

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

The Honorable Tanya A. Gee

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SC SUPREME COURT

JUMAR MCLEOD

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002661

A P P E N D I X

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

Jumar Shontel McLeod,)
)
PLAINTIFF,)
)
v.)
)
State of South Carolina,)
)
DEFENDANT.)
_____)

TRANSCRIPT OF PLEA
C/A No. 2009-GS-43-459
2011-GS-43-693
2012-GS-43-676

Sumter County Courthouse
April 10, 2012

BEFORE:

HONORABLE GEORGE C. JAMES, JR., PRESIDING

APPEARANCES:

Bronwyn McElveen, Esquire
Assistant Solicitor for the State

Elaine Cooke, Esquire
Sumter County Public Defender for Mr. McLeod

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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1 Bailiff: All rise.

2 The Court: Okay. Everybody ready to go.

3 Ms. McElveen: Your Honor, may we approach?

4 (Counsels approach bench)

5 The Court: For the record, this is Jumar S. McLeod.

6 How do you spell your first name?

7 Mr. McLeod: J-u-m-a-r.

8 The Court: J-u-m-a-r?

9 Mr. McLeod: Yes, sir.

10 The Court: Okay. Swear him in Mr. Prince.

11 Bailiff: Put your left hand on the Bible, raise your
12 right hand, please.

13 (Defendant complies)

14 Bailiff: State your name, please.

15 Mr. McLeod: Jumar Shontel McLeod.

16 Bailiff: Do you solemnly swear or affirm the
17 testimony you give this court will be the truth, the
18 whole truth and nothing but the truth, so help you God?

19 Mr. McLeod: Yes, sir.

20 The Court: Of course, Mr. McLeod, is a Defendant in
21 the case where we picked the jury yesterday in Indictment
22 number 2011-GS-43-693 and I have indictment 2009-459.
23 Those are the two cases that he wants to plead in or was
24 there another case that you did a wavier on?

25 Ms. McElveen: Yes, sir. There is a case that my co-

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1 worker Tyler is working on right now. He's gone to get
2 the waiver indictment. It's a forgery charge and a
3 criminal conspiracy charge. So far we have assigned a
4 waiver indictment number 2012-676. One count of forgery
5 and one count of criminal conspiracy.

6 The Court: All right. So, do you intend to do that
7 now as part of this plea?

8 Ms. McElveen: Whatever, Your Honor, prefers.

9 The Court: It's a quarter of ten and the jury has
10 been here since 9:30. I'd rather not keep them but ...

11 Ms. McElveen: Okay. Yes, sir, Your Honor.

12 The Court: ... I'll be flexible. Any objection Ms.
13 Cooke and Mr. McLeod to me amending the indictment to the
14 correct spelling of his first name in Indictment 459?

15 (Ms. Cooke talks off the record with Mr. McLeod)

16 Ms. Cooke: No, Your Honor.

17 The Court: Okay. Any recommendations or
18 negotiations?

19 Ms. McElveen: Your Honor, we have dismissed some of
20 the charges that Mr. McLeod has pending but in light of
21 the fact that it's the day of trial we are not
22 recommending any set amount of time. We are recommending
23 that you run it concurrent but ...

24 The Court: Okay. Ms. Cooke, you represent Mr.
25 McLeod on these charges where there is a true bill

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1 indictment?

2 Ms. Cooke: Yes, Your Honor.

3 The Court: Do you think he'd be convicted based on
4 your knowledge of the facts?

5 Ms. Cooke: Yes, Your Honor.

6 The Court: Does he understand what the State has to
7 prove? Does he understand any mandatory minimum sentence
8 that would be required on any of these statues that are
9 applicable?

10 Ms. Cooke: Yes, Your Honor. We have discussed that
11 several times.

12 The Court: Distribution third is still non violent,
13 is it not?

14 Ms. McElveen: Yes, sir.

15 The Court: Is he competent?

16 Ms. Cooke: Yes, sir.

17 The Court: Okay. Your name is Jumar Shontel McLeod?

18 Mr. McLeod: Yes, sir.

19 The Court: Mr. McLeod, I'm going to ask you some
20 questions to make sure you enter your pleas freely and
21 voluntarily.

22 **Mr. Shontel - Questions by The Court:**

23 Q: Do you understand that I won't accept your plea
24 unless I'm sure about that?

25 A: Yes, sir.

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1 Q: Do you have any drugs or alcohol in your system now?

2 A: No, sir.

3 Q: Do you have any mental problems?

4 A: No, sir.

5 Q: Are you thinking clearly?

6 A: Yes, sir.

7 Q: Do you take any prescription medication?

8 A: No, sir.

9 Q: Do you have a high school diploma?

10 A: A GED.

11 The Court: Speak up just a tad for me.

12 A: A GED.

13 Q: A GED. Okay. And are you satisfied with the
14 services provided to you by your lawyer?

15 A: Yes, sir.

16 Q: Have you talked to her enough about all these cases?

17 A: Yes, sir.

18 Q: Do you think she has done everything within reason
19 to represent you properly?

20 A: Yes, sir.

21 Q: Okay. What I have is an indictment, we picked a
22 jury yesterday, for possession with intent to
23 distribute marijuana, indictment number 2011-693.
24 It says that you and your co-defendant did in this
25 county on or about October 21, 2010 possess with

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1 intent to distribute a quantity of marijuana. Do
2 you understand that charge and it carries up to five
3 (5) years in prison?

4 A: Yes, sir.

5 Q: The indictment 459 from 2009, under count one says
6 that on the 2nd of September of 2008, you
7 distributed a quantity of crack cocaine. Do you
8 understand that charge according to the sentencing
9 sheet being your third or subsequent offense carries
10 a minimum of ten years and up to thirty years?

11 A: Yes, sir.

12 Q: And count two says that you committed that offense
13 within one-half mile from Wilder Elementary School,
14 do you understand that?

15 A: Yes, sir.

16 Q: That carries zero to ten. Also, it is what is
17 called a serious offense under our three strikes
18 law. I don't know if you have any other strikes but
19 this is a strike you get to your third one. The
20 State can serve you with a notice of life without
21 parole if you get convicted on that third serious
22 offense, do you understand that?

23 A: Yes, sir.

24 Q: All right. Whatever period of time I sentence you to
25 in these cases, sir, you have to understand that I

1 make no representations up front about when you
2 might get released. If I sentence you to a period
3 of time in prison, just go ahead and assume that is
4 what you'll serve. It may be that you'll get out
5 early. Do you understand all that?

6 A: Yes, sir.

7 Q: All right. You plead guilty before?

8 A: Yes, sir.

9 Q: Are you on probation or parole on that?

10 A: No, sir.

11 Q: When you plead guilty you give up your right to
12 remain silent, your right to a jury trial and your
13 right to confront witnesses. Your right to remain
14 silent is your right to say nothing. Your right to
15 a jury trial is your right to have juries decide
16 whether or not you're guilty or not guilty. We
17 picked a jury in the marijuana case. On down the
18 line I would assume there will be a jury selected in
19 this crack cocaine distribution case. There will be
20 twelve people on those juries. You could not be
21 found guilty unless the prosecutor is able to
22 convince every juror that you were guilty beyond a
23 reasonable doubt. That's a high burden. You're
24 presumed innocent and you do not proof or disprove
25 anything. Do you understand that?

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1 A: Yes, sir.

2 Q: Thirdly, if you plead guilty you give up the right
3 to confront witnesses. There are some witnesses
4 here. Typically in a trial, you have the right to
5 see them and listen to them and most importantly
6 question them through your lawyer. Do you
7 understand that right?

8 A: Yes, sir.

9 Q: If you plead guilty that won't happen. Do you
10 understand that?

11 A: Yes, sir.

12 Q: Do you understand clearly those rights I've
13 explained to you?

14 A: Yes, sir.

15 Q: Do you want to give them up today and enter these
16 pleas?

17 A: Yes, sir.

18 Q: Do you also understand that you will be giving up
19 all of your defenses and all rights to challenge the
20 admissibility of any evidence the State has against
21 you?

22 A: Yes, sir.

23 Q: Now, Mr. Brown is in her with that waiver
24 indictment.

25 The Court: Do you have the sentencing sheet on that

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1 case?

2 Mr. Brown: I do have both sentencing sheets, Your
3 Honor.

4 The Court: Did he sign that ahead of time?

5 Ms. McElveen: No, sir. We just printed out the
6 sentencing sheet when we got the indictment number.

7 The Court: If you all want to do that now let's get
8 it done since I'm at the point of reading from that.

9 (Initialing of paperwork done)

10 Q: All right. Mr. McLeod, on these cases that I've
11 mentioned to you already, do you understand that
12 you're giving up the right to challenge the
13 admissibility of any evidence the State has and
14 you're giving up the right to challenge whether or
15 not any of that evidence was obtain in accordance
16 with the law?

17 A: Yes, sir.

18 Q: All right. There is another indictment handed to me
19 that has not been to the grand jury. It is
20 indictment 2012-676 for forgery and criminal
21 conspiracy.

22 The Court: So, why is it that I'm seeing so many
23 criminal conspiracy cases now? Why do we need a
24 conspiracy, too?

25 Ms. McElveen: Your Honor, I believe it is when

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1 people conspired together to commit multiple acts of
2 forgery.

3 The Court: In other words any time we have two
4 people acting together there is going to be a conspiracy
5 charge on them?

6 Ms. McElveen: I suppose that is what Senior
7 Detective Litaker charges, Your Honor.

8 Q: Okay. Do you understand this new indictment has not
9 been to the grand jury?

10 A: Yes, sir.

11 Q: There are eighteen (18) people on that grand jury
12 and in order for the charges to go forward it would
13 take a vote of at least twelve (12) of those grand
14 jurors that you were probably guilty, do you
15 understand that?

16 A: Yes, sir.

17 Q: You can give up the right of presentment and go
18 forward with the pleas today if that is what you
19 would like to do. Is that what you want to do?

20 A: Yes, sir.

21 Q: Do you understand the same rights that I mention to
22 you about to be silent, the jury trial and confront
23 the witnesses applies to these two charges, too?

24 A: Yes, sir.

25 Q: And you're giving up your defenses and the right to

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1 challenge the admissibility of evidence as well?

2 A: Yes, sir.

3 Q: All right. With regard to the sentencing sheet are
4 these your initials on the sentencing sheets for
5 conspiracy and forgery confirming that you have
6 waived presentment?

7 A: Yes, sir.

8 Q: Are these your initials?

9 A: Yes, sir.

10 Q: Is this your signature on the indictment confirming
11 that you have waived presentment?

12 A: Yes, sir.

13 Q: Do you plead guilty or no guilty to possession of
14 marijuana with intent to distribute?

15 A: Guilty.

16 Q: And that is indictment 693. Do you plead guilty or
17 not guilty under indictment 2009-459 to distribution
18 of crack cocaine third offense?

19 A: Guilty.

20 Q: And do you plead guilty or not guilty to
21 distribution of crack cocaine within one half mile
22 of a school?

23 A: Guilty.

24 Q: Under indictment 2012-676 guilty or not guilty to
25 forgery?

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1 A: Guilty.

2 Q: By the way that indictment says that on November 25,
3 2011 you utter a counterfeit check to Bi-Lo for
4 \$384.20 and also the second count says that you
5 conspired with your co-defendants to do that. Do
6 you understand that that is what they charged you
7 with?

8 A: Yes, sir.

9 Q: Are you guilty or not guilty of that?

10 A: Guilty.

11 Q: Are you truly guilty of all five (5) of these
12 offenses we have just covered?

13 A: Yes, sir.

14 Q: All right. Forgery is a property crime. If you get
15 convicted of three or more of those beginning with
16 the third one you are facing ten years, do you
17 understand that?

18 A: Yes, sir.

19 Q: Forgery you're facing up to five and conspiracy ...

20 The Court: Is that five too, Ms. McElveen?

21 Ms. McElveen: I believe zero to five, Your Honor.

22 Q: Do you understand all that?

23 A: Yes, sir.

24 Q: Has anybody promised you anything to get you to
25 plead guilty?

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1 A: No, sir.

2 Q: Has anybody used any pressure, threat or force?

3 A: No, sir.

4 Q: Have you had enough time to decide?

5 A: Yes, sir.

6 Q: And you're still satisfied with the services
7 provided to you by your lawyer?

8 A: Yes, sir.

9 Q: You have ten (10) days to appeal these pleas and the
10 sentences, do you understand that?

11 A: Yes, sir.

12 Q: All right. Now, are you truly and absolutely guilty
13 of all of these offenses?

14 A: Yes, sir.

15 The Court: Are you going to go through all the facts
16 on all these?

17 Ms. McElveen: I was just going to read from the
18 warrants, if that's okay, Your Honor.

19 The Court: All right.

20 Ms. McElveen: Regarding the indictment ending in
21 693, on October 21, 2010 in Sumter County, Mr. McLeod did
22 aide, abet, attempt to conspire to possess marijuana with
23 the intent to distribute it right here at Atlantic and
24 Gate Street. He has a prior conviction for drugs and the
25 vehicle made a left hand turn without using a turn signal

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1 prior to a drivers license check point and upon
2 conducting a traffic stop the driver and passenger fled
3 from the vehicle on foot. Sergeant Fulmore observed two
4 baggies, one from each subject fall to the ground while
5 running. One bag contained fourteen (14) baggies of
6 suspect marijuana and the other bag contained three (3)
7 baggies of suspect marijuana. The drugs were tested and
8 came back positive.

9 Regarding indictment 459 ...

10 The Court: Marijuana?

11 Ms. McElveen: I'm sorry?

12 The Court: That's for marijuana?

13 Ms. McElveen: Yes, sir.

14 The Court: Was that you running from the car?

15 Mr. McLeod: Yes, sir.

16 The Court: All right.

17 Ms. McElveen: Regarding the indictment ending in
18 459. On September 2nd, 2008 at 701 Sheppard Street here
19 in Sumter County, Mr. McLeod did knowingly and without
20 authorization distributed approximately .43 grams of
21 crack cocaine. This being within a one-half mile of
22 Wilder Elementary School. A confidential informative
23 working under the direction and supervision of the Sumter
24 County Drug Unit did purchase suspect crack cocaine from
25 Mr. McLeod using Forty (\$40.00) Dollars in documented

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1 funds. The defendant has two prior drug convictions.

2 The Court: What were they?

3 Ms. McElveen: Cocaine charges.

4 The Court: All those facts true, too?

5 Mr. McLeod: Yes, sir.

6 The Court: Within one-half mile of Wilder, is that
7 right?

8 Ms. McElveen: Yes, sir.

9 The Court: Okay.

10 Ms. McElveen: And then the most recent indictment
11 2012-676, on or about November 25, 2011, the defendant
12 did utter and present a counterfeit check, number 19684
13 drawn on the Bank of American on the account of
14 Performance Staffing and did present said check to Bi-Lo,
15 located at 2055 Wedgefield Road here in Sumter County.
16 He did obtain Three Hundred and Eighty-Four Dollars and
17 Twenty cents (\$384.20) in cash or merchandise all with
18 knowledge the check was forged with the intent to cheat
19 and defraud. The check made payable to the Defendant was
20 endorsed with his signature and identification. The
21 incident was also captured on video surveillance and he
22 was together with co-defendants conspiring to commit this
23 criminal act. And, Your Honor, there is restitution owed
24 Three Hundred Eighty-four Dollars and Twenty cent
25 (\$384.20) to Bi-Lo for this incident and there's a

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1 forgery we are dismissing and Three Hundred Eighty-four
2 Dollars and Twenty cent (\$384.20) is owed to Piggly
3 Wiggly #91 on that incident.

4 The Court: All right. Piggly Wiggly typically does
5 not want to be present.

6 Ms. McElveen: No, sir.

7 The Court: You presented that fraudulent check to
8 Piggy Wiggly?

9 Mr. McLeod: Yes, sir.

10 The Court: Where did you get it from?

11 Mr. McLeod: Someone had made it.

12 The Court: Okay. I'll accept all his pleas. Are we
13 going to sentence him now?

14 Ms. McElveen: If, Your Honor, so wishes.

15 The Court: I will leave that up to the State as to
16 whether or not we sentence now.

17 Ms. McElveen: That would be wonderful, Your Honor.

18 The Court: All right. What's his record?

19 Ms. McElveen: He has a driving without a license
20 from 2008 and a corresponding DUI first offense and a
21 driving under suspension first offense all from 2008.
22 October 2009 interfering with police and then 2002 a
23 shoplifting offense, 2004, two shoplifting offenses,
24 2004, possession of cocaine first offense. October of
25 2005, I'm sorry, December, I'm sorry, October 2005,

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1 possession of a stolen vehicle, May 2006, possession of a
2 scheduled two controlled substance, which would be the
3 cocaine again or crack cocaine again. December 2007,
4 forgery. And that is his criminal history, Your Honor.

5 The Court: When were his cocaine convictions?

6 Ms. McElveen: 2006 and 2004.

7 The Court: Those were possessions?

8 Ms. McElveen: Yes, sir.

9 The Court: Okay. Anything from law enforcement on
10 this defendant?

11 Ms. McElveen: Would you like to speak?

12 Law Enforcement: No, sir, Your Honor.

13 The Court: All right. Thank you. Okay. Ms. Cooke?

14 Ms. Cooke: Your Honor, Mr. McLeod is 26 years old.
15 He has three children. One age seven, two of his children
16 are age one. He's been working at Gold Kist for eight
17 months. I think he wants to tell you, in his own words,
18 that he decided to put drugs behind him but it was too
19 late because he had accumulated all these charges but
20 I'll let him tell you what his goal was, how he feels
21 about that.

22 The Court: Okay.

23 Ms. Cooke: Your Honor, I believe it's my
24 understanding that if the two priors are possessions that
25 under the new law that might change the mandatory minimum

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1 to ten and it might could be suspended?

2 The Court: You all need to ... if you believe that
3 you need to advise your client of that because I'm not
4 going to ...

5 Ms. Cooke: I did advise him that he was facing the
6 mandatory minimum ten because I thought one of them was
7 ...

8 The Court: If it's suspendable ...

9 Ms. McElveen: If it's under the non --- if it's a
10 non marijuana offense, the prior offense is only about a
11 first offense which his only went back ten (10) years.
12 His earliest one is in 2004 so we are within the ten
13 years.

14 Ms. Cooke: I'm sorry, I mean, I'm not disputing the
15 fact that it's a ...

16 The Court: The way I understand it, the way that I
17 have it written down it may not be suspended, no
18 probation, no parole unless all priors are possession
19 offenses under the same section.

20 Ms. McElveen: I mean, you were talking about whether
21 it could be suspended or probation granted.

22 The Court: So, if you're going to argue for
23 probation, then educate me.

24 Ms. Cooke: I'm not arguing for probation, Your
25 Honor, just arguing for a sentence less than ten (10)

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1 years under section 44-53-370 because of the prior two
2 offenses ...

3 The Court: Okay. You're arguing for a suspended
4 sentence?

5 Ms. Cooke: Yes.

6 The Court: All right. Well, then I may just have to
7 sentence him later because I may have to research that.
8 If that's what you think, then you're going to need to
9 find a statute, get it to me and we can debate that. We
10 frankly don't have the time to do that now unless I just
11 turn this jury lose. So, do you all have a copy of the
12 code section?

13 Ms. McElveen: It's under code section 44-53-
14 370(b)(1).

15 The Court: Does anybody have a copy of it?

16 Ms. Cooke: I believe I have it right here, Your
17 Honor.

18 The Court: Have you ever spent any time in prison?

19 Mr. McLeod: Yes, sir.

20 The Court: How much?

21 Mr. McLeod: Thirteen (13) months.

22 The Court: It didn't do you any good?

23 Mr. McLeod: Yes, sir.

24 Ms. McElveen: A person convicted and sentence
25 pursuant to this subsection for a third or subsequent

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1 offense in which all prior offenses were for possession
2 of a controlled substance pursuant to subsection c and d,
3 may have the sentence suspended and probation granted and
4 is eligible for parole, supervised furlough, community
5 supervision, work release, work credits, education
6 credits and good conduct credits. In all other cases
7 the sentence must not be suspended or probation granted.

8 The Court: That's the crack section?

9 Ms. McElveen: I believe so.

10 The Court: 375(b)?

11 Ms. McElveen: 44-53-370(b)(1).

12 The Court: Crack is 375(b). 370(b)(1), I think is
13 cocaine.

14 Ms. McElveen: Okay. Third or subsequent offense
15 under the crack cocaine 375, which all prior offenses for
16 possession of a control substance may have the sentence
17 suspended and probation granted is eligible for parole,
18 supervised furlough, community service, work release,
19 work credit, education credits and good conduct credits.
20 And all other sentence may not be suspended or probation
21 granted.

22 The Court: I'm just going to have to read that.
23 That's hard for me to digest. I'm just not going to do
24 it in a snap way.

25 Ms. Cooke: All right, Your Honor.

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1 The Court: I'm probably not, well, I'm not going to
2 give him probation, I can tell you that. There's a
3 difference between suspending it and putting him on
4 probation but I'm not going to put him on probation.
5 Okay. I can tell you that I will be glad to hear
6 anything else you have to say. We can debate the law
7 later. Is there anything else you want to tell me, Ms.
8 Cooke?

9 Ms. Cooke: No, Your Honor. I think Mr. McLeod would
10 like to tell you something.

11 The Court: All right. Mr. McLeod.

12 Mr. McLeod: Yes, sir.

13 The Court: Speak up loud for me.

14 Mr. McLeod: I say yes, sir. I'm trying to change my
15 life around. I got kids, trying to live better, take
16 care of them. I wish you could show some kind of leniency
17 on me.

18 The Court: You heard your record, right?

19 Mr. McLeod: Yes, sir.

20 The Court: You're twenty-six (26) years old?

21 Mr. McLeod: Yes, sir.

22 The Court: And now is when you are saying you're
23 ready to put all this behind you and not break the law
24 anymore?

25 Mr. McLeod: But the charges was like, I've had the

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1 charges since like 2008, 2009.

2 The Court: You're right, the crack was from 2008 and
3 the marijuana was later and the forgery was last
4 November.

5 Mr. McLeod: Yes, sir

6 The Court: Anything else?

7 Mr. McLeod: I just wish you could show me some kind
8 of leniency.

9 The Court: All right. Okay. I'll sentence him
10 later after I look up that distribution law.

11 **(Break on plea for now)**

12 **(Back on with Sentencing)**

13 The Court: Okay. We are back on the record with
14 Jumar Shontel McLeod for the sentencing in these
15 indictments. 2012-676, 2011-693, 2009-459.

16 Ms. McElveen: Your Honor ...

17 The Court: The uncertainty I had was on -459.

18 Ms. McElveen: Your Honor, we'd like to amend that
19 sentencing sheet to have the CDR Code not read on warrant
20 number M192399, we'd like the CDR Code to be 3015 instead
21 of 3039. So, we'd ask that instead Mr. McLeod plead
22 guilty to distribution, second offense, with the
23 understanding that he would not be testifying in the
24 trial that is taking place right now.

25 The Court: At all?

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1 Ms. McElveen: That's correct.

2 The Court: Okay. What if Mr. Sullivan calls him.
3 He can't refuse to take the stand because of a plea
4 agreement. He can refuse to take the stand and testify
5 because of a fifth amendment right. So ...

6 Ms. McElveen: I guess may we wait on sentencing,
7 Your Honor, until after the trial?

8 The Court: I don't know. Mr. Sullivan is he still
9 here?

10 Mr. Sullivan: I'm here.

11 The Court: Do you think it's appropriate for the
12 State to have that authority to say or offer a change if
13 he just doesn't take the stand? That's just kind of a
14 confrontation issue between Mr. Abrams and Mr. McLeod.

15 Mr. Sullivan: Well, and I can understand her wanting
16 to make this sentence conditioned on whether he
17 testifies. I don't think I'd want to put --- and
18 obviously Ms. Cooke is not going to want me talking to
19 him if his sentence is no set in stone yet, so I'm not
20 going to put somebody on the stand who I haven't
21 interviewed.

22 Ms. McElveen: Your Honor, could we may be wait on
23 sentencing until the case is to the jury and they are
24 deliberating, which should be later today?

25 The Court: Does that suit you, Ms. Cooke?

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1 Ms. Cooke: It does, Your Honor.

2 The Court: Mr. Sullivan doesn't have a dog in that
3 fight. He would have a dog in the fight of whether or
4 not we would condition a lesser sentence or lesser window
5 of him not testifying at all.

6 Mr. McElveen: Yes, sir.

7 The Court: Of course, let's not lose track of the
8 fact the jury is in search of the truth where ever it
9 might be. Okay. So we are going to sentence him
10 afterwards?

11 Ms. McElveen: Is that okay with you, Your Honor?

12 The Court: It suits me fine. Do you all want to
13 discuss it?

14 Ms. Cooke: No, Your Honor, that's fine.

15 The Court: All right. I will sentence him at the
16 time that evidence is closed in the other. As far as
17 whether or not he is or is not called as a witness, of
18 course, the only time you can do it now is on reply.

19 Ms. McElveen: Yes, sir.

20 The Court: And Mr. Sullivan, I will let you figure
21 out what you're going to do between now --- what if I say
22 let's get back together between --- ten minutes til two
23 o'clock to decide what your position is. All right. I'll
24 see the lawyers back and 10:00 and I'll talk to Mr.
25 Abrams about whether he is or is not going to testify.

Jumar Shontel McLeod vs. The State of South Carolina 26

1 Court Reporter: You said 10:00.

2 The Court: Ten minutes to two, I'm sorry.

3 **(Court break)**

4 **(4-10-14 P.M. sentencing of Mr. McLeod)**

5 The Court: Okay. Mr. McLeod, come on back up front,
6 please.

7 (Mr. McLeod comes to front of court room)

8 The Court: All right.

9 Ms. McElveen: Your Honor, we're back on the record
10 with Jumar McLeod. Indictments 2011-0693, 2009-459 and
11 the CDR Code for warrant number M192399 with that
12 indictment should read 3015 instead of 3039.

13 The Court: I've made that change. That will cure any
14 problem Mr. McLeod of any uncertainty in that statute
15 about whether or not you're entitled to parole, work
16 credits or any other type of thing like that in the
17 Department of Corrections. Frankly, nobody can figure
18 out what that statute means. So, it's irrelevant right
19 now. Ms. McElveen, you're going to have to sign this
20 sentencing sheet. Put your Bar Number on it.

21 Ms. McElveen: Yes, sir. And then Indictment 2012-
22 676.

23 The Court: Just for the record. Is there any
24 recommendation or negotiation at all?

25 Ms. McElveen: No, sir. Except \$384.20 restitution

Jumar Shontel McLeod vs. The State of South Carolina 27

1 is owed to Bi-Lo and \$384.20 is owed to Piggly Wiggly
2 Number 91 and that they run concurrent. That's the only
3 recommendation.

4 The Court: Bi-Lo or Piggly Wiggly?

5 Ms. McElveen: Both, Your Honor. There is a forgery
6 charge that we are dismissing in exchange for his plea
7 but restitution is still owed. The exact same amounts
8 oddly enough forged checks at two different locations.

9 The Court: I put Piggly Wiggly on one of them,
10 that's what I heard before. I will get that straightened
11 out. Does he distribute the amount of the restitution?

12 Ms. Cooke: No, Your Honor, we agree to the
13 restitution.

14 The Court: All right. Ms. Cooke, anything else you
15 all want to tell me?

16 Ms. Cooke: Nothing other than what we said earlier,
17 Your Honor.

18 The Court: Mr. McLeod, anything else you want to
19 tell me?

20 Mr. McLeod: No, sir.

21 The Court: Okay.

22 Ms. McElveen: The warrant ...

23 The Court: Ma'am?

24 Ms. McElveen: The warrant ending 935864 is the one
25 that has the two restitution amounts.

Jumar Shontel McLeod vs. The State of South Carolina 28

1 The Court: I will just have to squeeze that on
2 there.

3 Ms. McElveen: Yes, sir.

4 The Court: You did put it on the sentencing sheet, I
5 just didn't notice there were two separate warrants.
6 Okay that's my fault.

7 All right. Mr. McLeod, the sentence of the court is
8 as follows. Indictment Number 2012-676, conspiracy
9 charge, five (5) years in the Department of Corrections,
10 concurrent with five (5) year sentence on the forgery.
11 This the City that has all these conspiracies, is that
12 right?

13 Ms. McElveen: Yes, sir.

14 The Court: Okay. Possession with intent to
15 distribute marijuana, first offense, under Indictment
16 2011-693, concurrent sentence of five (5) years. The
17 distribution of crack cocaine, second offense, ten (10)
18 years, distribution of crack cocaine within a half mile
19 of school, ten (10) years. Drug dealers are going to be
20 caught and drug dealers are going to be sentenced. And
21 right now you're classified as a drug dealer. So, when
22 you get out, I assume you understand you'll have to stop
23 this. If you don't they are just going to keep on
24 catching you and keep on putting you back in. You get
25 credit for any time you've served and again if I didn't

Jumar Shontel McLeod vs. The State of South Carolina 29

1 make it clear all these sentences are concurrent. Good
2 luck to you, sir.

3 Ms. McElveen: Thank you, Your Honor.

4 Ms. Cooke: Thank you, Your Honor.

5 (End of Plea)

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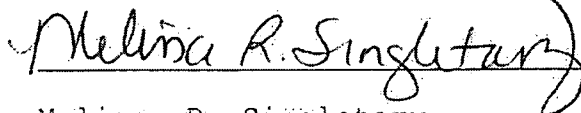
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CERTIFICATE

This is to certify that the motion transcript in the matter of Jumar Shontel McLeod vs. State of South Carolina, consisting of Twenty-Nine (29) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 29thth day of October, 2014.



Melissa R. Singletary
Certified Court Reporter

RECEIVED

31
AUG 08 2014

Referred to PCR/dm
Answered _____

FORM 5
RECORDED

STATE OF SOUTH CAROLINA

County of Sumter

Jumar Shontel McLeod

Full name and prison number (if any) of Applicant
scDC# 315368

v.

State of South Carolina

2014 JUL 30 AM 11:04 IN THE COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2014-CP-43 1557

CERTIFIED TRUE COPY
OF ORIGINAL FILE

APPLICATION FOR

Barbara Stager
CLERK OF COURT

POST-CONVICTION

SUMTER COUNTY
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Turbeville CI

2. Name and location of Court which imposed sentence Sumter Co. Clerk of Court

3. Name(s) of co-defendant(s) (if any) Leroy J. Abrams Jr.
(2011-GS-43-0693)

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2011-GS-43-0693 Poss. w/ Intent to distrib. marijuana
- (b) 2012-GS-43-0676 Conspiracy / criminal conspiracy
- 2009-GS-43-0459 Drug/manufacturing dist. 2nd offense
- 2009-GS-43-0459 Dist. sell, purchase, manufact

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-10-12, 5 yrs. Concurrent
- (b) 4-10-12, 5 yrs. Concurrent
- (c) 4-10-12, 10 yrs. concurrent
4-10-12, 10 yrs. concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No, I asked counsel to file the notice and he failed to do so.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) my Counsel Failed to file the notice after being instructed to do so. I have waited
- (b) this long because I thought I had an appeal in process.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: consel was Ineffective For not
- (a) In filing the notice of appeal
- (b) Failing to file a motion for Re-consideration
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Roel Flores-ortega
- (b) Compece Higgin bottom v. state
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

no.

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

(a) which grounds have been presented:

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

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

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

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

- (a) I was Relying on my Counsel and he Failed to
- (b) Protect my Rights
- (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? NO
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

- (a) the name and address of each attorney who represented you:
 - i. elaine cook
public Defender For Sumter co.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea + Sentencing
 - ii. _____
 - iii. _____

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

Reverse + Remand Conviction + sentence or any other
Remedy that this Court Deems Just + Proper

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

NO.

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, Jumar Shontel McLeod, 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.

Jumar McLeod

SWORN to and subscribed before me this 28th
day of July, 2014.

Erin Hoke (L.S.)
Notary Public

My Commission Expires: 4-27-2016

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

I, Jomar Shontel McLeod, 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.


Applicant

SWORN or affirmed to and subscribed before me this

28th day of July, 2014.


Notary Public

My Commission Expires: 4-27-2016

court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was pled guilty to the offense(s) he challenges in this Application on April 10, 2012. The Applicant was therefore required to file his application on or before April 10, 2013. This Application was filed on July 30, 2014, which was well beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

Applicant claims that he was denied effective assistance of counsel because his plea attorney did not appeal his guilty plea. The one-year statute of limitations does not apply to a claim that an applicant was denied his direct appeal. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002).

Respondent submits that trial counsel for the Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States

Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel's performance was not deficient nor was the Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on the sole issue of whether Plea Counsel was ineffective for failing to file a direct appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

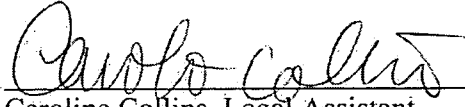
December 22, 2014.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	
)	
)	2014-CP-43-1557
)	
JUMAR MCLEOD, #315368,)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 22nd day of December, 2014.


Caroline Collins, Legal Assistant
For Respondent

State of South Carolina)	Court of Common Pleas
)	Third Judicial Circuit
County of Sumter)	Case No. 2012-CP-43-01557
)	
Jumar McLeod,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

November 17, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Tanya A. Gee, Judge

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

Lance Boozèr, Esquire
Attorney for the Plaintiff

Daniel Gourley, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E X

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<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Jumar McLeod	
Direct by Mr. Boozer.....	6
Cross by Mr. Gourley.....	8
Susan Elaine Cooke	
Direct by Mr. Boozer.....	10
Cross by Mr. Gourley.....	11
Ruling.....	13
Court Reporter Certification.....	14

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(No Exhibits Presented)

1 NOVEMBER 17, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 11:34 a.m.)

5 THE COURT: All right. Mr. Gourley?

6 MR. GOURLEY: Yes, Your Honor. This is Jumar McLeod
7 versus the State of South Carolina, Docket Number 2014-CP-43-
8 1557. He's presently confined in the South Carolina
9 Department of Corrections pursuant to orders of commitment of
10 the Sumter County Clerk of Court.

11 He was true-bill indicted at the April 2009 term of the
12 Sumter County Grand Jury for distribution of cocaine base and
13 distribution of cocaine base within a half a mile of a school.
14 He was then true-bill indicted at the May 2011 term of the
15 Sumter County Grand Jury for possession with intent to
16 distribute marijuana. He then waived presentment to the May
17 2012 term of the Sumter County Grand Jury for forgery, value
18 less than \$10,000, and criminal conspiracy charges.

19 Ms. Cooke represented him. On April 10th, 2012, he pled
20 guilty before the Honorable George C. James Jr., and Judge
21 James sentenced the applicant to essentially a ten-year
22 sentence, an aggregate sentence. He did not appeal his guilty
23 plea or sentence.

24 He filed a timely -- or he filed an application for PCR
25 on July 30th, 2014, alleging ineffective assistance of counsel

1 for failing to file a notice of appeal.

2 THE COURT: And that was not timely?

3 MR. GOURLEY: That was not timely.

4 THE COURT: Okay.

5 MR. GOURLEY: No, Your Honor. I misspoke. And failing
6 to file a motion for reconsideration. The State filed its
7 return and motion to dismiss all claims except for the White
8 v. State failure to file an appeal on December 22nd, 2014. And
9 he is represented in this matter by Mr. Boozer.

10 THE COURT: All right. Mr. Boozer:

11 MR. BOOZER: Thank you, Your Honor. If it pleases the
12 Court, Your Honor, we'd call Mr. McLeod to the stand.

13 THE CLERK: Place your left hand on the Bible and raise
14 your right hand. State your name, please.

15 THE APPLICANT: Jumar McLeod.

16 THE CLERK: Do you solemnly swear or affirm your
17 testimony to the Court shall be the truth, the whole truth,
18 and nothing but the truth, so help you God?

19 THE APPLICANT: Yes, sir.

20 THE CLERK: Have a seat up here. Come around, please.
21 Please state your full name and spell your last name for the
22 record.

23 THE APPLICANT: Jumar McLeod, M-c-L-e-o-d.

24 THE COURT: Okay. Mr. Boozer?

25 MR. BOOZER: Thank you, Your Honor.

JUMAR MCLEOD - DIRECT BY MR. BOOZER

1 JUMAR MCLEOD, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BOOZER:

5 Q: Mr. McLeod, the first thing I notice is that you're
6 dressed a little differently today. What -- where are you
7 housed?

8 A: Sumter Lee Regional Detention Center.

9 Q: And why is it that you're over there?

10 A: I put in for a turnaround.

11 Q: Okay. Are you what's considered a trustee?

12 A: Yes, sir.

13 Q: All right. And so you're now over in Sumter? You're not
14 in SCDC custody?

15 A: No, sir.

16 Q: Okay. So you're -- you're doing pretty well considering
17 the circumstances; is that right?

18 A: Yes, sir.

19 Q: Okay. Mr. McLeod, you obviously had a guilty plea some
20 time ago and then you put in for an application for post-
21 conviction relief?

22 A: Yes, sir.

23 Q: And you were asking -- what were you asking for?

24 A: An appeal.

25 Q: You wanted a belated -- you didn't appeal your guilty

JUMAR MCLEOD - DIRECT BY MR. BOOZER

1 plea?

2 A: No, sir.

3 Q: Okay. And you were wanting to get a belated appeal of
4 that plea?

5 A: Yes, sir.

6 Q: All right. And you know that Her Honor -- that that's
7 what she -- the only thing she has the authority to do is to
8 either grant or deny you getting a belated appeal, and that's
9 something that you want?

10 A: Yes, sir.

11 Q: Okay. Mr. McLeod, who represented you for your plea?

12 A: Ms. Elaine Cooke.

13 Q: Okay. And after your plea, did you and Ms. Cooke have
14 any discussion about you filing an appeal of the plea?

15 A: I thought she was going to put one in for me.

16 Q: Why did you think that?

17 A: I asked her to.

18 Q: And did she do that?

19 A: No, sir.

20 Q: How did you ask her?

21 A: Yes.

22 Q: Do you know where you asked her, if you asked her in
23 court or if you wrote her a letter or --

24 A: I asked her after I got sentenced.

25 Q: And what did she say? Do you recall?

JUMAR MCLEOD - DIRECT BY MR. BOOZER

1 A: I thought I was going to get one, but it never came
2 through after, like, two or three years.

3 Q: Okay. When did you find out that an appeal had not been
4 filed?

5 A: I was at Turbeville Correctional Institution and one
6 never appointed for me; so I put in for another one.

7 Q: Say that again? You put in for what?

8 A: I put in for another one. I was at Turbeville
9 Correctional Institution.

10 Q: You tried to file another -- another appeal?

11 A: Yes, sir.

12 Q: And what happened with that?

13 A: It came back. The PCR came back.

14 Q: Okay. Is this why you filed a PCR is because you didn't
15 get an appeal from your guilty plea?

16 A: Yes, sir.

17 Q: All right.

18 MR. BOOZER: Your Honor, I don't have any further
19 questions at this time.

20 THE COURT: All right. Mr. Gourley?

21 MR. GOURLEY: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. GOURLEY:

24 Q: Mr. McLeod, do you recall the plea judge advising you
25 that you had ten days to file an appeal after your plea?

JUMAR MCLEOD - CROSS BY MR. GOURLEY

1 A: Yes, sir.

2 Q: And when did you ask Ms. Cooke to file one?

3 A: At the Sumter County Courthouse.

4 Q: Okay. After you got -- after you pled guilty, you asked
5 her to file one?

6 A: Yeah. She had me on trial first of all.

7 Q: Okay. And then you ended up pleading guilty?

8 A: Yes, sir.

9 Q: And then after you were sentenced, you asked her to file
10 an appeal?

11 A: Yes, sir.

12 Q: Okay.

13 MR. GOURLEY: That's all the questions I have. Thank
14 you, Mr. McLeod.

15 THE COURT: All right. Mr. McLeod, you may step down.
16 Thank you. Any additional witnesses, Mr. Boozer?

17 MR. BOOZER: Yes, Your Honor. We'd call Ms. Cooke to the
18 stand.

19 THE CLERK: Place your left hand on the Bible and raise
20 your right hand. State your name, please.

21 THE WITNESS: Susan Elaine Cooke.

22 THE CLERK: Do you solemnly swear or affirm your
23 testimony to the Court shall be the truth, the whole truth,
24 and nothing but the truth, so help you God?

25 THE WITNESS: I do.

SUSAN ELAINE COOKE - DIRECT BY MR. BOOZER

1 THE CLERK: Thank you. Please state your full name and
2 spell your last name for the record.

3 THE WITNESS: Susan Elaine Cooke, C-o-o-k-e.

4 SUSAN ELAINE COOKE, being first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BOOZER:

8 Q: Ms. Cooke, do you recall representing Mr. McLeod some
9 time ago?

10 A: I do.

11 Q: Okay. And you represented him at what ultimately was a
12 guilty plea?

13 A: Yes.

14 Q: Do you recall Mr. McLeod asking you to file an appeal?

15 A: I do not recall Mr. McLeod ever asking me to file an
16 appeal.

17 Q: Okay. Do you recall -- do you just not recall it or --

18 A: I don't specifically recall our -- I don't recall our
19 specific conversation, if that's what you're asking. I can
20 tell you that if he had asked me for an appeal, I would have
21 filed one. I always file an appeal if a client asks me to,
22 and I don't recall him ever asking me to file one.

23 Q: Do you recall having any contact with Mr. McLeod at all
24 following the plea?

25 A: No.

SUSAN ELAINE COOKE - DIRECT BY MR. BOOZER

1 Q: Okay. Do you recall immediately following the plea if
2 you had any discussion in the courtroom with -- with Mr.
3 McLeod?

4 A: Not that I recall.

5 Q: But you don't actually recall him asking you to file an
6 appeal?

7 A: I do not. If he had asked me to file an appeal, I would
8 have filed the paperwork.

9 Q: And you'd agree with me that April 2012 -- that's been
10 some time ago?

11 A: It has. And like I said, I do not specifically recall
12 the conversation we had, but I can just tell you my practice
13 and my habit and routine. I've never not filed an appeal that
14 a client has asked me to file, and I don't specifically recall
15 him asking me to file one.

16 MR. BOOZER: The Court's indulgence, Your Honor. No
17 further questions, Your Honor.

18 THE COURT: All right. Thank you. Mr. Gourley?

19 MR. GOURLEY: Thank you, Judge. Very briefly.

20 CROSS-EXAMINATION

21 BY MR. GOURLEY:

22 Q: Ms. Cooke, what is your habit and routine in regards to
23 discussing the rights to appeal and filing an appeal on behalf
24 of your clients?

25 A: Just that any time any client has ever asked me to file

SUSAN ELAINE COOKE - CROSS BY MR. GOURLEY

1 an appeal on a guilty plea, I've done it. I automatically
2 file an appeal on a trial, but with a guilty plea I only file
3 an appeal if a client asks. And only three clients have asked
4 me to file an appeal on a guilty plea.

5 And if -- if they do ask me to file an appeal on a guilty
6 plea, I do go in -- go into the back or where I'm able to talk
7 to them, take them outside if they're not in custody or go
8 into an interview with them if they are in custody and let
9 them know that I will file the paperwork, but I also let them
10 know that basically it -- nothing is going to happen with it
11 because -- you know, generally I -- I generally take them and
12 have a conversation with them and advise them I will file the
13 paperwork since you asked for one, but don't expect anything
14 to come of this because there weren't any legal errors made
15 during the plea. And I didn't have that conversation with
16 him.

17 Q: All right. Thank you, Ms. Cooke.

18 MR. GOURLEY: Thank you, Judge.

19 THE COURT: Thank you. Any redirect, Mr. Boozer?

20 MR. BOOZER: No redirect, Your Honor.

21 THE COURT: All right. You may step down. Thank you.

22 MR. GOURLEY: Judge, the State has no additional
23 witnesses -- or no witnesses.

24 THE COURT: All right. Anything further before the Court
25 rules?

26

1 MR. BOOZER: Nothing further, Your Honor.

2 THE COURT: All right. All right. I have reviewed this
3 guilty plea transcript, the application, and the return. I've
4 also listened carefully to the testimony before me today, and
5 I find that Ms. Cooke's testimony is credible. That she would
6 have filed an appeal had Mr. McLeod asked her to, and she does
7 -- she did not file an appeal and she does not recall Mr.
8 McLeod asking her to.

9 I also find that Rule 203, subsection B, Roman numeral
10 IV, requires that any appeal that would have been filed would
11 have to be accompanied by an explanation of what appealable
12 issue exists. And in this particular case, having reviewed
13 the guilty plea transcript, as there were no issues raised to
14 the trial -- the plea court, any appeal would have been
15 dismissed in any event.

16 So therefore, the application is denied. The request for
17 a belated White v. State appeal is denied. And I would ask
18 Mr. Gourley to please prepare an order.

19 MR. GOURLEY: Thank you, Judge.

20 THE COURT: Thank you.

21 (WHEREUPON, the proceedings ended at 11:45 a.m.)

22

23 --- END REQUESTED TRANSCRIPT ---

24

25

1 State of South Carolina)
2) Certificate
3 County of Florence)
4
5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 13 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Sumter County, South Carolina, on the 17th day
13 of November, 2015.
14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16
17 s/Krystal J. Smith
18 Court Reporter
19
20 Florence, South Carolina
21 January 29, 2016
22
23
24
25

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
)
 Jumar McLeod, #315368,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-43-1557

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
Sherry H. Hart
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

RECORDED
 2015 NOV 30 PM 3:43
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 30, 2014. The Respondent submitted a return and partial motion to dismiss dated December 22, 2014. An evidentiary hearing into the matter was convened on November 17, 2015, at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the April 2009 term of the Sumter County Grand Jury for distribution of cocaine base and distribution of cocaine base within one half mile of a school (2009-GS-43-459). Additionally, the Applicant was true bill indicted at the May 2011 term of the Sumter County Grand Jury for possession with intent to distribute marijuana (2011-GS-43-0693). Furthermore, Applicant waived presentment to the May 2012 term of the Sumter County Grand Jury for forgery, value less than 10,000 and criminal conspiracy (2012-GS-43-0676). Elaine Cooke,

Esquire represented Applicant. On April 10, 2012, Applicant pled guilty before the Honorable George C. James, Jr. Judge James sentenced Applicant to the following:

- Distribution of cocaine base, 2nd offense 10 years, concurrent
- Distribution of cocaine base within ½ mile of a school 10 years, concurrent
- Possession with intent to distribute marijuana 5 years, concurrent
- Criminal conspiracy 5 years, concurrent
- Forgery, value less than 10,000 5 years, concurrent.

Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Failing to file a notice of appeal
 - b. Failing to file a motion for reconsideration.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf and called Susan Elaine Cooke (hereinafter "Plea Counsel"). The Court had before it the transcript of the guilty plea hearing, the Sumter County Clerk of Court's records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return and partial motion to dismiss.

During the evidentiary hearing, Applicant testified that Plea Counsel was appointed to represent him on his charges. Applicant stated that he thought Plea Counsel had filed a notice of appeal following his guilty plea. Applicant stated that he requested Plea Counsel to file an appeal immediately following his guilty plea and sentence. Applicant stated that he did not

discover that an appeal was not pending until several years later. Applicant stated he immediately filed his PCR application after he learned that an appeal was not pending.

Following Applicant's testimony, Plea Counsel was called to testify by Applicant. Plea Counsel stated that she did not recall filing an appeal on Applicant's behalf. Plea Counsel stated that she did not recall any specific conversation with Applicant regarding an appeal. However, Plea Counsel stated that had Applicant requested her to file an appeal she would have filed an appeal immediately. Plea Counsel stated she had no contact with Applicant following his plea. Plea Counsel stated she has never not filed an appeal when a client requested her to file an appeal. Plea Counsel stated that had Applicant requested her to file an appeal she would have had a full conversation about the appeal and would have advised Applicant that there was no merit to an appeal. Plea Counsel opined that there were no grounds to appeal as a result of Applicant's plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. Ineffective Assistance of Counsel for failing to advise and file a notice of appeal.

This Court finds no merit to the allegation that Plea Counsel was ineffective for failing to review and file a notice of appeal on the Applicant's behalf following his guilty plea. Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example,



because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal, for example, because there are nonfrivolous grounds for appeal, or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 670 S.E.2d 373, (2008).

The record before this Court is clear in establishing that Applicant was aware of his appellate rights following the entry of his guilty plea. The court advised Applicant that he had ten days to file an appeal. Additionally, this Court finds credible Plea Counsel's testimony that Applicant did not request her to file an appeal on his behalf. This Court further finds credible Plea Counsel's testimony that she would have filed an appeal had Applicant requested her to file an appeal. This Court further notes that there were no meritorious grounds for an appeal. Accordingly, Applicant's contention that he was never advised of the right to appeal is insufficient to warrant the grant of a review of direct appeal issues pursuant to White v. State.

CONCLUSION

Based on the foregoing, this Court finds 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 is denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-



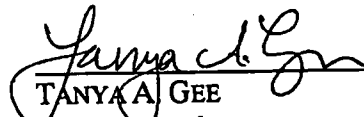
conviction relief. Rule 71.1(g), SCRCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 23rd day of November, 2015.

Columbia, South Carolina


TANYA A. GEE
Presiding Judge
Third Judicial Circuit

DOCKET NO. 2009-GS-43- 459

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

APRIL TERM 2009

THE STATE
vs.

JAMAR McLEOD

ARREST WARRANT NUMBER

M192399; M192398

D/A: 02/26/09

ACTION OF GRAND JURY

[Signature]

[Signature]

Foreperson of Grand Jury

Date: *2/27/09*

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

DISTRIBUTION OF COCAINE BASE,
DISTRIBUTION OF COCAINE BASE
WITHIN 1/2 MILE OF A SCHOOL

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

DISTRIBUTION OF COCAINE BASE,
DISTRIBUTION OF COCAINE BASE WITHIN 1/2
MILE OF A SCHOOL

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

B. [Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE - DISTRIBUTION OF COCAINE BASE

of Jumar (amended by court 4/10/12)
That ~~JUMAR~~ McLEOD did in Sumter County on or about September 2, 2008, distribute to a reliable, confidential informant working under the authority of the Sumter City-County drug unit, a quantity of cocaine base, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-375(B) et. seq., 1976 Code of Laws of South Carolina, as amended), such distribution not having been authorized by law.

COUNT TWO - DISTRIBUTION OF COCAINE BASE WITHIN 1/2 MILE OF A SCHOOL

of Jumar (amended by court) 4/10/12
That ~~JUMAR~~ McLEOD did in Sumter County on or about September 2, 2008, distribute to a reliable, confidential informant working under the authority of the Sumter City-County drug unit, a quantity of cocaine base, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-445 et. seq., 1976 Code of Laws of South Carolina, as amended), such distribution having occurred within one-half mile of a school, to-wit: Wilder Elementary School.

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

C. Kelly Jackson
SOLICITOR

WITNESSES

A White

Sumter Police Dept.

DOCKET NO. 2011-GS-43-0693

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE

vs.

JUMAR SHONTEL MCLEOD

LEROY JAMES ABRAMS JR.

ARREST WARRANT NUMBER

M003408

M003407

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: 5/19/2011

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

Drugs / Manuf., poss. of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.t.d.

[Signature]

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Drugs / Manuf., poss. of other sub. in Sch. I, II, III or
flunitrazepam or analogue, w.i.t.d.

CERTIFIED TRUE COPY
OF ORIGINAL FILE

At a Court of General Sessions, convened on May 19, 2011 the Grand Jurors of *Sumter*

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

SUMTER County present upon their oath:

COUNT ONE
POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA

That JUMAR S. McLEOD and LEROY J. ABRAMS, JR. did in Sumter County on or about October 21, 2010, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Marijuana, a controlled substance under the provisions of Section 44-53-110, et seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(d), S. C. Code of Laws, 1976, as amended.

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

Solicitor

Edward H. King III

WITNESSES

H Gardner Sumter Police Dept.

ARREST WARRANT NUMBER

M935864 M935865

ACTION OF GRAND JURY

*Defendant hereby waives
presentment to the Sumter Co. Grand Jury.*

Jumar Shontell McLeod
Foreperson of Grand Jury
Date: _____

VERDICT

Foreperson of Petit Jury
Date: _____

DOCKET NO. 2012-GS-43-0676

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2012

THE STATE

vs.

JUMAR SHONTEL MCLEOD

Indictment for

Forgery, value less than \$10,000; Criminal
Conspiracy

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

CERTIFIED TRUE COPY
OF ORIGINAL FILE
INDICTMENT FOR
Balmer Page
Forgery, value less than \$10,000, Criminal Conspiracy
SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on May 17, 2012 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE - FORGERY LESS THAN \$10,000

That Jumar Shontel McLeod did in Sumter County on or about November 25, 2011, with intent to defraud, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or utter and publish as true any false, forged or counterfeited writing or instrument of writing, or did willingly act or assist in any of the foregoing, to wit: utter and present a counterfeit check #19684 to Bi-Lo in the amount of \$384.20, where the amount of the forgery was less than ten thousand dollars, in violation of Section 16-13-0010(B)(2), S. C. Code of Laws, 1976, as amended.

COUNT TWO - CRIMINAL CONSPIRACY

That Jumar Shontel McLeod did in Sumter County on or about November 25, 2011 combine with Laqwanda Monique Hinnant, Jerry Anthony Wright, and/or Todd Levar McLeod with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Forgery, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

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

Solicitor

Ernest F. III