -- no credible evidence is presented that he would've gone
22 to trial had he not been told that the -- the home
23 detention is a possibility. Again, it's wishful thinking
24 about a sentence doesn't amount to ineffectiveness.

25 And other than that, we just submit that the -- the

1 order has everything right.

2 THE COURT: Okay. Anything else?

3 MR. GROSE: Well, and -- and, you know, I -- I think
4 the -- the -- the obligation of the lawyer in this case was
5 to say that this cannot be suspended. Mr. Simpson should
6 not have gone into court with any hope that it could be
7 suspended. And I think there's abundant evidence that
8 that's what, you know, influenced his decision.

9 In Mr. Simpson's testimony at the hearing, when he was
10 asked about -- on cross-examination was asked about, "So
11 you wouldn't have pled guilty despite the evidence that you
12 had," he was, like, there's other things that you can do
13 when you go to trial; there's other motions you can file;
14 there's other things that you can do.

15 And it's -- the -- the -- the -- it -- it -- the --
16 the focus is on whether the decision to plead guilty was
17 rendered involuntary or not. And -- and it was in this
18 case.

19 THE COURT: All right. All right. I want to -- I
20 read this memorandum this morning. I want to read it
21 again.

22 MR. GROSE: Okay. And -- and Mr. Simpson is putting
23 -- he's -- he's put a note that it was always a second
24 offense. It was never negotiated from a third to a second.

25 THE COURT: Yeah. I thought it was true ---

1 MR. GROSE: That ---

2 THE COURT: --- second.

3 MR. GROSE: --- that -- that's how -- and when --
4 you're right. When we -- when you -- when you go and you
5 look at it on the Web site, what he charged with was a
6 second and what he pled to was a second. The order
7 actually makes a finding that it was negotiated to a first,
8 but that's not correct.

9 THE COURT: It was a traffic stop, wasn't it?

10 MR. GROSE: It was a traffic stop.

11 THE COURT: All right.

12 MR. GROSE: Yeah.

13 THE COURT: Yeah. I remember that.

14 MR. GROSE: Yeah.

15 THE COURT: And brief facts I remember were he had a
16 lot, but his testimony or something was that I kept a lot,
17 but it was all mine. I didn't -- I did not need to sell
18 any because I didn't want to run out because of my
19 addiction, something along those lines.

20 MR. GROSE: No, no. And then, that was -- and that
21 was, essentially, I think what was presented at the ---

22 THE COURT: That's ---

23 MR. GROSE: --- the guilty plea too.

24 THE COURT: That's what ---

25 MR. GROSE: Yes, sir.

1 THE COURT: --- I remember.

2 MR. GROSE: Yeah.

3 THE COURT: Because it wasn't ---

4 MR. GROSE: Yeah.

5 THE COURT: --- it wasn't a selling to assist him ---

6 MR. GROSE: Uh-huh.

7 THE COURT: --- to maintain his habit; his ---

8 MR. GROSE: Uh-huh.

9 THE COURT: --- his habit was to maintain inventory.

10 MR. GROSE: Right. Yes.

11 THE COURT: Okay. All right. Anything else from
12 either of y'all?

13 MR. GROSE: Well, and -- and -- and that -- you know,
14 and there's a -- a notable case out of Rock Hill where the
15 -- where Chris Wellborn was the lawyer and they had a -- a
16 fella that was charged -- I don't even know what it was --
17 but some type of opiate or something that this person used
18 for pain medication. And when the jury heard the evidence
19 that he maintained a large amount just for that and Judge
20 King, I believe, was the judge and gave the standard charge
21 on criminal intent -- nothing more, nothing less -- and the
22 jury acquitted. You know, that is something, I mean, that
23 is in the discretion of the jury.

24 THE COURT: Uh-huh.

25 MR. GROSE: I mean, it -- and again, that may be, you

1 know, jury nullification. But that's something that he's
2 allowed to make a decision if I want to tell the jury my
3 side of the story.

4 THE COURT: Uh-huh. Okay. All right. I will wade
5 through it and let y'all know.

6 MR. GROSE: All right. Thank you, Judge.

7 THE COURT: Good deal.

8 MR. THOMAS: Thank you, Judge.

9 THE COURT: The record is closed. Thank you.

10 (Whereupon, the proceeding was concluded at 10:40 a.m.)

11 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE
7TH DAY OF MAY, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 2, 2015

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

FOR THE THIRTEENTH JUDICIAL CIRCUIT

Frank Daniel Simpson, SCDC #354338)

Case Number: 2014-CP-23-00531

v.)

Order Granting Applicant's Rule 59(e),
SCRCP Motion and Post-Conviction ReliefState of South Carolina)
_____))

This matter is before the Court on the applicant, Frank Daniel Simpson's, Rule 59(e), SCRCP motion to alter or amend the amended order dismissing his application for post-conviction relief. After carefully considering the guilty plea transcript, the evidence presented at the evidentiary hearing, the Rule 59(e) motion, the State's response to the Rule 59(e) motion, and arguments presented at the hearing on the motion, the Court has reconsidered the amended order of dismissal, withdraws the amended order of dismissal, grants the Rule 59(e) motion, and grants Mr. Simpson's application for post-conviction relief.

Procedural History

As a result of a traffic stop on March 24, 2011, the State charged Mr. Simpson with trafficking methamphetamine, 28-100 grams, second offense. On February 13, 2013, the State called Mr. Simpson's case before the Honorable Letitia H. Verdin for a guilty plea. Joyce L. Monts represented the State. Cameron G. "Bozzie" Boggs represented Mr. Simpson. Judge Verdin sentenced Mr. Simpson to nine (9) years imprisonment. By written order dated March 18, 2014, the Honorable Edward W. Miller reduced Mr. Simpson's sentence "from a term of nine (9) years to seven (7) years" pursuant to S.C. Code Ann. §17-25-65.

1. *EC* 1/8

On January 28, 2014, Mr. Simpson filed this application for post-conviction relief. This Court convened an evidentiary hearing on December 17, 2014 at the Greenville County Courthouse.

Prior to receiving notice of the written order signed on February 10, 2015 and filed on March 16, 2015, by email dated February 12, 2015, counsel for Mr. Simpson informed the Court of his objections to the order of dismissal. By written order dated March 6, 2015, filed on March 19, 2015, the Court amended the order of dismissal.

On March 30, 2015, Mr. Simpson served a Rule 59(e), SCRPC motion. On April 1, 2015, the State served its return to Mr. Simpson's motion. On May 7, 2015, the Court convened a hearing on this motion to reconsider its amended order at the Newberry County Courthouse.

Findings of Fact

The following occurred during the guilty plea colloquy:

The Court: And Mr. Simpson, you are here today to plead to Trafficking in Methamphetamine less than 100 grams, but greater than 28 grams second offense. That carries a minimum sentence of seven years up to 30 years and it's a violent offense and a serious offense. Is that your understanding?

Mr. Simpson: Yes, ma'am.

The Court: Okay. And a violent offense means that any active jail sentence you receive, you'll serve a greater percentage than it [sic] if were non-violent. You understand that?

Mr. Simpson: Yes, ma'am.

The Court: And serious means that if you were to get two other serious offenses, on the third, the State could seek life

without the possibility of parole against you. You understand that?

Mr. Simpson: I do.

Guilty Plea Transcript (hereinafter "Tr.") 7, line 9 – 8, line 2.

Ms. Monts summarized the factual background, provided Mr. Simpson's prior record, and recommended "a cap of 15" years. Tr. 18, line 1 – 19, line 23.

Plea counsel provided Judge Verdin the Defendant's Sentencing Memorandum and another document "entitled Mitigating Factors and Extenuating Circumstances." Tr. 20, lines 9-18. During his presentation to the Court, plea counsel argued:

Judge, I know there's a statutory minimum, but just as a point of reference, as you know, there's an annotated statutory provision that said any sentence can be suspended by a judge even though this says no suspended sentence. I'm not – I'm not trying to insult your intelligence in any way, Judge. He can do house arrest, Judge. He can make it. He would want it. Obviously, who wouldn't.

Tr. 26, lines 11-18. Judge Verdin neither advised Mr. Simpson that house arrest was not an available sentencing option nor corrected plea counsel's assertion that the minimum sentence could be suspended.

Mr. Simpson's mother, Ida Simpson who is "in her 80s" addressed Judge Verdin.

Mr. Simpson's fraternal twin, Robert Simpson, addressed the plea judge and requested:

Right now, my wife and I have a small daughter. I can't help my parents as they grow older. I really need Frank to help out. If this had happened 10 years ago, I would not be here today. I would let him do the time and let him live in his own debt. But right now, he's – I really need help. Thank you.

Tr. 30, lines 17-23. Mr. Simpson addressed Judge Verdin. Tr. 31, line 4 – 33, line 9.

Judge Verdin sentenced Mr. Simpson to nine (9) years imprisonment and returned the Sentencing Memorandum to plea counsel. Tr. 34, lines 13-23.

Although the Sentencing Memorandum plea counsel provided Judge Verdin was not introduced into the record during the guilty plea, Mr. Simpson introduced it into the record during the post-conviction relief proceedings. Section II of the Sentencing Memorandum, at p. 2, is captioned, "A Federal-esque 'Variance' is appropriate in this case." The memorandum argues, "In the federal system, a variance, or reduction, from a statutory sentence is available to the defendants based on various factors set forth in 18 U.S.C. §3553(a)." After reviewing a number of justifications for treating Mr. Simpson with mercy, the Sentencing Memorandum, at p. 5, concludes:

Even when mandatory sentencing levels exist, this Court, like the federal courts across the country and in this very state, should be able to treat those before them as individuals. . . . If federal laws and cases dictate that a Court should impose a sentence that is "sufficient, but not greater than necessary," then all sentencing courts should have greater latitude to impose a sentence that fits not only the crime, but the person before the court. Therefore, Frank [Simpson] respectfully submits that a sentence of house arrest, would be a sentence that is "sufficient, but not greater than necessary."

During the post-conviction relief hearing, plea counsel testified he prepared this Sentencing Memorandum and submitted it to Judge Verdin in which he requested a sentence of house arrest. Plea counsel also confirmed that Mr. Simpson's family had the financial ability to pay the fines.

Mr. Simpson testified he expected to receive a fine, a suspended sentence, and that any active sentence could be served through home incarceration. He also testified that he would not have plead guilty but for his plea counsel's erroneous legal advice.

Robert Simpson corroborated this expectation. He testified he was present in the courtroom and prepared to pay a fine in excess of \$100,000.00 the same day as his brother's guilty plea.

Conclusions of Law

In his application for post-conviction relief, Mr. Simpson contends he "was denied the right to effective assistance of counsel during his guilty plea, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution" because "[p]lea counsel failed to prepare for Applicant's guilty plea" by "inaccurately advis[ing him] about entering his guilty plea, the applicable penalties, and the authority of the sentencing judge." PCR Application ¶¶ 10 and 11.

In determining whether trial defense counsel provided ineffective assistance of counsel, pursuant to the Sixth and Fourteenth Amendments, this Court must apply the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, the defendant "must show that counsel's representation fell below an objective standard of reasonableness," which must be judged under "prevailing professional norms." *Id.* at 688.

Once the defendant asserting ineffective assistance of counsel has established counsel's failure to comply with the prevailing professional norms, he must affirmatively prove that this deficiency has prejudiced him. Specifically:

The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland, 466 U.S. at 694. The totality of the evidence must be considered in deciding whether the defendant was prejudiced by counsel's errors.

Furthermore,

[i]n *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), the Supreme Court applied the two part standard adopted in *Strickland* to guilty plea challenges bottomed on ineffective assistance of counsel. The Court reiterated that the defendant must show first that counsel's representation fell below the standard of reasonableness; and, that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. 106 S.Ct. at 370. Specifically, the Court stated that the defendant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 106 S.Ct. at 370.

Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). See also *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000) ("A defendant who pleads guilty on advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases and there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty and would have insisted on going to trial.").

Plea counsel's performance was deficient. Trafficking methamphetamine, 28-100 grams, second offense carries "a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars." S.C. Code Ann. §44-53-375(C)(2)(b). Because of this specific prohibition, the plea court's general power to suspend sentences, pursuant to S.C. Code Ann. §24-21-410, does not apply. Compare *State v. Tisdale*, 321 S.C. 153, 467 S.E.2d 270 (Ct. App. 1996) (by using language "the service of the minimum sentence is

6 SEP 6/8

mandatory," legislature intended for someone convicted third-offense DUI to serve actual imprisonment of at least 60 days) *with State v. Thomas*, 372 S.C. 466, 642 S.E.2d 724 (2007) (held that statute prohibiting distribution of controlled substance within proximity of school contained no provision prohibiting the suspension of a sentence imposed pursuant to the statute, and thus, trial judge had the general authority to suspend the minimum sentence). Plea counsel, therefore, was ineffective for advising Mr. Simpson to seek a fine and suspended sentence which is not available under state law for this offense. For a plea to be voluntary, intelligent, and knowing, "a 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) (emphasis added). Here, trial counsel did not advise Mr. Simpson that the minimum sentence is mandatory and cannot be suspended.

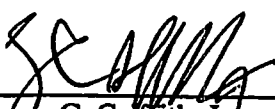
Additionally, the sentencing court was without authority to impose house arrest. Our General Assembly has enacted a "Home Detention Act." S.C. Code Ann. §24-13-1510, *et. seq.* The "Home Detention Act," however, does not apply to "charges of violating, the illicit narcotic drugs and controlled substances laws of this State which are classified as Class A, B, or C felonies." S.C. Code Ann. §24-13-1590. Trafficking methamphetamine, 28-100 grams, second offense is a Class A felony. S.C. Code Ann. §16-1-90(A). Plea counsel, therefore, was ineffective for advising Mr. Simpson that he would request a house arrest sentence when the "Home Detention Act" expressly excludes a house arrest sentence for this class of felony.

Having concluded that plea counsel's strategy to ask for a suspended sentence and house arrest is contrary to law, the Court also concludes that this strategy is objectively unreasonable. Mr. Simpson was prejudiced by plea counsel's deficient performance. The erroneous advice was material to his decision to plead guilty. Mr. Simpson testified credibly that he would not have plead guilty but for the erroneous advice. Plea counsel's deficient performance, therefore, rendered Mr. Simpson's guilty plea involuntary. *Lockhart, Jordan, Thompson, and Pittman, supra*. Because plea counsel's performance was both deficient and prejudicial, Mr. Simpson is entitled to a new trial.

Conclusion

Therefore, the Court grants the Rule 59(e) motion, withdraws the amended order of dismissal, and grants Mr. Simpson's application for post-conviction relief. It is further ordered that Mr. Simpson's conviction and sentence are vacated and the case is remanded to the Greenville County Court of General Sessions for a new trial.

IT IS SO ORDERED.


 Eugene C. Griffith, Jr.
 Presiding Judge, Thirteenth Judicial Circuit

June 2nd, 2015
 Newberry, South Carolina

8/2/15 8/8

Fax:

Dec 11 2012 04:17pm P001/001

COUNTY OF Greenville
STATE VS.
Frank Daniel Simpson

AKA:

Race: WHITE Sex: M Age: 49DOB: 1963 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Hendersonville, NC 28792DL#: [REDACTED] SID#: [REDACTED]*CDE Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was 2nd ☐ CONVICTED OF or ☒ PLEADS
TO: Trafficking in methamphetamine - 28 g or more, but less than 100 g - 2nd offensein violation of § 44-53-0375(C) of the S.C. Code of Laws, bearing CDR Code # 0389
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: gaye Monts 65331 [Signature] [Signature] # 8646
Monts, Joyce K. SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 90 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPFS Recipient: *Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter: T. Johnson

SCCA/217 (03/2011)

Paul B. WidenmanINDICTMENT/CASE#: 2011GS2309272A/W#: 1432330Date of Offense: 3/24/2011S.C. Code §: 44-53-0375(C)(2)(CDR Code #: 0392

SENTENCE SHEET

Presiding Judge

Judge Code: 262Sentence Date: 2/13/13

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

At a Court of General Sessions, convened on DEC 20 2011 the Grand Jurors of Greenville County present upon their oath:

That FRANK DANIEL SIMPSON did in Greenville County, on or about the 24th day of March 2011, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Methamphetamine (Crank). This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

B. D. Dowis

S. C. Highway Patrol

3/24/2011

ARREST WARRANT NUMBER

1432330

ACTION OF GRAND JURY

Bohly Laum
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

JLK

009272

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2011

THE STATE

vs.

FRANK DANIEL SIMPSON

Q

Bohly
Indictment for

TRAFFICKING METHAMPHETAMINE

VIOLATION § 44-53-0375

RECEIVED

DEC - 2 2011

Clerk of Court
Greenville County

145

ARREST WARRANT

I-432330

SS31

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

3-28-11

Greenville

THE STATE

11-23-HP8-104

against

Frank Daniel Simpson

Address:

Hendersonville, NC 28792-

Phone:

SSN:

Sec M

Race: W

Height: 6

Weight: 150

DL State: NC

DL #:

DOB: 1/1963

Agency ORI #: SCSHP0300

Prosecuting Agency: S. C. Highway Patrol

Prosecuting Officer: B D Dowis - 438

Offense: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 1st offense

Offense Code: 0392

Code/Ordinance Sec: 44-53-0375(C)(2)(

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Frank Simpson
3-24-11

Signature of Constable/Law Enforcement Officer

4/21/11
J. J. Owens GCSO

RETURN WARRANT TO:

Greenville General Sessions (West Grv)
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant B D Dowis

who

being duly sworn deposes and says that defendant Frank Daniel Simpson

did within this county and state on or about 03/24/2011

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant did knowingly possess more than 28 grams of a white crystal substance, methamphetamine, without legal authority to do so. This incident occurred on Interstate 85 North Bound in Greenville, County SC, while the affiant was conducting a lawful traffic stop.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 211 Century Drive Suite D

Greenville, SC 29607-

Affiant's Telephone (864)241-1000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/24/2011

defendant Frank Daniel Simpson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 03/24/2011

Judge's Address 20 McGree St

Greenville, SC 29601-

Signature of Issuing Judge

Vilvin Garrison

Judge's Telephone

Judge Code: 5946

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 02/21/14
 OMCOMITA RELEASE DATE SCREEN C051132
 SCDC# > 354338 LOC: KIRKLAND
 SIMPSON, FRANK DANIEL SCDC CLASSIFICATION...: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION....:
 CURRENT SENTENCE: 009-00-000 CONSECUTIVE SENTENCE ...: N
 009-00-000 CURRENT SENT START DATE: 05/11/2012
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 01/01/2020 CURRENT EWC ..: 2 F 5
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ..: 000228 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 000640 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 SCDC1541 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 02/19/14

C0511

SIMPSON, FRANK DANIEL FBI # 599710X7 SID# SC01983052 SCDC # 00354338

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: KIRKLAND CORR INST

SECURITY/CUST.: 1B MINIMUM OUT RESTRICTED

CURR INCARC SENT...: 9 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #....: [REDACTED]

DORM.....: EA20001A

RACE....:W SEX...:M

PROJ MAXOUT DATE: 01/01/2020

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: LIBRARY HELPER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: LIBRARY

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 50 DATE OF BIRTH.../63

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES

TRAFFICKING IN CRACK COC

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

5/15/12 OTHER ESCAPE RELATED CODE NOT IN TABLE

11/15/11 OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	SENTENCE	YRS	MOS	DYS	COUNTY	SENTENCE	START	V/NV	CATEGORY
2/ 4/14	KIRKLAND	INCARCERATED	9	0	0	GREENVILLE	5/11/2012	V		4
2/ 4/14	RICHLAND CO	AUTH ABSENCE (AWL)								
1/ 9/14	KIRKLAND	INCARCERATED								
1/ 9/14	RICHLAND CO	AUTH ABSENCE (AWL)								
11/20/13	KIRKLAND	INCARCERATED								
11/20/13	RICHLAND CO	AUTH ABSENCE (AWL)								
2/19/13	KIRKLAND	INCARCERATED								
2/19/13	PERRY	INCARCERATED								

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
LIBRARY HELPER	12/17/13	0/ 0/ 0		YF5
HORTICULTURIST (GNHS)	07/30/13	12/16/13	INMATE REQUEST	YF5
GENERAL WORKER	03/21/13	7/29/13	LATERAL TRANSFER	YF5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
NO SCHOOL ASSIGNMENTS			

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

Fax:

Dec 11 2012 04:17pm P001/001

229/GRN

COUNTY OF Greenville
STATE VS.
Frank Daniel Simpson
AKA:
Race: WHITE Sex: M Age: 49
DOB: 1963 SS#: [REDACTED]
Address:
City, State, Zip: Hendersonville, NC 28792
DL#: [REDACTED] SID#: [REDACTED]

*CDE Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was 1st ☐ CONVICTED OF or ☒ PLEADS
TO: Trafficking in methamphetamine - 28 g or more, but less than 100 g - 2nd offense

INDICTMENT/CASE#: 2011GS2309272A/W#: 1432330Date of Offense: 3/24/2011S.C. Code §: 44-53-0375(C)(2)(CDR Code #: 0392

SENTENCE SHEET

7-30

in violation of § 44-53-0375(C) of the S.C. Code of Laws, bearing CDR Code # 0389

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Monica K. Boyce 65331 [Signature] #8646
Monica K. Boyce SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 90 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce, Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (If paid in installments)	\$	\$
TOTAL	\$	\$

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickens

Court Reporter: T. Johnson

SCCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: 262

Sentence Date: 2/13/13