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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Roger E. Henderson, Family Court Judge

WAYNE HOLLINSHEAD

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002427

A P P E N D I X

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1 (August 25, 2014.)

2 THE COURT: I understand you have an offer
3 you want to put on the record?

4 MR. KIDD: That's correct, Your Honor. May
5 it please the Court: Mr. Hollinshead has a number of
6 charges pending currently. They include possession with
7 intent to distribute cocaine proximity, trafficking
8 cocaine proximity, trafficking cocaine in excess of 400
9 grams, another trafficking cocaine in excess of 400 grams
10 proximity, trafficking crack cocaine, 10 to 28 grams with
11 the proximity, possession with intent to distribute
12 marijuana within proximity, and a possession of a firearm
13 during a violent crime.

14 His prior record includes a possession with
15 intent to distribute cocaine proximity, possession of
16 marijuana, assault while resisting arrest, unlawful
17 carrying, and another possession with intent to
18 distribute cocaine.

19 Due to the fact that there is multiple kilos
20 of cocaine involved in this case and his prior record,
21 the State has made an offer, negotiated 18 years on two
22 trafficking charges, and to null prosse the other eight
23 or so charges.

24 He is currently on the trial docket for
25 September 12th, and we just wanted to put on the record,

1 by not pleading on the September 12th trial docket, he
2 will have refused our offer and it will no longer be on
3 the table, and he will be going to trial with a minimum
4 25 on the first charges and life without parole on any of
5 the subsequent charges.

6 THE COURT: Mr. Hollinshead, did you hear
7 what the gentleman is saying? They've offered you a
8 sentence of 18 years to resolve all this. Of course,
9 that is no parole, and you have collateral consequences
10 of having strike offenses, but it's 18 years. You have
11 to do 85 percent of that. If you go to trial and get
12 convicted, you face a minimum of 25 years up to life
13 without parole.

14 Your lawyer, I understand, has explained that
15 to you, and you do not wish to plead guilty, which is
16 certainly your right. You can go to trial, but they do
17 want to have that on the record because that is a
18 downside because to you, at a minimum, you do seven more
19 years if you got convicted, but on the really bad
20 downside, you could face life without the possibility of
21 parole.

22 So we just want to make sure that on the
23 record you understand what the offer is and that you
24 understand the consequences of getting convicted. It's
25 at a minimum seven more years and there is a good

1 possibility, I suppose, that you could end up with
2 something close to life without the possibility of
3 parole, simply based on the number of charges you have.
4 But, again, you got a good lawyer, so you might be able
5 to convince the jury that it's not you or you didn't do
6 it or it's not cocaine or whatever the charge is.

7 But there is an offer, and it will expire
8 very, very soon, and you need to be ready to go to trial
9 unless you change your mind.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay.

13 MR. STAVRINAKIS: Your Honor, could I ask
14 your guidance a little bit on something? My client --
15 well, the family and I have been interacting with him the
16 last couple days. They have indicated to me that they
17 have noticed some erratic behavior on his part. They're
18 worried about his mental health.

19 The case is on the trial docket for the 12th.
20 Mr. Kidd has offered to put it again on the plea docket
21 for next week. I am first up in a trial next week. I
22 don't know if I'll even be able to get to it. If he does
23 put it on the docket, I appreciate him being willing to
24 do that, but I don't know how to proceed with that, given
25 the time constraints I'm under. I don't want --

1 THE COURT: To proceed with what?

2 MR. STAVRINAKIS: With resolving concerns
3 about his mental state.

4 THE COURT: Do you have concerns about
5 whether or not he has the ability to assist you? Is that
6 what you're getting at, competency to stand trial as
7 opposed to criminal responsibility at the time of the
8 offense?

9 MR. STAVRINAKIS: Judge, do I have those
10 concerns? To be honest with you, not really, but I don't
11 want to leave them unaddressed. He and his family have
12 expressed them to me. They know him better than I do,
13 and I've never been in a position like this where I have
14 a trial coming up so soon, have a trial next week -- I
15 don't really have a lot of time to deal with these
16 issues.

17 If he feels like -- what he has told me today
18 is that he doesn't feel emotionally and mentally capable
19 of making a decision to accept 18 years. I don't know
20 that he's going to feel any different next week.

21 THE COURT: I'm going to tell you, that's
22 just one of them things that there is no good feeling
23 about, you know? The question is, does he understand
24 what's going on in the legal sense of he's at trial, he
25 knows what the charges are. He's going to have anxiety

1 no matter what.

2 MR. STAVRINAKIS: If I'm going to ask for an
3 evaluation, do I ask you right now?

4 THE COURT: You would need to, and I don't
5 know whether one could be scheduled before the 12th.

6 MR. STAVRINAKIS: I'm certain that one can,
7 and I'm not just bringing this up with Mr. Kidd. I
8 talked with him before we came up here, and he knew I was
9 going to address this.

10 I can't ignore it. It's been brought to my
11 attention by the family and by him, so if I need to ask
12 that, then I'm asking.

13 THE COURT: Well, I'm not going to delay a
14 trial that is scheduled simply because he's anxious and
15 perhaps a little --

16 MR. STAVRINAKIS: He does apparently have
17 some history that I wasn't aware of before. He has been
18 evaluated from the time he was a child for various
19 emotional and/or learning disabilities. I don't know how
20 to describe them.

21 THE COURT: What don't you do this: Why
22 don't you call over to the folks that do the evaluations
23 at MUSC in the morning and get ahold of them and see if
24 they could actually do an evaluation for criminal -- for
25 competency to stand trial next week, and if they can move

1 one up next week, or prior to the 12th, I guess, I will
2 order that one get done, but just to do it for delaying
3 of a trial, I have a real hesitancy to do that when it's
4 one of those things that it doesn't sound to me like it's
5 a very real issue.

6 But, again, if he's facing life without the
7 possibility of parole, I'll consider it, but call over
8 there tomorrow, and -- who is in charge over there? I
9 know you got Dr. -- is it Knight and Dr. Mulberry and --
10 I don't know who is actually the one to call that's in
11 charge. I just see those two names a good bit, but call
12 over to the institute of psychiatry ask to speak somebody
13 in the forensic psychiatry department.

14 Tell them what the deal is, and see if they
15 can get him in in the next two weeks, basically, if we
16 can get him brought over there, which if they can get an
17 evaluation done, I don't know what they're going to
18 require by way of background and records and things like
19 that. They may say there is no possible way to do it.

20 MR. STAVRINAKIS: If they say yes, should I
21 send you an order?

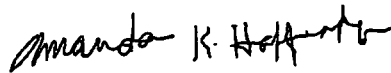
22 THE COURT: If they say yes, let me know and
23 I'll sign an order either tomorrow or whenever you get in
24 touch with them. All right? Okay.

25 (Whereupon, the proceedings were concluded.)

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth 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 Circuit Court for Charleston County, South Carolina, on the 25th of August 2011.

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

October 23, 2014



Circuit Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2009-GS-10-01712

STATE OF SOUTH CAROLINA,)
)
)
 -vs-)
)
)
 WAYNE A. HOLLINGSHEAD,)
)
 Defendant.)

November 2, 2011

B E F O R E:

HONORABLE DEADRA L. JEFFERSON

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

E. CULVER KIDD, Esquire
BURNS M. WETMORE, Esquire
Attorney for the State

LEON E. STAVRINAKIS, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

1 (Convened at 1:08 p.m, November 2, 2011).

2 MR. STAVRINAKIS: Your Honor, my client
3 indicates he wants to change his plea.

4 THE COURT: Do you all have a plea sheet?

5 MR. KIDD: I don't, Judge.

6 THE COURT: Is it correct Mr. Hollingshead
7 wishes to change his plea from not guilty to
8 guilty?

9 MR. STAVRINAKIS: That is my understanding.

10 THE COURT: Is it correct he's going to enter
11 a guilty plea on indictment 2009-GS-10-1712?

12 MR. STAVRINAKIS: Yes, Your Honor.

13 THE COURT: Which is trafficking, actually
14 charges trafficking cocaine in excess of 400 grams
15 but he's entering a plea to trafficking cocaine 28
16 to 100 grams second offense.

17 MR. STAVRINAKIS: Yes, Your Honor.

18 THE COURT: And on indictment 2010-GS-10-7079
19 he's going to be pleading to the same thing?

20 MR. STAVRINAKIS: He is, Your Honor.

21 THE COURT: Are there any recommendations or
22 negotiations?

23 MR. KIDD: A negotiated twenty year sentence,
24 Judge.

25 MR. STAVRINAKIS: In addition, Your Honor, he

1 has several other pending indictments that are all
2 going to be dismissed.

3 MR. KIDD: We'll nol-pros everything in
4 Charleston County, and call Berkeley and Dorchester
5 Counties and explain they need to dismiss those
6 charges as well.

7 THE COURT: What is his record?

8 MR. KIDD: He has a 2002 unlawful carrying,
9 2004 assault on a police officer while resisting
10 arrest times two, two counts of possession of
11 marijuana, three counts of possession with intent
12 to distribute cocaine, two proximity charges and a
13 DUS.

14 THE COURT: Is that his record, Mr.
15 Stavrinakis.

16 MR. STAVRINAKIS: Yes, Your Honor.

17 Your Honor, I think there might be a
18 probation issue to resolve also, I think.

19 THE COURT: Is he on probation? Do you know
20 what it is for?

21 MR. STAVRINAKIS: For a possession with
22 intent, I believe, Your Honor.

23 MR. KIDD: He's got an active YOA, it might
24 be YOA parole.

25 THE COURT: It has been my experience if he

1 is out on YOA parole, I don't want to guarantee it
2 but they probably, in light of the time he has
3 agreed to they are probably going to waive it.

4 MR. STAVRINAKIS: I don't believe that is the
5 case, Your Honor. I represented him in 2006 and he
6 pled to what I'm pretty sure was a PWID charge and
7 received a probationary sentence.

8 THE COURT: Do you know how long for?

9 MR. STAVRINAKIS: I don't recall. I think it
10 was five suspended on three but I know, I'm almost
11 positive he was on probation at the time of his
12 arrest we have before the Court today.

13 THE COURT: When did he plead, '06, do you
14 think?

15 MR. STAVRINAKIS: He was arrested in 2008.
16 He's saying it ended.

17 THE COURT: If it is three years it probably
18 would have by now.

19 MR. STAVRINAKIS: Initially, Your Honor, I
20 had notice of a violation so that is what had me
21 concerned.

22 THE COURT: How long has he been in jail,
23 pre detention?

24 MR. STAVRINAKIS: The date of the last arrest
25 on the indictment.

1 THE COURT: Which would be?

2 MR. KIDD: The 7079, Judge.

3 THE COURT: I need to know how long he has
4 been in jail.

5 MR. KIDD: July 30, 2011.

6 MR. STAVRINAKIS: He also served 58 -- 50
7 days, Your Honor, on the 2008 charge plus the time
8 he has been in since the most recent arrest.

9 THE COURT: What I was going to suggest if
10 he's still on probation you all get with Probation
11 and agree to revoke whatever predetention. I
12 assume he served and terminated. You can do that
13 with paperwork.

14 MR. STAVRINAKIS: I would imagine that
15 wouldn't affect his status, either.

16 THE COURT: Actually it would help him
17 because if it's a YOA sentence they have the
18 authority to make him serve that consecutive, but
19 based on the amount of time he's going to serve, if
20 they, they usually just forego it, they don't
21 really --

22 MR. KIDD: Judge, would you tear up the sheet
23 on the 7079 indictment?

24 THE COURT: Pardon?

25 MR. KIDD: On the sentence sheet on the 7079,

1 we won't go forward on that, instead of getting a
2 waiver and all that mess.

3 THE COURT: Do you want me to tear that sheet
4 up?

5 MR. KIDD: Yes, ma'am. We'll just go forward
6 on the 1712 indictment.

7 THE COURT: Okay.

8 Mr. Stavrinakis, did you explain to your
9 client the charges contained in the indictment, the
10 punishment and his constitutional rights?

11 MR. STAVRINAKIS: We have talked about those
12 issues on a number of occasions, Your Honor, at
13 length.

14 THE COURT: Do you believe he understands the
15 charges and punishment and his rights?

16 MR. STAVRINAKIS: I do, Your Honor.

17 THE COURT: Does he wish to plead guilty or
18 not guilty?

19 MR. STAVRINAKIS: He indicates to me he
20 wishes to plead guilty.

21 THE COURT: Do you agree with that decision?

22 MR. STAVRINAKIS: I do, Your Honor. It is
23 very difficult for me to tell you that because it
24 is a big sentence but --

25 THE COURT: But what he is facing is

1 potentially facing a life without parole.

2 MR. STAVRINAKIS: He and I have discussed
3 those issues at length, Your Honor, the strikes,
4 the possibility of a life without parole sentence,
5 the number of charges he has pending against him,
6 albeit different cases, and the difficulty of him
7 ever successfully navigating his way through that
8 without avoiding this exact scenario, wipe all that
9 out in what we anticipate will be multiple
10 counties. I think ultimately this is the right
11 thing for him to do. I think he understands, I
12 know how difficult it is for him, it has been
13 difficult for me, too, but I do believe it is the
14 right thing for him to do and I talked, just for my
15 own benefit, Judge, without mentioning his name, to
16 a number of other lawyers who I highly respect and
17 they have agreed with it.

18 THE COURT: There is no good palpable
19 solution because this is the best of all solutions
20 presents itself, I would say to him.

21 To your knowlege has he ever had a mental
22 evaluation to determine competency?

23 MR. STAVRINAKIS: No, Your Honor.

24 THE COURT: Sir, I remind you you are still
25 under oath. State your name for me.

1 THE DEFENDANT: Wayne Hollingshead.

2 THE COURT: How old are you?

3 THE DEFENDANT: 26.

4 THE COURT: How far have you gone in school?

5 THE DEFENDANT: The tenth grade.

6 THE COURT: What do you do for a living?

7 THE DEFENDANT: I work in a clothing store,
8 retail.

9 THE COURT: Are you married?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you have any children?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: How many and their ages?

14 THE DEFENDANT: Four and ten, two children.

15 THE COURT: Do you have a four year old and
16 ten year old?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you currently on probation or
19 parole?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Have you ever been treated for
22 the abuse of alcohol, drugs or mental health?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Have you had any drugs, alcohol
25 or medication in the last 72 hours?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Are you aware of any physical,
3 emotional or nervous problem that might keep you
4 from understanding where you are right now or what
5 you're doing?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: In indictment 2009-10-1712,
8 trafficking cocaine 28 to 100 grams, as to that
9 offense how do you plead?

10 THE DEFENDANT: Guilty.

11 THE COURT: Do you understand that carries a
12 minimum of seven years, a maximum of 30 years and a
13 mandatory \$50,000 fine?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you understand that no part of
16 the sentence can be suspended nor probation given?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you understand that it is also
19 classified as serious and violent?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you understand that under
22 South Carolina law that subjects you to enhancement
23 penalties?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that if you

1 receive two additional serious offenses you could
2 face life without the possibility of parole?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Sir, I will advise you that you
5 may have discussed parole or parole eligibility
6 with your lawyer or with others but under your
7 sentence no one can tell you when in fact you will
8 be eligible for parole, under what conditions. You
9 should assume that you will serve the entire time
10 in jail for your sentence, do day for day.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Sir, do you understand that the
13 negotiated plea that your lawyer worked out with
14 the Solicitor is twenty years?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand that the Court
17 has no discretion in that sentence?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand the Court's
20 only options are to accept or reject that
21 negotiated deal?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: I want you to listen carefully to
24 the facts.

25 MR. KIDD: Thank you, Your Honor. I think a

1 lot of the facts came out in pretrial. December
2 2nd, December 1st, 2008, approximately 11:30 p.m. a
3 drug investigation was launched on Mr.
4 Hollingshead. He sold a half kilogram of cocaine
5 or attempted to sell a half kilogram of cocaine to
6 a confidential informant. Based on that and the
7 statement he made a search warrant was then
8 obtained and executed on his residence at
9 in North Charleston. That
10 search warrant uncovered another half kilogram of
11 cocaine, I believe it was 478 grams of cocaine, 25
12 grams of crack cocaine, a variety of scales,
13 baggies, things of that nature.

14 I think you already have his record, Judge.

15 THE COURT: Sir, do you agree or disagree
16 with the facts?

17 THE DEFENDANT: I disagree with the facts.

18 THE COURT: Okay, tell me what you disagree
19 with.

20 THE DEFENDANT: I disagree with 400 something
21 grams being found.

22 THE COURT: Talking about the quantity at the
23 residence, you agree you had 28 to 100 grams?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you agree or disagree with

1 that?

2 THE DEFENDANT: I agree.

3 THE COURT: Do you feel anything other than
4 what you just stated needs to be changed or added
5 to the facts?

6 THE DEFENDANT: No.

7 THE COURT: Are you pleading guilty, sir,
8 because you are guilty?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: I want you to listen carefully.
11 When you plead guilty you give up certain important
12 constitutional rights. Those rights include your
13 right to a jury trial. At a jury trial you are
14 entitled to a presumption of innocence. The State
15 has the burden of proving you guilty beyond a
16 reasonable doubt. You have the right to
17 cross-examine, to confront the State's witnesses in
18 your own defense. You have the right to present
19 any defenses you may have. If you made any
20 confessions or any other incriminating statements
21 you have the right to challenge those statements.
22 You would also have the right to remain silent and
23 if you were to remain silent your silence could
24 never be used against you?

25 Do you understand each and every one of your

1 rights as I have explained them to you?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand you are giving
4 up those rights?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: The questions I would ask, he has
7 still in a round about way admitted guilt. If he
8 really believes he isn't guilty I've got a jury
9 down the hall, I'm ready to proceed. That is the
10 next question I'm going to ask you, if you're going
11 to equivocate, I don't like hindsight, I don't like
12 people coming back on a PCR and saying, "Somebody
13 forced me to do something." If you want to do it,
14 or you don't, I've got a jury here, they are ready
15 to proceed, I'm going to swear them, I have already
16 picked the foreperson, I'm ready to have a trial.

17 So, if that is what you really want, at the
18 end of the day you need to be the person completely
19 satisfied. I don't want you going to the
20 Department of Corrections saying somebody forced
21 you, then coming back filing a PCR saying, "My
22 lawyer made me do it, forced me to do it."
23 Ultimately it's your decision, so you need to be
24 sure because even if you enter an Alford plea I'm
25 going to ask you if you think the State can produce

1 sufficient evidence to prove your guilt beyond a
2 reasonable doubt and if they do you're going to be
3 found guilty. You are basically saying that you
4 feel the need to do an Alford plea which on a
5 felony I'm not even certain you can, the issue
6 becomes whether or not you believe you're guilty.
7 If you don't believe you're guilty you might as
8 well roll the dice with the jury. Of course that
9 is a big if and I can't calculate that risk for
10 you, only you can calculate that risk. At the end
11 of the day you are the person has to suffer the
12 consequences, none of us in this room have to do
13 that. So, you have to make the decision that you
14 feel comfortable with but if you equivocate I'm
15 going to tell you now I'm not going to accept the
16 plea, we're just going to go forward with the
17 trial.

18 I'm going to ask again, do you understand
19 that you're giving up your right to a jury trial?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And do you understand we picked a
22 jury, because you participated in that, have you
23 not?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You understand I have a jury down

1 the hall that is ready to proceed to try this case?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And knowing that, do you still
4 wish to plead guilty?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Now, have you been
7 satisfied with your lawyer's services?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Has he answered all your
10 questions?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Has he done everything you have
13 asked or expected in representing you?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Is there anything more he has to
16 do that he has not already done on your behalf?

17 THE DEFENDANT: Do I have to say it now?

18 THE COURT: Say what?

19 THE DEFENDANT: If there is anything I wish
20 him to do, that he hasn't done on my behalf?

21 THE COURT: Talking about, yes, if it
22 affects, I mean, what is it you would have him to
23 have done he hasn't already done?

24 THE DEFENDANT: Just have leniency so I can
25 spend some more time with my kids.

1 THE COURT: In what way?

2 THE DEFENDANT: To have leniency.

3 THE COURT: The only thing, the position that
4 you're now in is if you plead guilty you would have
5 to plead pursuant to the negotiated plea that the
6 State is offering you, so my only option is either
7 accept that which you all have negotiated or reject
8 it. If I reject it you have a trial. So our only
9 option is the twenty years, they offered you 18,
10 you turned it down, I had them reoffer it to you at
11 the beginning of trial, you turned it down, and
12 they have bumped it up to twenty, which is their
13 prerogative and either you accept that or reject
14 that. There would be really nothing more for Mr.
15 Stavrinakis to say in terms of mediation because
16 you all worked out a deal, so at this point the
17 only thing is you either accept or reject that
18 deal. Does that make sense?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. Now, so my question
21 becomes, is there anything more you would have him
22 do that he has not already done on your behalf?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Have you met with him for as long
25 and as often as you felt necessary for him to

1 represent you?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Have up understood your talks
4 with him?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Has anyone promised you anything
7 or held out any hope of reward to cause you to
8 plead guilty?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Has anyone used threats,
11 coercion, force, pressure, intimidation to make you
12 plead guilty?

13 THE DEFENDANT: Say that again.

14 THE COURT: Are you pleading guilty freely
15 and voluntarily and of your own free will?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Have you had time to make up your
18 mind?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Have you understood my questions?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you need to ask me about
23 anything we have been over?

24 THE DEFENDANT: Huh-uh.

25 THE COURT: Are you sure? You have to tell

1 me yes or no.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Have you been absolutely truthful
4 in each and every one of your answers to the Court?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you understand that you have
7 the right to appeal this guilty plea and sentence
8 of the Court but you must do so in writing within
9 ten days of today?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you understand that if you
12 cannot afford an attorney for that protest that one
13 will be appointed to you at no cost?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And I ask again, sir, are you
16 pleading guilty because you're guilty?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And I have a jury down the hall,
19 are you certain that you want to waive your right
20 to have your case heard by that jury and for them
21 to render a verdict in this case?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: I find there is substantial
24 factual basis for the plea, that the defendant has
25 entered the plea knowingly, freely, voluntarily and

1 intelligently, that he has had the advice and
2 assistance of counsel with whom he I has indicated
3 to the Court he's satisfied and I will accept the
4 plea. I would further find for the record that the
5 defendant has indicated to the Court that he is
6 well aware that there is a jury standing by to try
7 this case and freely and voluntarily wishes to
8 waive that right as well.

9 Is there anything further from the State?

10 MR. KIDD: No, ma'am.

11 THE COURT: Anything further from the
12 defense, Mr. Stavrinakis?

13 MR. STAVRINAKIS: Your Honor, obviously it
14 has been a difficult process, I know the State has
15 put a lot into the case and I appreciate Mr. Kidd
16 being willing to still entertain offers. You know,
17 it's been tough for Wayne and tough for his family.
18 He's lucky in many ways. His mother loves him to
19 death and calls me and texts me constantly so
20 worried about her son, worried about his future and
21 his freedom and his life and his children. You
22 know, Your Honor, I know you look at the sentencing
23 sheets and the rap sheet and you don't see a very
24 nice guy but, you know, I'm going to tell you --

25 THE COURT: You know, that's about the 50th

1 time this week I have heard that term, a lot about
2 people being nice and have great character and I
3 think there is a misnomer that a person has to be
4 made to commit a criminal act, they don't, 99
5 percent of the people I see just make a bad
6 decision and unfortunately as I often tell
7 teenagers, bad decisions carry grave consequences.

8 MR. STAVRINAKIS: You know, Your Honor, I
9 think, I have known him for almost six years now,
10 there is a lot to like about him. He is a
11 thoughtful guy in many ways. I don't know what to
12 make of how this happens to somebody like him, I
13 just think it is a cultural thing, raised in an
14 environment where this to some degree where normal
15 society doesn't accept it or tolerate it and he
16 built up this record. Obviously it is painful for
17 me to ask you to accept this recommendation because
18 I care about the guy and want to do better than
19 this but I understand there is tremendous risk in
20 going forward and I have tried to explain that to
21 him at many different points in time and I have to
22 ask you to accept it and not reject it and allow
23 him to eliminate the rest of that risk and go
24 forward.

25 THE COURT: I accept the plea, I think it is

1 in his best interest, I think it is a very bitter
2 pill to swallow, I think it is a difficult one, but
3 when faced with the larger picture of the
4 alternative, which is the benefit he is receiving,
5 which is the not-crossing six other indictments
6 here, which I may be misstating it but I think
7 there is one, two, three, four, yes, six, seven
8 actually, indictments in Charleston and potential
9 for those other indictment being dismissed in other
10 counties, that enurs greatly to his benefit and
11 while difficult to accept, I do believe it is in
12 his best interest because as a young man in South
13 Carolina even though they have to try two more of
14 their cases and be successful, he would face life
15 without parole and as we know people watch
16 television and they have an impression of what life
17 without parole is, that means you die, that means
18 you never get out. At least with this he gets an
19 opportunity to serve 85 percent of this. Of course
20 that is up to the Department of Corrections how
21 they calculate it. Sometimes for varying reasons
22 they let people out earlier, you never know what
23 happens, but at least he will have an opportunity
24 to come out, rehabilitate himself and to have the
25 ability to have some semblance of a life.

1 So, the Court has accepted the negotiated
2 plea, sir, you're sentenced to the State Department
3 of Corrections for a period of twenty years. You
4 will get credit for any time you served, to be
5 calculated and approved by the Department of
6 Corrections pursuant to 24-13-40. They will get
7 all your records, all the predetention time you
8 served, you will meet with a counselor when you
9 arrive and he will go over that with you.

10 In addition to that, did you check with
11 probation? Probation is at lunch but I will have
12 my clerk follow up on that and if in fact he has a
13 probation case I'm going to ask them to simply
14 revoke it and terminate it and then I will have Mr.
15 Stavrinakis do, if you have no objection to Mr.
16 Stavrinakis signing those documents on your behalf
17 so there won't be any hold otherwise put on you.

18 THE DEFENDANT: No.

19 THE COURT: It is not going to affect you, it
20 is to your benefit. Basically what they do is
21 revoke the probation, you will get credit for
22 whatever time you served and terminate that case.

23 Do you have any objection to that if it is
24 still pending?

25 THE DEFENDANT: It is not pending.

1 THE COURT: Okay. Well I've got to double
2 check and make sure because if you were in
3 violation they could toll it and it could still be
4 out there and you not realize it. I think it is
5 better safe than sorry because if you don't they
6 can toll it forever until you get out and then you
7 have a hold on you and you would be facing that
8 time. Do you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have any problems with Mr.
11 Stavrinakis signing those documents on your behalf
12 if in fact it is still pending?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Okay. Thank you very much, sir,
15 I wish you Godspeed.

16 (Hearing Concluded at 1:30 p.m.).

17

18

19

20

21

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23

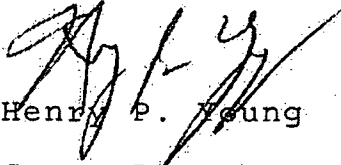
24

25

1
2
3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Charleston County,
11 South Carolina, on the 2nd day of November, 2011.

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

14 November 28, 2013

15
16
17
18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)Wayne Hollingshead, #300696,)

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

v.)

State of South Carolina)

2012-CP-10-7840
IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2012 NOV 30 PM 4:26
JULIE J. ARMSTRONG
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institute; 430 Oaklawn Road;
Pelzer, South Carolina 29689
2. Name and location of Court which imposed sentence Charleston 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) 2004-GS-10-1712
2009

1

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

CLERK C.P. GS & FC

By

DEPUTY CLERK

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) November 2, 2011 / 20 years
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty XXX
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Dismissed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. Filed March 21, 2012
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N / A
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____

2

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., S.S., & F.C.
 By [Signature]
 DEPUTY CLERK

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) _____ PLEASE SEE ATTACHMENT _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____ PLEASE SEE ATTACHMENT _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- N / A
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____ N / A _____
- ii. _____
- iii. _____

3
 ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)

CLERK C.P. O.S. & F.G.
 By *Mark Seem*
 DEPUTY CLERK

iv. _____

(c) the disposition thereof:

N / A

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

N / A

i. _____

ii. _____

iii. _____

iv. _____

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

N / A

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

N / A

i. _____

ii. _____

iii. _____

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

N / A

i. _____

ii. _____

iii. _____

4
 ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., C.S. & F.C.
 By *Mark D. Smith*
 DEPUTY CLERK

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:
- N / A
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO -- Counsel failed to notify Appellate Defense (SCCID)
- (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. Leon E. Stavrinakis; Cool Blow St./Suite 201; Charleston, SC 29403
- ii. Leon E. Stavrinakis; Cool Blow St./Suite 201; Charleston, SC 29403
- iii. Leon E. Stavrinakis; Cool Blow St./Suite 201; Charleston, SC 29403
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment and plea
- ii. Partial Trial
- iii. Sentencing

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., C.S. & F.C.
 By *Michael Han*
 DEPUTY CLERK

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

For conviction and sentence reversed and remanded.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, WAYNE HOLLINGSHEAD, #300696, 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.

Wayne Hollingshead

SWORN to and subscribed before me this 21st
day of November, 2012

Georgette M. McArthur
Notary Public

My Commission Expires: November 7, 2016

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By [Signature]
DEPUTY CLERK

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

I, Wayne Hollinshead, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Wayne Hollinshead
applicant

SWORN or affirmed to and subscribed before me this

21st day of January, 2012
Ernest Mueller
Notary Public

My Commission Expires: January 7, 2016

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By [Signature]
DEPUTY CLERK

Attachment**Issue one**

Applicant was denied effective assistance of counsel in violation of the 6th and 14th amendment to the United States Constitution and South Carolina law as a result of counsel's failure to abide by The Honorable Judge Roger Young's Order for applicant to undergo a Competency Hearing pursuant to statute **44-23-410-430** to see if applicant understood the procedures that lie ahead of him. Counsel's failure to follow the Judge's orders, violated applicant's Procedural Due Process rendering counsel ineffective for failing to extend the guiding hand that's needed throughout each and every critical stage of applicant's criminal proceedings. However, Assistant Solicitor Kulver Kidd was aware of the order giving by The Honorable Judge Roger Young that applicant was to undergo a competency hearing. By asst.solicitor Kidd having knowledge of this, asst.solicitor Kidd also committed misconduct for the continuous prosecution of applicant's criminal charges.

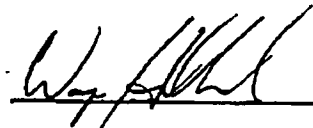
Issue two

Applicant was denied effective assistance of counsel in violation of the 6th and 14th amendments to the United States Constitution and South Carolina law when counsel failed to follow the proper procedures on appealing the Judge's decision in which applicant received 20 years for trafficking cocaine as instructed by the applicant.

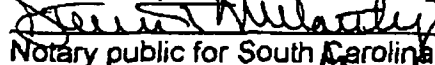
Issue three

Applicant was denied effective assistance of counsel in violation of the 6th and 14th amendments to the United States Constitution and South Carolina law when counsel fail to contest a break in the chain of custody.

For the fore going reasons, the applicant's conviction and sentence should be reversed and remanded for a new trial.



Sworn and prescribed to on this 5th day of November 2012


Notary public for South Carolina

My commission expires November 7, 2016

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2012-CP-10-7840
	)	
Wayne Hollinshead, # 300696,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 30, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the March 2009 term of the Charleston County Grand Jury for trafficking cocaine-400 grams or more (09-GS-10-1712). Applicant was represented by Leon Stavrinakis, Esquire.

On November 2, 2011, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of twenty (20) years. A timely Notice of Appeal was filed with the South Carolina Court of Appeals on November 4, 2011. On appeal, the Applicant was represented by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. Upon information and belief, the South Carolina Court of Appeals affirmed Applicant's sentence on January 17, 2012, and issued Remittitur on February 3, 2012.

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

II.

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

I. Ineffective assistance of counsel.

- a. Counsel failed to abide by the Honorable Judge Roger Young's Order for applicant to undergo a Competency Hearing.
- b. Counsel failed to follow the proper procedures on appealing the Judge's decision in which applicant received 20 years for trafficking cocaine as instructed by the applicant.
- c. Counsel failed to contest a break in the chain of custody.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

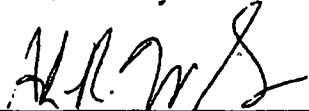
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 28, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WAYNE HOLLINSHEAD, #300696

Applicant,

Vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

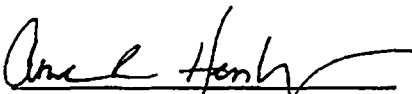
2012-CP-10-7840

AFFIDAVIT OF SERVICE BY MAIL

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:

William O. Hanahan, Esquire
 520 Folly Road,
 Suite P, Box 304
 Charleston, SC 29412

DATED this 28th day of June, 2013


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Wayne Hollinshead,	)	CASE NO. 2012-CP-10-7840
	)	
APPLICANT,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	PCR HEARING
State of South Carolina,	)	
	)	
RESPONDENT.	)	
	)	

July 20, 2015

Charleston, South Carolina

B E F O R E:

The Honorable Roger E. Henderson

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

William O. Hanahan, III, Esquire
For the Applicant

J. Rutledge Johnson, Esquire
For the Respondent

Phyllis Norton, CVR, *Nationally Certified Verbatim Court Reporter*
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

(AW) - DENOTES APPLICANT'S WITNESS

(RW) - DENOTES RESPONDENT'S WITNESS

PCR Hearing	--	03
Examination by the Court of Mr. Hollinshead	--	05
	--	12

WITNESSES(AW) Wayne Hollinshead:

Direct Examination by Mr. Hanahan	--	16
Cross-Examination by Mr. Johnson	--	34
Redirect Examination by Mr. Hanahan	--	44
Recross-Examination by Mr. Johnson	--	45

(RW) Leon Stavrinakis:

Direct Examination by Mr. Johnson	--	46
Cross-Examination by Mr. Hanahan	--	58

EXHIBITS:

	<u>Mark</u>	<u>Admit</u>
Court's Exhibit Number 1	27	27

CERTIFICATION OF TRANSCRIPT

-- 66

1 THE COURT: Mr. Johnson.

2 MR. JOHNSON: May it please the court, Your Honor.

3 This is the case of Wayne Hollinshead versus the State of
4 South Carolina. It is Case Number 2012-CP-10-7840.

5 Mr. Hollinshead was indicted at the March 2009 term of
6 the Charleston County Grand Jury for trafficking cocaine 400
7 grams or more.

8 On November 2nd, 2011, he pled guilty as indicted
9 before the Honorable Deadra J. Jefferson. Pursuant to the
10 negotiated sentence he was sentenced to 20 years. The other
11 pending indictment was dismissed. There was a notice of
12 appeal filed. The Court of Appeals affirmed his conviction.
13 The remittitur was issued on February 3rd, 2012. He filed a
14 timely PCR application November 30th, 2012. The State filed
15 its return July the 1st, 2013. And he is represented here
16 today by Mr. Bill Hanahan.

17 THE COURT: Mr. Hanahan.

18 MR. HANAHAN: May it please the court, Your Honor. I
19 met with my client this morning and he has asked me to make
20 a motion for a continuance as he would like to replace
21 counsel.

22 He has been in talks with Tricia Blanchette down in
23 Columbia, South Carolina. I don't think that they have
24 finalized a deal. He informs me that they were in the
25 process of finalizing that. I have not heard back from her

1 confirmation that they have finalized that deal.

2 But he has asked me to make a motion and therefore I am
3 making a motion for a continuance so that he can replace me
4 as his counsel.

5 THE COURT: Mr. Hanahan, are you retained or are you
6 appointed?

7 MR. HANAHAN: I am appointed, Your Honor.

8 THE COURT: Yes, sir, Mr. Johnson.

9 MR. JOHNSON: Yes, sir, the State's position, you know,
10 I have spoken to my predecessor Ashley Wilson who used to
11 handle this case. Obviously you can tell by the docket
12 number it is quite an old case.

13 According to Ms. Wilson that Mr. Hollinshead has
14 brought this up before, has gotten cases continued to try to
15 retain Ms. Blanchette and he has had, you know, many
16 opportunities to do so. He just failed to do so. So we are
17 going to strenuously object to this.

18 Mr. Stavrinakis as you know is running for mayor of
19 Charleston, and he will be getting protection later on this
20 year; and it is going to be very hard for me to get him in
21 the court. So I would hope that Your Honor will decline
22 this motion and let's head forward on the full evidentiary
23 hearing today.

24 THE COURT: Have you represented him the entire time,
25 Mr. Hanahan?

1 MR. HANAHAN: Yes, Your Honor.

2 THE COURT: Okay. And on how many occasions has he had
3 this matter continued?

4 MR. HANAHAN: Your Honor, I had it continued once. My
5 wife had some surgery that came up quite suddenly the week
6 as a PCR it came up. And the last time I am here I'm not
7 exactly sure what the resolution was.

8 I made a motion for continuance for the same reason.
9 But it turned out he was never transported so we didn't have
10 him to go forward with anyway. So I think that is a one,
11 maybe a one-and-a-half.

12 THE COURT: So you were going to make this same motion
13 when he was not transported; is that ---

14 MR. HANAHAN: Yes, Your Honor.

15 THE COURT: --- what you are saying?

16 MR. HANAHAN: Yes, Your Honor.

17 THE COURT: And when was that?

18 MR. HANAHAN: That was the last term of PCR which I
19 believe was April.

20 THE COURT: The other attorney's name is Blanchett?

21 MR. HANAHAN: Yes, Your Honor; B-L-A-N-C-H-E-T-T-E.

22 THE COURT: Okay. Mr. Hollinshead, stand up please.

23 (WHEREUPON, Mr. Hollinshead complied.)

24 THE COURT: So back in April you were going to have
25 your attorney make a motion to be continued so that you

1 could hire Ms. Blanchette?

2 MR. HOLLINSHEAD: Yes sir.

3 THE COURT: Okay. What steps have you taken since
4 April to have her retained?

5 MR. HOLLINSHEAD: Mr. Blanchette has recently came to
6 see me and reviewed my case. Just -- just since April I
7 have been trying to come up with a reasonable offer. And I
8 never knew that I was even on the docket. I filed ---

9 THE COURT: What do you mean you have been trying to
10 come up with a reasonable offer?

11 MR. HOLLINSHEAD: She -- we were going -- she was
12 negotiating an offer with her as far as what she would take.

13 THE COURT: Are you talking about fees or what?

14 MR. HOLLINSHEAD: Yes, sir, fees. And I filed a
15 disciplinary complaint against Mr. Hanahan prior to this
16 because a certain lack of communication. So it was already
17 a conflict of interest with him representing me. And Ms.
18 Trisha was supposed to be taking over.

19 THE COURT: Have you paid her anything at all at this
20 point?

21 MR. HOLLINSHEAD: Yes, I paid her so far the initial
22 fees of her reviewing my case.

23 THE COURT: And when did she review your case?

24 MR. HOLLINSHEAD: She started reviewing my case the
25 early part of this year.

1 THE COURT: Do you understand if I grant your motion
2 for continuance there is no telling when this matter will be
3 heard?

4 MR. HOLLINSHEAD: I understand that, sir.

5 THE COURT: I mean, you know, you are the one that, you
6 know, it would harm as far as delays are concerned; do you
7 understand that?

8 MR. HOLLINSHEAD: Yes, sir.

9 THE COURT: No harm to the State in the matter of being
10 delayed. You are the one that is incarcerated.

11 MR. HOLLINSHEAD: Yes, sir. I know, sir. It is kind
12 of a one-shot thing, so I am really trying to have
13 everything lined up in the right order.

14 THE COURT: Well, how soon can you pay her in full and
15 have her represent you?

16 MR. HOLLINSHEAD: It all depends on what she's asking.

17 THE COURT: And how are you paying her? You are
18 incarcerated.

19 MR. HOLLINSHEAD: Yeah, my family. They wasn't even
20 notified that I was even having a PCR today.

21 THE COURT: Mr. Johnson.

22 MR. JOHNSON: Just for the record, Your Honor, I have a
23 note in my file that this case was also continued in
24 February of this year before Judge Griffith; and the reason
25 it states is the applicant possibly obtaining Patricia

1 Blanchette. So ---

2 MR. HOLLINSHEAD: Yes, that's been ---

3 MR. JOHNSON: --- it's been ---

4 THE COURT: Wait a minute. Don't interrupt him. Go
5 ahead.

6 MR. JOHNSON: It has been, what, eight, nine months now
7 or seven months. And as far as conflict of interest is
8 concerned just because he filed a grievance ODC the case out
9 of Oconee County County, Earnest E. Richardson versus The
10 State of South Carolina -- it is Opinion Number 26-46-4 in
11 2008 which states that another tactic, another common tactic
12 in PCR matters, is for the applicant to file a complaint
13 against appointed counsel with ODC.

14 And it is basically saying that just because he files a
15 complaint does not mean there is a conflict of interest. So
16 just for Your Honor's

17 THE COURT: And has that complaint been resolved?

18 MR. HOLLINSHEAD: Yes, sir, it was recently dismissed.

19 THE COURT: Okay. How long have you had this case, Mr.
20 Hanahan?

21 MR. HANAHAN: Your Honor, I don't know the exact
22 timeframe. It has been over a year.

23 THE COURT: Are you prepared to go forward?

24 MR. HANAHAN: I am prepared as best I can ---

25 THE COURT: I understand your client's position. But

1 are you prepared to go forward?

2 MR. HANAHAN: I am as prepared as I guess as I can be
3 at this juncture. I am not 100 percent confident of my
4 client's confidence in my ability to do so under the
5 circumstances.

6 THE COURT: The problem I have is -- and we are talking
7 about since February when this was first brought up and he
8 hasn't done anything to hire Ms. Blanchette.

9 MR. HOLLINSHEAD: In February that is when she
10 originally started reviewing my case. She came down there.
11 I was in the courtroom, but I never came in front of the
12 judge. She didn't get no continuance. This is the first
13 time I've ever been in a courtroom.

14 THE COURT: She didn't need a continuance. You didn't
15 need a continuance at that point in time.

16 Is that right, Mr. Johnson?

17 MR. JOHNSON: Sir?

18 THE COURT: I mean there wasn't any need for a
19 continuance in February, was it?

20 MR. JOHNSON: That's -- the case was continued so that
21 he could go try and retain Ms. Blanchette.

22 THE COURT: So it was continued.

23 MR. HOLLINSHEAD: Not to my knowledge. I wasn't
24 even ---

25 THE COURT: But you were in discussions with the lady

1 in February about hiring her?

2 MR. HOLLINSHEAD: Yes, in February she was done here.
3 She came -- she was down to Charleston on another matter.
4 And that's when we -- she started -- that is when she
5 started reviewing my case.

6 From there she just came to the conclusion on the
7 requirements that she's -- that she's looking for in the
8 case to go further on and representing me.

9 So from there she was like okay whatever offer was back
10 and forth with my mother. But I haven't -- I don't know the
11 exact fees that have recently been discussed.

12 THE COURT: It took her five months to decide she
13 wanted to represent you?

14 MR. HOLLINSHEAD: I'm not sure, Your Honor. I
15 don't ---

16 THE COURT: Well, you have been talking to her, haven't
17 you?

18 MR. HOLLINSHEAD: Yes, sir, but by -- via by mail I
19 have some letters from her now where she is just discussing
20 the fees and getting back with my parents.

21 THE COURT: Well, what is the date on those letters?

22 MR. HOLLINSHEAD: It is in May ---

23 THE COURT: Well, this is July.

24 MR. HOLLINSHEAD: Oh, no, April. It is April.

25 THE COURT: That is three -- three months ago.

1 MR. HOLLINSHEAD: Sir, I don't have the actual document
2 with me. Because I wasn't -- I didn't know I was coming to
3 PCR until the other night. I've got her telephone number.

4 THE COURT: When did you file your complaint against
5 Mr. Hanahan?

6 MR. HOLLINSHEAD: The end of 2014.

7 THE COURT: Is that correct, Mr. Hanahan, as you
8 recall?

9 MR. HANAHAN: As I recall, Your Honor. I left that
10 part of my file back in my file cabinet.

11 THE COURT: Do you recall when it was dismissed?

12 MR. HANAHAN: I would have to go back and look, to be
13 honest with you.

14 THE COURT: It didn't take them long to dismiss it, did
15 it?

16 MR. HANAHAN: No, Your Honor; once I entered, no.

17 THE COURT: Okay. I see no reason why Mr. Hollinshead
18 should not have already retained new counsel. He has had
19 ample opportunity. This started at least back in February.

20 Dissatisfaction with Mr. Hanahan started obviously back
21 in 2014. That has been resolved by the dismissal of the
22 complaint against him.

23 Mr. Hanahan is a very competent attorney. I see no
24 reason why he could not represent this gentleman at today's
25 hearing; therefore, I am going to respectfully deny the

1 motion for continuance and we are going to proceed with this
2 matter.

3 You may be seated, Mr. Hollinshead.

4 MR. HANAHAN: May we approach, Your Honor?

5 THE COURT: Yes, sir.

6 (WHEREUPON, a bench conference was had.)

7 THE COURT: Mr. Hollinshead, raise your right hand.

8 (WHEREUPON, Mr. Hollinshead was duly sworn.)

9 THE COURT: All right. I want to ask you a couple of
10 questions before we proceed, sir. Do you fully understand
11 what it is you are asking for?

12 MR. HOLLINSHEAD: Yes, sir.

13 THE COURT: And what is that?

14 MR. HOLLINSHEAD: I am asking for a new trial and my
15 sentence vacated.

16 THE COURT: Okay. Now do you understand what you would
17 be confronted with if I were to grant your relief and grant
18 you a new trial?

19 MR. HOLLINSHEAD: Yes, sir.

20 THE COURT: All right. Do you want to tell me what you
21 understand you would be confronted with?

22 MR. HOLLINSHEAD: My original charges would be brought
23 back up and whatever the sentence between the minimum and a
24 maximum would still be still attached to it.

25 THE COURT: Do you understand -- it is worse than that.

1 Do you understand that you would be faced with life without
2 parole?

3 MR. HOLLINSHEAD: Yes, sir.

4 THE COURT: Do you understand that?

5 MR. HOLLINSHEAD: Yes, sir.

6 THE COURT: Do you understand what that means?

7 MR. HOLLINSHEAD: Yes, sir.

8 THE COURT: Are you sure?

9 MR. HOLLINSHEAD: Yes, sir.

10 THE COURT: Do you understand that is a risk you are
11 taking?

12 MR. HOLLINSHEAD: Yes, sir.

13 THE COURT: You are gambling on a 20-year sentence
14 being -- becoming a life without parole sentence.

15 MR. HOLLINSHEAD: Yes, sir.

16 THE COURT: Okay. I think he understands the
17 substantial risk. We will go forward.

18 You may be seated.

19 MR. HANAHAN: May it please the court, Your Honor.

20 THE COURT: Yes, sir.

21 MR. HANAHAN: Obviously we are before you on a post-
22 conviction relief action that the applicant filed based on a
23 sentence that he received.

24 Originally this began as a trial where he was offered a
25 18-year sentence which he rejected. Prior to that there was

1 a hearing before Judge Young in August.

2 Evidently there was concern that the trial was coming
3 up quickly. There were concerns throughout that record as
4 well as the subsequent record at his sentencing as to
5 whether or not he was competent to help assist in his
6 defense.

7 That is the thrust of what this PCR action is all about
8 is whether or not he was competent to assist effectively in
9 defending this case, assist Mr. Stavrinakis.

10 There were -- mistakes were made along the way. I
11 think looking back and hindsight being 20/20 I think the
12 concern about the upcoming trial, maybe thinking they
13 weren't enough time.

14 There is in the record an order, a verbal order -- or
15 an intent on Judge Young's part to order an evaluation be
16 done. He had asked Mr. Stavrinakis if he would call down at
17 MUSC and see if an evaluation could be done. It never
18 happened.

19 There is also later in the record in front of Judge
20 Jefferson when he was sentenced there is a colloquy back and
21 forth about whether or not he has been -- there has been
22 time to have him evaluated.

23 I am going to put Mr. Hollinshead up on the stand and
24 we will go through everything. But, again, the overarching
25 theme is whether or not he was competent to assist in his

1 defense and whether or not steps were taken to try to
2 determine if he was evaluated to do so.

3 I am relying on the standard cited in the Chico Bell
4 case which was a Court of Appeals opinion that came down in
5 September of 2014. It refers to the Davie case.

6 And I have given a copy to counsel, and I have a copy
7 to hand up to your law clerk regarding the standard. If I
8 may just briefly refer to verbiage in the opinion. And I
9 have highlighted it here for your clerk.

10 Obviously everyone here knows what the standard usually
11 is. Real briefly I will recite that for the court: In a
12 PCR proceeding the applicant bears the burden of
13 establishing that he or she is entitled to relief.

14 And that is quoting from Davie 381 S.C. -- I'm sorry,
15 it's S -- 675 S.E. 2nd at 419: The applicant must show that
16 there was a reasonable probability that but for counsel's
17 unprofessional errors the result of the proceeding would
18 have been different. A reasonable probability is a
19 probability sufficient to undermine confidence in the
20 outcome.

21 Later in the opinion the court states - this is the
22 Bell court, the Court of Appeals, citing the Davie case:
23 However the court stated it is not always necessary for an
24 applicant to offer objective evidence to support a claim of
25 actual prejudice. Instead depending on the facts of the

1 case an applicant's self-serving statement may be sufficient
2 to establish actual prejudice.

3 I would ask the court bear that in mind as we present
4 our case.

5 THE COURT: All right, sir.

6 MR. HANAHAN: May I approach and hand this up?

7 THE COURT: Yes sir.

8 MR. HANAHAN: And, Your Honor, if I may I would like to
9 call Mr. Hollinshead to the stand.

10 THE COURT: Come forward please, sir.

11 (WHEREUPON, the witness was duly sworn.)

12 THE CLERK: Please be seated. Sir, for the record if
13 you will please state your name spelling your last name.

14 MR. HOLLINSHEAD: Wayne Hollinshead,
15 H-O-L-L-I-N-S-H-E-A-D.

16 **DIRECT EXAMINATION BY MR. HANAHAN OF WAYNE HOLLINSHEAD:**

17 Q. Thank you, Mr. Hollinshead. Would you please tell the
18 court where you are currently housed.

19 A. At Broad River Correctional Institution.

20 THE COURT: Sir, you have got to speak up a little bit,
21 please. Speak loudly and clearly.

22 A. At Broad River Correctional Institution.

23 Q. And I know the judge has already asked you some of
24 these questions, but I am just going to ask a couple more
25 just to establish that fact if that is all right. I

1 apologize if these are repeats.

2 Did you file an application for PCR?

3 A. Yes, sir.

4 Q. What actual relief are you asking for?

5 A. For my sentence to be vacated and then a new trial.

6 Q. Do you understand that a new trial means that you are
7 asking the court to set aside your plea and conviction and
8 place you in the position you were in prior to your plea
9 with no guarantee of less time?

10 A. Yes.

11 Q. Who was your attorney in your -- when you pled?

12 A. Leon Stavrinakis.

13 Q. How many times did the two of you meet before you --
14 before you pled?

15 A. Probably about three times.

16 Q. And do you know for about how long those meetings
17 lasted?

18 A. No more than an hour.

19 Q. An hour a piece or an hour total?

20 A. I would say roughly three hours total.

21 Q. Were you out on bond or were you in the Detention
22 Center at the time?

23 A. At the time we met I was in the Detention Center.

24 Q. What did the two of you review to prepare for your
25 case?

1 A. The evidence that was against me. Nothing -- that's
2 all.

3 Q. Did you get a copy of your Rule 5 to review?

4 A. Yes.

5 Q. Tell the court if you would a little bit about what was
6 in there.

7 A. My Rule 5 contained the search warrants, the
8 affidavits, and different chain of custody reports. But I
9 really didn't have long to review them because I only had it
10 for about 45 days prior to trial.

11 Q. Do you recall approximately when those meetings
12 occurred?

13 A. When me and my attorney met?

14 Q. Yes.

15 A. I roughly don't know. But it was like one -- one the
16 week before trial, probably a month before that, and right
17 before I was rearrested in July of 2011.

18 Q. For what were you rearrested?

19 A. For trafficking.

20 Q. All right. Was that prior to the appearance that you
21 had before Judge Young, ---

22 A. Yes.

23 Q. --- that arrest?

24 A. Yes.

25 Q. Okay. And just for the record, the appearance in front

1 of Judge Young was August the 25th of two thousand -- Excuse
2 me. I'm sorry. That was the 25 of August 2011?

3 A. Yes.

4 Q. So the arrest occurred in July of 2011?

5 A. Yes.

6 Q. How did -- what did you do to prepare for trial other
7 than review the documents; did you discuss strategy or
8 anything like that?

9 A. Not necessarily. We didn't discuss a real strategy.
10 A lot of things I wanted -- I wanted him to do as far as I
11 wanted him to review the area and have a geographical
12 understandings of the area because a lot of things in my
13 Rule 5 was saying I was one place but actually I was
14 another. I mean pretty much.

15 Q. Did he advise you as to what your available defenses
16 were?

17 A. Yes.

18 Q. And what were those?

19 A. Basically we was -- we was looking at the search
20 warrant. Because the search warrant was timed for one time,
21 and the incident report was timed for another. And it was
22 showing that it was inconsistent.

23 As far if the search warrant was even - what do you
24 call it - if it was even valid at the time. Because it was
25 an hour gap between two different situations.

1 And we also -- it was a bunch of things that just
2 wasn't always clear with a lot of the paperwork.

3 Q. So is it fair to say that there are inconsistencies
4 between the ---

5 A. Yeah, it was inconsistencies throughout the whole
6 Rule 5 as far as timing and placing and I guess the
7 evidence.

8 Q. Do you feel confident that your attorney was prepared
9 for trial?

10 A. Huh-uh.

11 Q. Could you explain why you say that, why you answer that
12 way.

13 A. Because a lot of the things that I wanted that -- I had
14 no real knowledge of the law and the things that I found out
15 in the short time I brought to his attention trying to
16 understand -- trying to get understandings with myself to
17 understand, okay, some things was a lie and some things was
18 truth.

19 And but when I brought it to light it was really never
20 really addressed as far as in the courtroom.

21 Q. Could you give any specifics?

22 A. For one, the evidence from the search warrant was
23 obtained and they were saying that there was a certain
24 amount of weight, it was a certain -- it was a certain
25 product.

1 We never had any SLED -- we had -- we only had a
2 SLED -- a SLED request for analysis, but we never had the
3 result for them as far as the chain of custody.

4 I asked for -- I found out about a Franks Hearing, and
5 I brought that up, and the Franks hearing was never -- was
6 never brought to the court's eyes because for whatever
7 reason. I don't know.

8 Q. Were any of these inconsistencies or problems you had
9 with the evidence were any of those ever discussed in court
10 either in front of Judge Young or Judge Jefferson?

11 A. Well, in front of Judge Jefferson they spoke about the
12 amount and who -- which officer obtained it first. It is
13 still unclear because every officer said that they claimed
14 it. Every officer said that they found it first. So it
15 wasn't -- it wasn't clear who obtained the evidence first.

16 And for my defense I was explaining that I wasn't -- I
17 wasn't a residence of this house or did the drugs belong to
18 me, but due to the search warrant and the prior incident I
19 was charged with everything that was found in the residence.

20 Q. Now was all of this discussed in open court?

21 A. The majority of it was discussed as far as who -- which
22 officer found the drugs first. Put it still wasn't clear
23 because every officer that got on the stand said that he
24 found it.

25 Q. Now was this in court with Judge Jefferson?

1 A. Judge Jefferson.

2 Q. Do you remember when that occurred; was it about the
3 time that you eventually pled?

4 A. Yeah, it was between -- yeah, the first day and the
5 second day.

6 Q. And have you ever seen a transcript of those
7 proceedings?

8 A. No, every time I was requesting for it I always had the
9 run around along with the Judge Young proceedings.

10 Which I brought that to your attention after a lot of
11 research finally obtained the Judge Young proceedings but
12 was never able to even have the adequate transcript as far
13 as the trial prior to -- the pretrial.

14 Q. Thank you.

15 MR. HANAHAN: And if I may just state, Your Honor, we
16 have searched for a transcript from the morning proceedings
17 prior -- they started the trial and he eventually pled. We
18 have never been able to recover that transcript.

19 I have written every court reporter that was assigned
20 to Charleston that week, and I have heard back from all of
21 them. We just have never been able to find that transcript.
22 And the Attorney General's office has not either.

23 It is a mystery to us. It has been one of the
24 sticklers that we've been trying to resolve to get here.
25 So I apologize for the break. I just failed to mention

1 that ---

2 THE COURT: I appreciated that.

3 MR. JOHNSON: --- in my opening.

4 Q. All right. Mr. Hollinshead, what plea offers did you
5 receive?

6 A. Fifteen-year plea first and then an eighteen-year plea.

7 Q. All right. In August you appeared in front of Judge
8 Young. There was an 18-year negotiated offer on the table
9 or you were facing trial. And your attorney asked for -- or
10 requested time for a mental evaluation.

11 Can you explain what led to that hearing and what took
12 place after it?

13 A. Yes, during that time I was going through a lot of -- a
14 good bit of things with not understanding and there were
15 some off and on mental issues. And along with me and my
16 family let Mr. Stavrinakis know.

17 And Mr. Stavrinakis knew that there was a slight change
18 in my behavior from dealing with me over the past years that
19 he has known me. So he let the judge know from his
20 understandings and his point of view what was going on.

21 MR. HANAHAN: And, Your Honor, if I may approach.

22 THE COURT: Yes, sir.

23 MR. HANAHAN: I am going to let him look at a copy of
24 the transcript.

25 And, Your Honor, if I may, that is two pages front and

1 back of testimony that I am just having him read.

2 THE COURT: All right.

3 Q. Mr. Hollinshead, could you summarize what that
4 discussion what took place?

5 A. The discussion basically Mr. Stavrinakis brought forth
6 to the judge's attention about my behavior. And also my
7 family let them know that things wasn't the same with me
8 most of the last couple of days.

9 He asked the judge's opinion. The judge gave him an
10 opinion. Told him to call over to the psychiatric
11 department and speak to one of those two different doctors
12 and to schedule an appointment and then to notify him and he
13 would sign the order.

14 MR. HANAHAN: Your Honor, if I may summarize briefly
15 exactly what the words instead of reading the whole thing.

16 THE COURT: Yes, sir.

17 MR. HANAHAN: Mr. Hollinshead asked for the court's
18 guidance, and Judge Young asked him to -- directed him to
19 call over to MUSC and see if they can get an evaluation
20 before trial next week. The trial did not take place next
21 week. But he said that if they said they could do it that
22 he would issue the order right away, for Mr. Stavrinakis to
23 bring it to him.

24 And I believe that is part of -- already a part of the
25 record in the case. I just wanted to bring that to the

1 court's attention.

2 THE COURT: Yes, sir.

3 MR. HANAHAN: Thank you.

4 BY MR. HANAHAN:

5 Q. Mr. Hollinshead, were you mentally capable of accepting
6 the 18-year offer?

7 A. At that point in time I don't think so. It's which --
8 which time were you talking about?

9 Q. I'm talking about in August ---

10 A. No, sir.

11 Q. --- in front Judge Young.

12 A. No, sir.

13 MR. JOHNSON: Your Honor, I do object to that
14 statement. That is a medical testimony statement, and that
15 is for an expert and not for Mr. Hollinshead.

16 THE COURT: All right, sir, I will note your objection
17 for the record.

18 BY MR. HANAHAN:

19 Q. Was that offer ever eventually made to you again?

20 A. Yes, sir.

21 Q. And did you accept it?

22 A. No, sir.

23 Q. Why not?

24 A. I still was going through the same issues. And at that
25 point in time I asked my attorney am I going to get an

1 evaluation. Because I was feeling different feelings too
2 about -- about -- about my mental abilities. And I didn't
3 get a clear answer on whether why or wasn't I going to get
4 an evaluation.

5 Q. Have you ever seen a signed order from Judge Young
6 ordering them in this action?

7 A. No, sir. Huh-uh.

8 Q. Do you know why the eval- -- evalu- -- eval -- pardon
9 me, the evaluation could not be done in -- or why it wasn't
10 done; and if not, do you know why?

11 A. I haven't the slightest idea.

12 Q. All right. You appeared in front of Judge Jefferson
13 for a plea to 20 years negotiated on November 2nd. Why did
14 the offer change?

15 A. During -- during trial we had a recess period, and my
16 lawyer advised me at the time, he said -- he said basically
17 if I go through it I am falling on my own sword and he said
18 the best thing to do was try to come back on an appeal and
19 plead guilty why -- while I have a chance to have more
20 freedom at the end of everything.

21 Q. At the November 2nd plea why wasn't the hearing in
22 August reference at that plea?

23 A. I have no idea.

24 Q. Prior to the plea was any portion of the trial or
25 pretrial conducted on the record?

1 A. Say that again.

2 Q. Prior to that plea in front of Judge Jefferson on the
3 second was any portion of a trial or pretrial conducted on
4 the record?

5 A. Yes. Yes.

6 Q. And that would refer to the transcript that we can't
7 seem to find?

8 A. It was two days of it. It was ---

9 MR. HANAHAN: And, Your Honor, I have a file with the
10 returns from the various court reporters. We searched high
11 and low to no avail.

12 (WHEREUPON, counselors conferred.)

13 MR. HANAHAN: And I will make that an exhibit, Your
14 Honor.

15 THE COURT: Do you want to offer it now?

16 MR. HANAHAN: That is fine. If we can make it a
17 court's exhibit that will actually help us on appeal so.

18 THE COURT: Okay. Let's go ahead and get it marked.

19 (WHEREUPON, folder with documents regarding requests of
20 court reporters, was marked as Court's Exhibit Number 1.)

21 THE COURT: All right. Those are admitted into
22 evidence.

23 (WHEREUPON, Court's Exhibit Number 1 was admitted into
24 evidence.)

25 BY MR. HANAHAN:

1 Q. Could you briefly mention what was discussed prior to
2 your plea.

3 A. As far as on -- in the courtroom or ...?

4 THE COURT: Yeah, let's get some timeframe if we are
5 going to talk about it.

6 BY MR. HANAHAN:

7 Q. What you recall was recorded prior to your plea in that
8 trial.

9 A. Are you talking about on the record?

10 Q. On the record.

11 A. In the courtroom?

12 Q. The transcript that we can't seem to find.

13 A. It is basically -- it was without -- the jury wasn't
14 even in there. If I'm not mistaken it was -- it was because
15 he was trying to suppress the evidence and a statement, a
16 verbal statement that was said to be made on my behalf.

17 Q. By whom?

18 A. By me.

19 Q. And you -- did you -- you mentioned earlier that
20 several police officers testified?

21 A. Yes, several -- it was -- oh, yes, several -- several
22 police officers testify, my wife testified.

23 Q. What did your wife testify to?

24 A. Testifying to -- because she was at the residence --
25 well, she -- at the time she wasn't my wife. But she was at

1 the residence when the search took place and she explained
2 that they didn't have a search warrant and they asked to use
3 her computer towards the end of the night, the computer and
4 printer, to print out some documents.

5 We also discussed it. Everything from the search
6 warrant returns on why it wasn't brought back to the judge
7 within the reasonable time and whatever mandated by the
8 attorney general. It was I think probably brought back to
9 the issuing judge after a 30-day period or something like
10 that and it was mandated as within a ten-day period.

11 I think that's roughly about it.

12 Q. Did you ever ask for that transcript?

13 A. Yes.

14 Q. Did I ask for it on your behalf?

15 A. Yes.

16 Q. Were they ever located or obtained?

17 A. No, sir.

18 Q. Do you feel that you can properly address your PC
19 allegations without that transcript, your PCR?

20 A. No, sir.

21 Q. If you could please tell the court what issues you
22 wanted your attorney to address, address at trial.

23 A. I wanted to have a Franks hearing when I found out the
24 knowledge of it because by reading through my Rule 5 I seen
25 a lot of, how do they say, reckless statements that was

1 falsely omitted into my affidavit prior to the search
2 warrant.

3 And we had -- to my knowledge he was going to subpoena
4 the officer who had ownership of -- ownership of the search
5 warrant returns and ownership of whatever property and
6 evidence that was taken place -- that was taken into
7 evidence from the residence. There was a couple of
8 difference subpoenas, but we didn't get that far with it.

9 Q. Were there some chain of custody issues that you wanted
10 to bring up?

11 A. Yes, there were chain of custody issues also as far as,
12 you know, where is the results and why was the evidence held
13 30 days before the judge had received it.

14 Q. How about your mental state was that something you
15 wanted your attorney to bring up?

16 A. Yes, sir. Yes, sir. I was wondering why the
17 evaluation was never brought to him -- to the judge's
18 attention. And basically for my benefit, you know, to
19 adequately help my attorney represent me.

20 Q. Was there also a SLED drug report that you never got
21 to see?

22 A. Yes, there was a drug report. I don't know the correct
23 terms for it, but there were some SLED people were -- that
24 was never received that was never in my Rule 5.

25 Q. Any other issues you can think of that you had wanted

1 to bring?

2 A. Not off of the top of my head right this minute.

3 Q. Were they in fact brought up to the court?

4 A. No, sir.

5 Q. All right. Why did you change and take a plea out of
6 the trial that started?

7 A. It was during a recess break Mr. Stavrinakis advised
8 me that it wouldn't turn out to the best and he was like
9 well it is better for you to plead guilty and let's try to
10 appeal it.

11 Because that was something with the judge at the time.
12 I think the Judge wasn't -- like she wasn't listening or
13 something ---

14 MR. JOHNSON: Objection, Your Honor. That is
15 speculation and irrelevant.

16 THE COURT: I will sustain the objection.

17 BY MR. HANAHAN:

18 Q. Anything else that you feel that he did not address
19 that you wanted to address?

20 A. In that short timeframe right there the main things was
21 the search warrant and the evaluation; those are the top
22 priority things.

23 Q. Did you change your plea because you thought that he
24 had failed to do things that you wanted him to do in your
25 defense?

1 A. Yeah, when we had a recess break I basically was
2 nervous and he was like well the best thing for you to do is
3 plead guilty. But when I was pleading guilty I wasn't under
4 the assumption that I was going to receive more time than
5 actually agreed upon.

6 And by then pleading guilty I didn't realize that it
7 was a 20-year sentence until the end when she was explaining
8 to me the sentence.

9 Even though they brought -- saying that it had been
10 negotiated, but I didn't -- I had the knowledge in thinking
11 that the negotiated plea could be suspended.

12 I didn't have -- I didn't -- I didn't understand the
13 law.

14 Q. At the plea you said you were never treated for a
15 mental health issue or for mental health issues. Why didn't
16 you tell the judge about your mental health issues?

17 A. When the judge asked me if I had a mental health issue
18 I told her yes. But when me and you spoke after we read the
19 transcript I told you that one of the transcripts from the
20 Judge Young proceeding I said you -- I could tell that it
21 was mixed up because I was there and I knew who said what.

22 I think you told me to rewrite the court reporter and
23 to try to get them to correct certain things. But I told
24 Judge Jefferson right then that I had a mental problem --
25 you know, I just said yes. And but the transcript says no.

1 The plea transcript says no.

2 Q. Having reviewed the transcript I would concur that it
3 says no.

4 A. Uh-huh.

5 Q. All right. On Pages 15, 16 to 16 of the transcript you
6 were asked if you needed to say what your attorney failed to
7 do, but you didn't say it. Why didn't you, and what were
8 you referencing? What were you referring to?

9 A. At that point in time I was -- I was just trying not
10 to -- it was like just say yes, you know. The judge -- he
11 was like the judge is going to ask you some questions, say
12 yes or no, you know, however and, you know, so the judge can
13 accept the plea so you can be sentenced accordingly.

14 So I really wasn't all the way aware of how things were
15 going to turn out. I was just knowing that he said okay
16 plead guilty, go ahead and stop, don't go through with the
17 complete trial.

18 Q. So you were following his advice?

19 A. Yes.

20 Q. Why did you -- why did you admit your guilt if you were
21 not guilty and had a viable defense to the charges?

22 A. The way -- the evidence that was -- that was being
23 shown against me my lawyer advised me that it is not looking
24 good, so he said the best -- the best bet is to plea and
25 then you try to come back and fight it later.

1 Q. All right. So based upon your attorney's performance
2 did you feel like you had any option but to enter a plea?

3 A. That's -- it's basically forced my hand. It was either
4 plead guilty or they were like okay well you face a life
5 sentence.

6 Q. On the notice file it indicates that you wanted to plea
7 under Alford but Judge Jefferson would not allow it. Did
8 that happen?

9 A. Yes. When she asked me to plead guilty when I was
10 aware of the Alford plea I told her that I wanted to plea
11 the Alford plea. She said in plain words that she don't
12 think that that plea -- I can plea that -- she don't think I
13 could have plead that to the caliber of charge so.

14 Q. Do you feel your attorney properly addressed that
15 matter for you?

16 A. No, because once I did my own research of the law I
17 realized that you can plead the Alford plea at any time.

18 Q. I have no further questions, Your Honor. Please answer
19 any questions that Mr. Johnson may have for you.

20 THE COURT: Mr. Johnson.

21 MR. JOHNSON: May it please the court, Your Honor.

22 **CROSS-EXAMINATION BY MR. JOHNSON OF WAYNE HOLLINSHEAD:**

23 Q. Mr. Hollinshead, you just testified that you decided to
24 plead guilty because your hand was forced, correct?

25 A. Yes.

1 Q. And that hand being you either accept the 20 years
2 negotiated or you go to trial on all of these charges,
3 right?

4 A. Yes, it was -- I didn't -- when he was saying
5 negotiated as far as that able to negotiate okay if I would
6 have -- if I would get sentenced up to the 20. I didn't
7 know that I was going to do 20 because the original plea was
8 15 and then it went to 18. But I didn't know it was going
9 to turn out to be 20 years.

10 Q. But you have already said you were the one who rejected
11 the 15 and 18 year offers, correct?

12 A. I -- I just didn't want -- my mental state at the time
13 I didn't understand what it was going on with the
14 proceedings.

15 Q. So you said you don't understand what was going on with
16 the proceedings, correct?

17 A. Yeah, at that time.

18 Q. Okay. But at no time did you ever stop the judge and
19 say Judge I have no idea what is going on, did you?

20 A. I never -- we -- we didn't speak to the judge. My
21 attorney spoke to the judge.

22 Q. During the guilty plea ---

23 A. Oh, during the guilty plea ---

24 Q. --- you certainly interacted with Judge Jefferson?

25 A. Yes, because ---

1 Q. You never stopped her and said I don't understand what
2 is going on?

3 A. Yeah, my attorney advised me to say yes and no. He
4 didn't -- he said just go in here, the judge is going to ask
5 you some questions.

6 Q. And you answered those truthfully?

7 A. No, sir.

8 Q. Did you say no you did not answer those truthfully?

9 A. No, because a lot of things that I needed to be done
10 was not done.

11 Q. So what you are basically admitting to is lying under
12 oath?

13 A. If you -- if you want to say that. That is why I said
14 because my lawyer advised me that is what I needed to.

15 Q. But it is not your lawyer going to prison, is it; it is
16 you?

17 A. Exactly.

18 Q. So you are the one who needs to answer truthfully,
19 right?

20 A. Exactly.

21 Q. He doesn't need to answer anything truthfully.

22 A. Well, he has more understanding in this thing than I
23 do.

24 Q. But you have more at risk in this thing than he does,
25 correct?

1 A. That's why I paid him.

2 Q. And that's why you chose to accept the 20-year
3 negotiation versus going to trial and particularly getting
4 LWOP'd, correct?

5 A. Because I thought he was leading me in the right hands
6 of the law.

7 Q. And as a matter of fact, Mr. Stavrinakis got about
8 eight different charges dropped in this guilty plea,
9 correct?

10 A. I don't know about the eight different charges. You
11 would have to show me ---

12 Q. You don't have three sets of charges?

13 A. Yeah, I think I -- yeah, I had three sets.

14 Q. Okay. And they are all trafficking cocaine, correct?

15 A. Yes.

16 Q. Okay. And those are most serious charges; do you
17 understand that?

18 A. Uh-huh.

19 Q. And that the State could try you on each one of those
20 three and seek a life without parole sentence?

21 A. Yes.

22 Q. And you chose to forgo that route to accept the 20
23 years negotiated, correct?

24 A. I told Mr. Stavrinakis that I wanted to go to trial on
25 each one of them.

1 Q. But then you obviously accepted a guilty plea?

2 A. Because Mr. Stavrinakis told me during a recess that we
3 needed to stop.

4 Q. But ---

5 A. He said it is not going correctly.

6 Q. Sir, it was your decision to plead guilty; am I not
7 correct?

8 A. Yes, I was forced to plead guilty.

9 Q. You were forced to plead guilty?

10 A. Yes.

11 Q. Okay. But at no point during the guilty plea did you
12 stop the judge and say Judge he is forcing me to plead
13 guilty, did you?

14 A. There by telling her I wanted to plea the Alford Plea.
15 That's -- that was basically what I am saying right there.
16 I'm not guilty but they are showing that the evidence they
17 are showing against me they are saying that I am guilty. So
18 that's why ---

19 THE COURT: Ask him the question again so he can
20 respond to it.

21 MR. HOLLINSHEAD: Sir?

22 THE COURT: Listen to -- ask the question again and
23 respond to that question. You are getting away from the
24 answer.

25 BY MR. JOHNSON:

1 Q. You never stopped the judge and said listen,
2 somebody -- that somebody, somehow, some way is forcing me
3 to plead guilty?

4 A. No, sir.

5 Q. Okay. As a matter of fact you actually when asked by
6 Judge Jefferson if you were pleading because you were
7 guilty, you said yes. Is that not correct?

8 A. No, that is not correct.

9 MR. JOHNSON: Your Honor, may I approach the witness?

10 THE COURT: Yes, sir.

11 BY MR. JOHNSON:

12 Q. And I am referencing Page 12 of the transcript, Line 7
13 through 9. Mr. Hollinshead, what I am showing you is a copy
14 of your transcript. Will you please read aloud seven
15 through nine for the court.

16 A. You are pleading guilty, sir, because you are guilty.
17 And it said yes; yes, ma'am.

18 Q. Okay. So when she asked you that question you said:
19 Yes, ma'am; correct?

20 A. Yes.

21 Q. Okay.

22 A. I may have not have had a clear understandings on the
23 question.

24 Q. That is a pretty clear question wouldn't you ---

25 A. At the state of mind that was in, I'm not sure.

1 Q. Okay. Do you have any evidence with you today that you
2 were incompetent at the time you pled guilty, any reports?

3 A. I wasn't even aware that I was even having -- Mr.
4 Hanahan didn't contact me or my family letting me know to
5 have any kind of documents together saying that we was going
6 to have a PCR hearing on today.

7 Q. So the simple answer is no you don't have any documents
8 to ---

9 A. I don't have no documents.

10 Q. Sir, you state that your attorney never challenged any
11 inconsistencies in the search warrant; correct?

12 A. Yes.

13 Q. Okay. Do you realize that when you pled guilty and she
14 read you your constitutional rights you gave up the right to
15 challenge those search warrants?

16 A. I didn't understand that until once I was already
17 incarcerated.

18 Q. So just now that you have had four years to think about
19 your decision to plead guilty now you are saying hey I
20 didn't understand that, right?

21 A. Well, we appealed; and the appellant's defense office
22 said they never received anything from Mr. Stavrinakis on my
23 appeal. I contact Mr. Stavrinakis through my family
24 personally and told him that appellate defense said they
25 haven't received any documents about my appeal.

1 MR. JOHNSON: Your Honor, I move to strike that as
2 hearsay whatever appellate defense would have said or
3 communicated.

4 THE COURT: Yes, sir.

5 BY MR. JOHNSON:

6 Q. And as a matter of fact when Judge Jefferson asked you
7 if you were satisfied with his service you said yes,
8 correct?

9 A. That transcript where it says yes and a no, it has to
10 be mistaken. Because that is the same -- that is the same
11 court reporter that we can't find the whole transcript prior
12 to that.

13 So I'm not -- I don't -- I am not agreeing with any of
14 that transcript stating. Because I don't remember even say
15 yes with some -- with some questions that I know I would
16 have answered no to.

17 Q. Okay. Are you aware that if you had answered that
18 question no, that Judge Jefferson wouldn't have accepted
19 your guilty plea?

20 A. Sir, if I answered it no ---

21 Q. Yes or no. It is a yes or no question.

22 A. I don't know.

23 Q. And Judge Jefferson asked you if you understood the
24 questions, to which you replied yes? Will you agree with me
25 that you said that?

1 A. That she -- that she asked me did I understand the
2 questions ---

3 Q. Yes.

4 A. --- and I said yes?

5 Q. Yes, sir, on Page 17. If you would like me to show it
6 to you I certainly will.

7 A. Yeah, I probably did say yes. But not understanding
8 fully what -- what the question is -- is she asking -- is
9 she referring to or not.

10 Q. She is referring to every question she asked you prior
11 to that question. She says have you understood my
12 questions. To which you reply yes, ma'am.

13 A. Uh-huh.

14 Q. Would you agree that that happened?

15 A. Oh, yes. Yeah.

16 Q. Okay.

17 A. Okay, I can agree to that.

18 Q. And then she asked you on Page 18 have you been
19 absolutely truthful in each and every one of your answers to
20 the court. To which you replied yes, ma'am?

21 A. Uh-huh.

22 Q. Yes?

23 THE COURT: Yes or no?

24 A. Yes.

25 Q. But you have already admitted to us that that is not a

1 correct answer, right?

2 A. Yeah, because ---

3 Q. Yes?

4 A. --- in those proceedings right there when she asked me
5 a numerous amount of questions, by me -- the mannerism that
6 I am having I am saying yes, ma'am, prior to even hearing a
7 clear understanding of the question.

8 Q. Okay. This is not your first time in court dealing
9 with drug charges, is it?

10 A. No, sir.

11 Q. You have pled guilty before, correct?

12 A. Yes, sir.

13 Q. Okay. And same type of plea colloquy occurred and you
14 answered the same type of questions?

15 A. My mental state might have been in a different frame at
16 that time.

17 Q. But my whole point is this is not your first time in
18 the criminal justice system, is it?

19 A. No, sir.

20 Q. Okay. Which brings me back full circle, Mr.
21 Hollinshead. At no point did you stop Judge Jefferson and
22 say I don't understand what is going on, you know, let's
23 talk about this; did you?

24 A. No, sir.

25 Q. Okay.

1 MR. JOHNSON: No further questions, Your Honor.

2 THE COURT: Mr. Hanahan.

3 MR. HANAHAN: Just a few follow-up questions.

4 **REDIRECT EXAMINATION BY MR. HANAHAN OF WAYNE HOLLINSHEAD:**

5 Q. Mr. Hollinshead, you testified that your plea was based
6 on your advice given you by your attorney, correct?

7 A. Yes, sir. Uh-huh.

8 Q. And did you feel like you were obligated to answer the
9 questions the way your attorney advised you to?

10 A. Yes.

11 Q. Were you being polite to the judge?

12 A. Yes, sir.

13 Q. You didn't want to upset the judge?

14 A. No, sir.

15 Q. When you are in court you do what the judge tells you
16 to do, correct?

17 A. Correct.

18 Q. No further questions. Thank you.

19 MR. JOHNSON: Just two ---

20 THE COURT: Sure.

21 MR. JOHNSON: --- follow-up.

22 THE COURT: Sure.

23 **RECROSS-EXAMINATION BY MR. JOHNSON OF WAYNE HOLLINSHEAD:**

24 Q. So what you are telling us or testifying here today is
25 that you are willing to undo the 20 years to go face a life

1 without parole?

2 A. Yeah, ---

3 Q. Yes?

4 A. --- the reason -- yeah, my reason for that because it
5 was so many things that was not done and what I was -- what
6 I was promised thinking that would be done but I didn't have
7 a clear understandings of.

8 So by right away from the first -- the -- after --
9 right after the sentencing we appealed. And from there I
10 even -- I even put in my PCR application stating about a
11 belated appeal because things didn't go right within my
12 appeal prior to even getting to this stage right here.

13 Q. So it's a round-a-bout answer; but please answer yes or
14 no, you are willing to forgo ---

15 A. Yes.

16 Q. --- the 20 years ---

17 A. Exactly.

18 Q. --- and facing ---

19 A. Yes.

20 Q. --- life without parole?

21 A. Yes, sir.

22 Q. No further questions.

23 THE COURT: Okay. You can step down, sir.

24 MR. HANAHAN: Court's indulgence, Your Honor.

25 THE COURT: Yes, sir.

1 MR. HANAHAN: Your Honor, that's all I have. And he
2 wished to proceed.

3 THE COURT: All right. Before you call your witness
4 let's take about a five-minute break.

5 (WHEREUPON, a break was had 4:01 p.m.)

6 (WHEREUPON, resumed 4:11 p.m.)

7 THE COURT: Yes, sir, Mr. Johnson.

8 MR. JOHNSON: Your Honor, the State calls Mr.
9 Stavrinakis to the stand, please.

10 (WHEREUPON, the witness was duly sworn.)

11 THE CLERK: Please be seated. Sir, for the record if
12 you will please state your name, spelling your last name.

13 THE WITNESS: Leon Stavrinakis. Last name is spelled
14 S-T-A-V-R-I-N-A-K-I-S.

15 **DIRECT EXAMINATION BY MR. JOHNSON OF LEON STAVRINAKIS:**

16 Q. Good afternoon, Mr. Stavrinakis. Can you please tell
17 the court how long you have been practicing law.

18 A. I graduated law school in '92 and was sworn into the
19 Bar that fall.

20 Q. And how much of your practice is criminal law?

21 A. The overwhelming majority. I don't know what
22 percentage to give you. But it would certainly be 80
23 percent or more.

24 Q. And have you handled drug cases before?

25 A. Yes, many. As a prosecutor and as a defense lawyer

1 I've handled a great number of drug cases.

2 Q. Including the drugs with the amount of weight that
3 these had in this case?

4 A. Yes, sir.

5 Q. Were you retained or appointed?

6 A. Retained.

7 Q. Do you remember about when you were retained in this
8 case?

9 A. You know, I had represented Wayne previously; so I
10 would imagine he -- I could go through and look. But I
11 imagine he got in touch with me pretty quickly after he was
12 arrested on December 2nd of 2008.

13 Q. And about how many times did you meet with him?

14 A. In total? You know, he was -- we certainly would have
15 met at the time he was arrested. He paid me over a great
16 length of time. So we would have met often times when he
17 made a payment. Although not every time. Sometimes he
18 would leave it at the office.

19 And from August to October I know we met a minimum of
20 seven times not counting appearances in court which when of
21 course we also would have had occasion to talk with each
22 other prior to and during those court proceedings.

23 So I would say I can safely say a minimum of ten times.
24 But don't know the exact number.

25 Q. And did you file discovery and Rule 5 in this case?

1 A. I did, yes, sir.

2 Q. And did you go over that with Mr. Hollinshead?

3 A. Yes, we -- we reviewed it and discussed his cases a
4 number of occasions. I am pretty sure that he may have been
5 on probation when he first got charged in this case.

6 And of course he was, you know, arrested a couple of
7 more times between the time I was originally retained and
8 the time that the case was called for trial.

9 And so, you know, we had a lot to discuss and we met
10 often to discuss the evidence in all of these cases. Plus
11 we met a number of times that aren't part of just our one
12 and one.

13 He -- he actually asked for and I negotiated for him
14 the opportunity to do some work cooperating with law
15 enforcement. And so there were a number of times when I
16 accompanied him to meet with agents. And we certainly met
17 and talked on those occasions and about his case and about
18 what the evidence was and where the case was headed. So we
19 talked about the evidence on multiple occasions.

20 And then of course leading up to trial we met, as I
21 described to you, a number of times to discuss the evidence
22 in his case and to discuss what his options were.

23 Q. Did you have any discussions about possible defenses in
24 this case?

25 A. Yes, we -- you know, once it became -- you know, there

1 were discussions throughout the case where the prosecutor
2 starting around mid 2010 I think was trying to facilitate
3 the case being resolved in some way. He wanted to know if
4 it was going to be a plea or not.

5 He made -- I mean I think the first conversation we
6 had was -- was just in a meeting between prosecutor and I
7 and he wanted, you know, him to plead straight up. And I
8 told him -- the mandatory minimum would have been 25 plus.
9 And I told him that would not happen. He eventually gave me
10 an offer of 20.

11 And so we met, you know, to discuss Wayne making a
12 decision multiple times leading up to the time when the
13 prosecutor dug in and said all right we are going to try
14 this case, during this time period it has got to be a plea
15 or a trial.

16 Once that happened then yeah we sat down, discussed all
17 of the defenses. The most obvious things to me were
18 challenging the search warrant, attempting to get -- because
19 they made it clear they were going to try the oldest case
20 first.

21 And to get -- in that case there were two quantities of
22 drugs that were -- well, more than two quantities; but there
23 were drugs in two different locations and they were charged
24 separately.

25 And to try to get those two suppressed I thought was

1 the biggest point that we could -- we could press. And we
2 tried to do it on multiple different grounds.

3 Wayne and I reviewed that, and then I pursued it in
4 court prior to the case be resolved.

5 Q. And what was the ultimate disposition of that
6 suppression hearing?

7 A. We went in and picked a jury. And but before the jury
8 was sworn Judge Jefferson entertained motions and we had
9 basically a day-and-a-half of testimony; largely police
10 officer testimony. But also I know that Wayne's wife Arial
11 testified. There may have been another witness. But I
12 think it was largely police officers.

13 And we pressed suppression of the drugs, of the
14 statement. And also once those were denied we attempted to
15 suppress part of the drug evidence from being admitted.

16 Basically there was an informant case and then there
17 was also a search warrant case that happened almost
18 simultaneously.

19 And prosecution called the search warrant case but was
20 going to attempt to introduce the CI evidence as well. And
21 we of course challenged that as well.

22 We didn't win on any of the motions in terms of
23 suppressing the evidence or the statement. But we did kind
24 of get a partial victory on the suppression of the CI
25 evidence.

1 Basically my recollection is that Judge Jefferson ruled
2 that she would not allow it to come in depending on what
3 kind of defense was offered.

4 And so that was the result of the motions that we
5 argued. And then it was at that point that things kind of
6 changed direction.

7 Q. And based on those -- the denial of those motions what
8 if anything did change?

9 A. Well, you know, when she issued her ruling I took
10 exception to the, you know, the characterization that his
11 defense would shape in some way what was admissible in the
12 CI case.

13 Of course I didn't agree with the decision on any of
14 it. But I particularly didn't like that because I felt like
15 it -- you know, I don't think in general the law looks
16 favorably on rulings from the bench that limit a person's
17 defenses.

18 And so there was some interaction between Judge
19 Jefferson and I over that. Wayne didn't really understand
20 at that point what we were -- fully what we were talking
21 about.

22 And, you know, when we were done in the court I was
23 trying to talk to him about it and I asked him do you need a
24 break for me to sit down and explain all of this to you; and
25 he said yes. And so I asked Judge Jefferson for a break,

1 and she granted it. And we went in the back. Because he
2 was in -- he was in detention, you know. And so we went in
3 the back and talk about what the results were.

4 And I explained to him her ruling as best I could.
5 And, you know, at that point, you know, he asked me about
6 whether it was possible to plead guilty again. And I told
7 him that there was not a plea offer on the table at that
8 point, that when he rejected those officers -- those offers
9 they were withdrawn. That if he wanted me to I would go ask
10 the prosecutor if they were willing to extend another offer.
11 He asked me to do that.

12 I went and spoke to Mr. Kidd who was the duty assistant
13 solicitor. He told me that once -- their office policy that
14 once a plea offer was rejected and a trial ensued the only
15 plea offers from that point on had to come from Solicitor
16 Wilson.

17 So I told that to Wayne. He told me to pursue it. We
18 went downstairs to Scarlett Wilson's office, Mr. Kidd and I,
19 and talked to her.

20 And basically I, you know, I told her that if she was,
21 you know, so inclined to please make an offer, that he was
22 interested. And the best offer we could get at that point
23 that she would authorize was the 20-year offer that he ended
24 up pleading to.

25 I came back up and explained to him what the terms of

1 the offer were. I believe he understood it fully. And we
2 went and entered it on the record.

3 I explained to him that if he pled, all the work that
4 we have done pretrial on the motions would be lost, that he
5 would not be able to challenge those rulings whether we
6 agreed with them or not. And certainly we did not.

7 But, you know, he just wanted to test those motions is
8 what he relayed to me. He wanted those issues to be
9 resolved. And since they were resolved he wanted to plead
10 guilty; he didn't want to go to trial and risk the larger
11 sentences.

12 Q. And that's just the first set of charges, correct?

13 A. Yeah, there were -- there were four sets, but really
14 there were three. So the first charge the first day was the
15 search warrant charge. And then a couple days later they
16 brought -- I think I have this right, they brought the
17 charges that were the result of -- or maybe the first day
18 they brought the CI charge. One or the other. And then the
19 second set of charges are the rest of -- from the search
20 warrant. It is one of the two.

21 And then he was rearrested a couple of times
22 thereafter. And the last time he was arrested I believe his
23 bond was revoked. And of course things became more
24 difficult for him and on him at that point because he was,
25 he was locked up and facing a very large sentence.

1 Q. And those were also trafficking charges?

2 A. I don't think all of them were. I think -- so of the
3 four sets, three were trafficking charges. One from
4 September of '09 was a possession with intent, cocaine base,
5 and a proximity charge. The rest were trafficking and
6 related proximity charges and a possession with intent,
7 marijuana, and a weapon's charge.

8 Q. Did you explain enhancement principles to Mr.
9 Hollinshead?

10 A. Yes. I mean obviously in a case like this, you know,
11 the enhancements that result from weight and from prior
12 sentence the prosecutor made clear that life without parole
13 sentence was an option that he was considering. And so on a
14 number of occasions sometimes literally pleading with him to
15 get serious about considering plea offers that we were
16 discussing because I literally needed him to give me some
17 kind of framework of what he would be willing to think about
18 so that I could go back and have some real opportunity to
19 negotiate.

20 I was just, you know, trying to get the number down as
21 low as I could so that he had something, you know, tangible
22 to consider. But he never really gave me an idea of what,
23 you know, that he would say yes to if he was going to say
24 yes to anything.

25 And of course, you know, in the process of explaining

1 to him what those enhancements would mean for him also
2 explaining to him that they have got a lot of different
3 shots at you here. It is not like you just win one trial
4 and you go home. They are going to call the next one next
5 one, you know, the next week or soon thereafter and so you
6 are going to have to -- you are going to have to win a lot
7 of different cases over and over again in order to accept --
8 excuse me, to escape what was a very negative outcome had
9 any of those hit.

10 Q. Whose decision was it to plead guilty?

11 A. It was Wayne's decision. I mean in fact I remember
12 asking him, you know, if you were going to plead why did you
13 turn down 15 to 17 to get us to 20.

14 And the, you know, again he just wanted the motions
15 made and to test the evidence. And, you know, my
16 frustration was again if it was one case, that might have
17 made a little more sense. But it was so many different
18 cases.

19 But it was his decision. And, you know, he -- he, you
20 know, obviously struggled with it. Anybody would. I mean,
21 you know, this was a lot of time that was being thrown at
22 him and that he was looking at; and there were never any,
23 you know, easy offers -- you know, any each decisions, you
24 know, coming forward in this case.

25 And, you know, I felt like I did a good job for him the

1 first time I represented him. And sometimes I wonder if,
2 you know, if in his mind he didn't think we could get to
3 that same kind of resolution before it was over. But that
4 just didn't happen. I

5 And by getting rearrested it just became more and more
6 difficult every time a new charge got added into the mix.

7 Q. Did you ever threaten or promise anything to him to get
8 him to plead guilty?

9 A. No, sir.

10 Q. Did he seem to understand the plea negotiations?

11 A. He did. You know, when we went in front of Judge Young
12 that was if I recall correctly Mr. Kidd that really wanted
13 to do that. He, you know, was I think concerned about a
14 PCR if a plea offer was turned down and he ended up with a
15 30-year sentence or a life sentence; and so they wanted to
16 get it on the record.

17 Right before that hearing -- and again, he was locked
18 up that time; so I mean he was certainly, you know, in a
19 difficult situation.

20 I think his mother right before the hearing maybe that
21 day or the day before was the first one to mention, you
22 know, that I should have him evaluated.

23 And, you know, to be honest, I had known him a lot of
24 years at that point and never ever noticed or had any
25 concern that he was incompetent or didn't understand what

1 was going on. He is a very thoughtful guy and easy to deal
2 with one on one.

3 When I, you know, brought it up in front of the judge I
4 think you will notice in the transcript that the judge asked
5 me if I thought he had an issue. And I told them honestly -
6 because I can't lie to the court of course - that I didn't
7 but that it was being raised to me by his family.

8 And so I presented it to the court. When we -- when we
9 left there it was either -- it was probably the next time I
10 went to see him he told me that he didn't want to be
11 evaluated, and that is why I never followed up on it.

12 And it never came up in any of our meetings after that.
13 It never came up during the two days that we were arguing
14 the motions. It never came up any time again after that.

15 Q. And have you ever had clients that need to be mentally
16 evaluated?

17 A. Yes?

18 Q. So you know the process by which you get them
19 evaluated?

20 A. Yeah. Yeah. And again, this was right at the last --
21 you know, Mr. Kidd was really holding my feet to the fire.
22 I was trying hard to buy more time for him in this case to
23 try to shake something loose with the kind of offers we were
24 getting versus choosing between that and a trial. And I was
25 really, really struggling to accomplish that.

1 They were dead set on trying this case around that time
2 period. I bought him a little extra time, but I mean he --
3 it certainly was right at the end of the process where this,
4 you know, was brought up.

5 And, you know, I didn't have any feeling myself that it
6 was something to worry about. So when he told me not to
7 pursue it I mean that was the end of it from my perspective.

8 Again, as I recall, his mother was the first person to
9 raise it. I don't really even know that I believe it was
10 him that brought it up, to be honest.

11 Q. Do you base that decision not to get him evaluated on
12 your interactions with Mr. Hollinshead?

13 A. Yeah. Again, I've known him -- known him a number of
14 years so going back to 2003 probably.

15 Q. And your prior experience as a solicitor and defense
16 counsel?

17 A. Yes, sir.

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

20 Please answer anything that Mr. Hanahan may have.

21 THE COURT: Mr. Hanahan.

22 **CROSS-EXAMINATION BY MR. HANAHAN OF LEON STAVRINAKIS:**

23 Q. Good morning, Mr. Stavrinakis. How are you?

24 A. Good morning -- or afternoon.

25 Q. Afternoon.

1 A. Late afternoon.

2 Q. It started this morning.

3 A. Yeah.

4 Q. You are not any kind of expert as far as evaluating
5 somebody's mental status are you?

6 A. I am not.

7 Q. And in fact you actually had concerns about it and
8 raised it to the court to Judge Young?

9 A. Well, again they were --- they were brought to me. I
10 felt it was my obligation to present it to the judge when I
11 was asked to.

12 Q. And he directed you to call MUSC and to try to get an
13 evaluation done, correct?

14 A. He said that -- you can see what the transcript says.
15 My recollection was he was hesitant to continue the case, if
16 we wanted to check and see if an evaluation could be done in
17 short order he would order it if they could.

18 When I followed up with Wayne about whether he wanted
19 me to call, again the answer was no. And so I didn't.

20 Q. And in fact you sought Judge Young's advice in that
21 regard?

22 A. I did. Again, it was brought up to me kind of at the
23 last minute before that -- that hearing where the rejection
24 of the plea offer was put on record.

25 And so because Mr. Kidd was dead set on trying the case

1 in short order and we were there at that moment and it was
2 the first time that this had ever been brought to my
3 attention. I wasn't sure what else to do other than bring
4 it up to Judge Young and let him give me some guidance,
5 which is what I did.

6 Q. And in fact in the subsequent plea Judge Jefferson
7 brought that issue up herself, did she not?

8 A. I'm not sure what you mean by that question. I mean
9 obviously as part of the plea colloquy it comes up
10 regularly. I don't know that she had any knowledge of it
11 beyond that. But I can't speak for her.

12 Q. But she did ask you if he had had a chance to have an
13 evaluation?

14 A. Yeah, I think she -- yeah, she asked me as part of the
15 regular course, but I mean -- or maybe not. I mean but she
16 did ask. I think so.

17 Q. No further questions. Thank you.

18 MR. JOHNSON: No redirect, Your Honor.

19 THE COURT: Okay. You can step down, sir.

20 MR. JOHNSON: We ask that this witness be released.

21 MR. HANAHAN: No objection, Your Honor.

22 THE COURT: All right. No objection to that. He can
23 be released then.

24 Thank you, Mr. Stavrinakis.

25 THE WITNESS: Thank you, Your Honor.

1 MR. JOHNSON: The State has no further witnesses, Your
2 Honor.

3 THE COURT: Anything else for Mr. Hollinshead?

4 MR. HANAHAN: Your Honor, no further questioning. I
5 just would like to offer a brief summary if I may.

6 THE COURT: Yes, sir. Certainly.

7 MR. HANAHAN: Again, in accordance with the standards
8 that are spelled out in the Bell and Davie cases you have
9 heard testimony from Mr. Hollinshead himself. There
10 obviously have been problems or problems with this case.

11 We never did find the transcript of the pretrial
12 hearings, the motion to suppress the hearings or anything
13 like that. We just never were able to find anything like
14 that.

15 There obviously were concerns about his ability to aid
16 in his defense. They were raised sua sponte by counsel.
17 They were also raised as a part of the sentencing by Judge
18 Jefferson herself independent of Mr. Stavrinakis. I think
19 the concerns were there.

20 The colloquy in the court it is somewhat like a child
21 who wants to please a grown-up telling them what they think
22 they want to hear from them. And I think there are some
23 issues that argue for perhaps a reevaluation on his part and
24 that would warrant him being granted a new trial and a
25 chance to plead his case again. That's all we have. Thank

1 you, Your Honor.

2 THE COURT: Thank you Mr. Hanahan.

3 Mr. Johnson.

4 MR. JOHNSON: Your Honor, the State's position, we have
5 three points that we want to make. First of all, as Mr.
6 Stavrinakis testified, Mr. Hollinshead said he didn't want
7 an evaluation.

8 And Strickland versus Washington, which as Your Honor
9 knows is the preeminent case in post-conviction relief at --
10 let's see, it says 46 -- 466 U.S. 668 at 691 paragraph
11 states that reasonable of counsel- -- counsel's actions may
12 be determined or substantially influenced by defendant's own
13 statements or actions. Counsel's actions are usually based
14 quite properly on informed, strategic decisions made by the
15 defendant and on information supplied by the defendant.

16 And skip down a couple of lines and it says and when a
17 defendant has given counsel reason to believe that pursuing
18 certain investigations would be fruitless or even harmful
19 counsel's failure to pursue those investigations may not
20 later be challenged as unreasonable.

21 Now you have had testimony that Mr. Stavrinakis has
22 represented Mr. Hollinshead in the past and that he is a
23 very intelligent man. You can tell by his answers on the
24 stand that he is very intelligent man. And that he had no
25 question about his mental capabilities whatsoever. It

1 wasn't until his mother came up about this evaluation that
2 the idea of having him mentally evaluated ever appeared.

3 So I believe that Strickland gives us guidance in that.
4 The information that Mr. Hollinshead had supplied to Mr.
5 Stavrinakis can now not be challenged as unreasonable or his
6 failure to get a mental evaluation as unreasonable.

7 Second, is that the case of Jeter versus State. It is
8 south -- it is 308 S.C. 230. And this pertains to whether
9 or not somebody is competent to enter a guilty plea. But it
10 states in determining if counsel is ineffective for failing
11 to request a competency hearing an applicant must show that
12 reasonable probability exists that he would be found
13 incompetent at the time of his trial or plea.

14 The State's position is he has provided absolutely no
15 evidence whatsoever that he was incompetent at the time of
16 his plea. His statement, yes, and I understand that the
17 Bell case his statement can be evidence. But there is -- to
18 show prejudice in this hearing he must have the evaluation.

19 It is kind of like bringing in -- saying hey my counsel
20 should have called these witnesses but yet the witnesses
21 don't testify at the hearing. They have to be here or be
22 present.

23 The evaluation has to be present and be introduced as
24 an exhibit to show the prejudice from counsel's failure to
25 order this mental evaluation.

1 And lastly Your Honor, this is a 1977 United States
2 Supreme Court case, Blackledge v. Allison. I am sure Your
3 Honor has heard of it.

4 But it states that because a guilty plea is a solemn,
5 judicial admission of the truth of the charges against an
6 individual an applicant's right to contest the validity of
7 such a plea is usually but not invariable foreclosed.
8 Statements made during a guilty plea should be considered
9 conclusively unless -- or conclusive unless an applicant
10 presents valid reasons why he should be allowed to depart
11 from the truth of the statements.

12 Your Honor, the State's position is he has provided no
13 reason why he should be able to deviate from the statements
14 he made during the guilty plea under oath. Which the State
15 now thinks he is not credible because he admitted to lying
16 under oath. But instead of facing a life without parole he
17 is facing only 20 years. That is a finite amount of time
18 versus going back, undoing this 20 years and getting lined
19 up for three sets of charges that the State is going to tee
20 him up and go life without parole.

21 Your Honor, the State's position is that Mr.
22 Stavrinakis provided more than adequate competency of
23 counsel in this matter and the applicant has failed to prove
24 any prejudice resulting there from.

25 Thank you.

1 THE COURT: Thank you, Mr. Johnson.
2 All right, counsel. I am going to take this matter
3 under advisement. I will let you hear from me in short
4 order. Okay. Thank you.
5 (WHEREUPON, the PCR hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth 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 captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on July 20, 2015.

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: January 5, 2016

Certified Transcript Provided For: SCC1D

Certification Reference # 010516 0716

CL
AT
AGSTATE OF SOUTH CAROLINA
COUNTY OF CHARLESTONWayne Hollingshead, # 300696,
Applicant,

v.

State of South Carolina,
Respondent.IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2012-CP-10-7840

ORDER OF DISMISSAL

FILED
2015 OCT 22 AM 11:49
JULIE L. HARRIS, CLERK
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 30, 2012. Respondent made its Return on June 28, 2013. An evidentiary hearing into the matter was convened on July 20, 2015 at the Charleston County Courthouse. Bill Hanahan, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Leon Stavrinakis, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the March 2009 term of the Charleston County Grand Jury for trafficking cocaine- 400 grams or more (09-GS-10-1712). Applicant was represented by Leon Stavrinakis, Esquire.

On November 2, 2011, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of twenty (20) years.

A timely Notice of Appeal was filed with the South Carolina Court of Appeals on November 4, 2011. On appeal, the Applicant was represented by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. Upon information and belief, the South Carolina Court of Appeals affirmed Applicant's sentence on January 17, 2012, and issued Remittitur on February 3, 2012.

In his original Application for post-conviction relief filed on January 3, 2014, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to abide by the Honorable Judge Roger Young's Order for applicant to undergo a Competency Hearing.
 - b. Counsel failed to follow the proper procedures on appealing the Judge's decision in which applicant received 20 years for trafficking cocaine as instructed by the applicant.
 - c. Counsel failed to contest a break in the chain of custody.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he wanted a new trial and understood there was no guarantee for a lesser sentence. Applicant testified he met with Counsel 3 times, with each meeting being less than an hour. Applicant testified is not on bond during this case. He stated he reviewed the evidence and received a copy of the Rule 5 materials, which included a search warrant, the affidavit, and the chain of custody documents. Applicant stated he obtained these material 45 days prior to the plea. Applicant testified he was rearrested ⁱⁿ 2011 for trafficking. Applicant

alleges he did not discuss any strategy with Counsel and wanted to be advised of all available defenses. Applicant claimed the search warrant was inconsistent with respect to the time of arrest. Applicant alleged Counsel was not prepared for trial and did not know the law. Applicant further stated there were issues with the weight amount, the chain of custody, and that there was no Franks¹ hearing.

As for pretrial issues, Applicant stated all the officers claimed they found the drugs. Applicant also stated they were plea offers of 15 and 18 years, which he rejected. Applicant testified that Counsel was required to have him mentally evaluated because he had off and on mental issues. Applicant stated the judge instructed counsel to call and schedule this mental evaluation. Applicant claimed he was not mentally capable of accepting the offer. Applicant also stated the offer was presented again but he could not accept it because the same issues. Applicant stated he did not know why a mental evaluation was not completed. Applicant claimed he took the 20 year plea offer because Counsel advised him that he could have a life after prison instead of facing life without parole. Applicant also stated that prior to the plea, there was a suppression hearing for the evidence and for the statement he gave to law enforcement. Both of these suppression hearings were denied.

Applicant then testified he wanted Counsel to ask for a Franks hearing, and that his mental state was not brought to the judge's attention. Applicant also claimed that the SLED drug report was not contained in his Rule 5 materials. Applicant also stated he thought it was better to plead than risk a trial. Applicant admitted that he did not tell the plea judge about his mental health issues and that

1. Franks v. Delaware, 438 U.S. 154 (1978)

he was not fully aware of what would happen. Applicant claimed that his hand was forced, in that he either had to plea or face life without parole.

On cross-examination, Applicant admitted that he understood he could either accept the 20 year, negotiated sentence or proceed to trial. Applicant admitted that he did not answer the plea judge's questions truthfully and also admitted to lying under oath at the plea. Applicant further admitted that this is not his first time being involved with the criminal justice system. Applicant admitted that he pled guilty because he is guilty. Applicant also stated that he did not, at any time, stop the plea judge to explain his mental issues or that he did not understand what was going on during the plea. Applicant lastly stated he was willing to risk the life without parole sentence on retrial if successful on PCR.

Counsel testified that he has been practicing law since 1992 and that criminal cases are the majority of his practice. Counsel stated he is handled drug cases before, including trafficking cases. Counsel stated he has represented Applicant before and that he met with Applicant on this case over 10 times. Counsel stated that he filed for discovery and Rule 5, and discussed and reviewed all of the materials with Applicant. Counsel stated that Applicant was arrested a few more times subsequent to these charges and that he discussed all the evidence with Applicant. Counsel then stated that Applicant agreed to cooperate with law enforcement. Additionally, Counsel testified that they discussed the different options and defenses in the case, including challenging the search warrant. Counsel stated the solicitor wanted to know if Applicant would accept a plea or not; and that the plea offer was 20 years. Counsel stated he wanted to try the oldest case first and try to get the drugs suppressed. Counsel stated in the first case, the jury was picked and both the suppression hearings for

the drugs and Applicant's statements were denied. There was a confidential informant case and a search warrant case.

Counsel testified he explained the rulings to Applicant and inquired about whether or not Applicant wanted to plead. Applicant asked counsel to speak with the solicitor and Counsel spoke with the solicitor and talked about pleas; however, the best offer was for 20 years. Counsel stated that applicant understood the plea offer and ^{he} ~~accepted~~ ^{the} this offer. Counsel further stated that he explained that the plea judge's rulings could not be challenged because Applicant decided plea. Counsel stated he was able to get 3 sets of charges reduced down to one plea. Counsel stated they were 3 separate trafficking charges, and that he explained the enhancements for prior drug charges and drug weight. Counsel explained to Applicant that the State could use the ~~prior~~ ^{the} convictions to enhance Applicant's sentence to life without parole. Counsel tried to get ^{the} ~~the~~ lowest sentence possible for Applicant. Counsel stated it was Applicant's decision to plead guilty and that there were no threats or promises made to entice Applicant to plead. Counsel stated Applicant understood the plea negotiations.

Counsel explained that Applicant's mother was the first person to mention that Applicant needed a mental evaluation. Counsel then testified he had no concerns about Applicant's competency, based on his interactions with Applicant and his experience as an attorney. Counsel also stated Applicant did not want to be mentally evaluated and that this issue did not come up in subsequent meetings. Counsel testified that he has had clients evaluated in other cases and knows the process by which defendants are evaluated.

On cross-examination, Counsel admitted he was not an expert in mental evaluations and that Judge Young instructed him to call the Medical University of South Carolina to arrange a mental

evaluation. Counsel once again explained that Applicant stated he did not want to be mentally evaluated.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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) (citing Rule 71.1(e), SCRPC). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 385 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel negotiated with the State in Applicant's best interest. Applicant also testified he pled guilty because he did not want to risk a trial and face life without parole. Applicant admitted nobody threatened him to plead guilty, and there were no promises other than the negotiations to entice him to plead guilty. Applicant also admitted that he pled guilty because he was guilty in this case. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

Additionally, this Court finds Applicant can prove no prejudice for Counsel's alleged failure to have applicant mentally evaluated. See Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991) (Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief); see also Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial). While Applicant claims Counsel failed to have him mentally evaluated, Applicant failed to produce any evidence that he was not competent to stand trial or assist in his own defense at the PCR hearing, and therefore, can prove no resulting prejudice. Thus, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test — that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

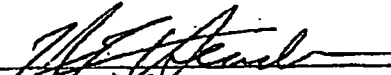
application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED:


Roger R. Henderson
Presiding Circuit Court Judge
Ninth Judicial Circuit

 October 12, 2015
 Charleston, South Carolina

DOCKET NO. 2009GS1001712

The State of South Carolina

County of Charleston

Department

MBER

COURT OF GENERAL SESSIONS

March Term 2009

NUMBER

ST

THE STATE

vs.

WAYNE ALWYN HOLLINSHEAD, Jr.

DOB:

B/M

E BILL

MAR 03 2009

Indictment for

Trafficking Cocaine

Date:

FILED

2009 MAR 23 AM 9:42

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

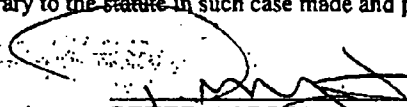
INDICTMENT

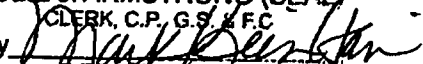
At a Court of General Sessions, convened on March 2, 2009 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about December 2, 2008, the Defendant, WAYNE ALWYN HOLLINSHEAD, Jr., unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of in excess of 400 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


 PETER MCCOY
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By 
 DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
WAYNE ALWYN HOLLINSHEAD

INDICTMENT/CASE#: 2009GS1001712A/W#: K352546Date of Offense: 12/2/2008S.C. Code § : 44-53-0370(e)(2)(e)CDR Code #: 0281

AKA:

Race: BLACK Sex: M Age: 27DOB: SS#:

Address:

City, State, Zip: SC 294180000DL#: SID#: SC01432066*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Trafficking in cocaine, 28 to 100 grams, 2nd offense

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0370(e)(2)(b)2 of the S.C. Code of Laws, bearing CDR Code # 0388
☐ 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: Kidd, Culver 76671 SC Bar# Defendant Attorney for Defendant 65307 SC Bar#

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 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 PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS 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 FundOther: Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$ 288.40Presiding Judge D.L. JafferJudge Code: 2128Sentence Date: 11/2/11Clerk of Court/ Deputy Clerk Whitney H. ...Court Reporter: Larry ...

SCCA/217 (03/2011)

 ATTEST: A TRUE COPY
 JAMES J. ARMSTRONG (SEAL)
 CLERK OF COURT
 By Deputy Clerk
 DEPUTY CLERK