

STATE OF SOUTH CAROLINA

RECEIVED

IN THE SUPREME COURT

SEP 20 2012

Appeal from Lee County

S.C. Supreme Court

R. Ferrell Cothran, Jr., Circuit Court Judge

LAQUAN MARSHALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA

County of Lee

THE STATE OF SOUTH CAROLINA,
Plaintiffs

vs.

La'Quan Marshall,
Defendant

09-GS-31-98
Guilty Plea

October 6, 2010
Bishopville, S.C.

Before the Honorable George C. James, Jr., judge.

A-P-P-E-A-R-A-N-C-E-S

Mr. Paul Fata,
Assistant Solicitor for the State

Ms. Deborah Butcher,
Attorney for defendant

Margaret T. Sullivan,
Court Reporter

1 MR. FATA: Your Honor, the State calls
2 Indictment 2009-GS-31-98. The State versus La'Quan
3 Marshall. Mr. Marshall was indicted for distribution of
4 crack cocaine, 5 counts. Distribution of crack cocaine
5 within the proximity of a school, four counts.

6 THE COURT: 5 counts of distribution, and
7 4 counts of proximity?

8 MR. FATA: Yes, sir. He is entering a
9 plea to the four counts of distribution which is
10 the crack cocaine second offense. And four counts
11 of distribution within the proximity of a school.
12 The State is recommending a 15-year sentence. And
13 that all charges or all sentences run concurrent
14 And Count 2, on the indictment is a count that the
15 State is nol-prossing. All the other counts he is
16 going to go forward on. Here are the indictments
17 and the plea sheets of the counts.

18 THE COURT: Okay.

19 (Whereupon, the defendant is sworn.)

20 THE COURT: So on the proximity with 10 to
21 15. On the distribution second for 5 to 30.

22 MR. FATA: The is correct. And the
23 recommendation of the State is 15 years
24 concurrent.

25 THE COURT: Now I believe under the Title

1 17 that the distribution second each of those on
2 the indictment would be a strike.

3 MR. FATA: Oh, yes, sir. He has
4 already---

5 THE COURT: So I am just looking at Count
6 1, distribution of crack cocaine.

7 MR. FANT: All of the proximities. All of
8 the proximities are a strike.

9 THE COURT: But okay. But all of these
10 together is one strike.

11 MR. FATA: That's correct. Yes, sir.

12 THE COURT: I think the sentence of the
13 maximum under the distributions carry up to 30
14 years. I think that will be one strike as well.
15 But one strike based on this plea.

16 MR. FATA: That's correct.

17 THE COURT: Ms. Butcher, you represent
18 Mr. Marshall?

19 MS. BUTCHER: I do, Your Honor.

20 THE COURT: And is there also a probation
21 encompassed with this?

22 PROBATION AGENT: Yes, sir, Your Honor.

23 THE COURT: What are the circumstances of
24 that?

25 PROBATION AGENT: He is currently serving

1 probation for possession of cocaine base first.
2 His sentence originally was done on June 25th
3 2008, and received 3 years and a \$1,000.
4 Suspended on time served. And \$100. And 3 years
5 probation. Credit for time served 3 days.
6 80 hours of public service. And surcharge of, I
7 believe it's 445, 447 on June 23rd 2008. That
8 concludes the violation of his probation.

9 THE COURT: Ms. Butcher, do you think
10 based on your knowledge of the facts and
11 circumstances of these 8 charges, is that right,
12 eight?

13 MR. FATA: Eight counts, yes, sir, Your
14 Honor.

15 THE COURT: That he would be found guilty?

16 MS. BUTCHER: I do, Your Honor.

17 THE COURT: Do you agree with his decision
18 to plead?

19 MS. BUTCHER: Yes, Your Honor.

20 THE COURT: Does he understand the
21 punishment that he faces and all his
22 constitutional rights?

23 MS. BUTCHER: Yes, Your Honor.

24 THE COURT: Your name, sir?

25 THE DEFENDANT: La'Quan Marshall.

1 THE COURT: Mr. Marshall, listen very
2 carefully to all these questions. I cannot accept
3 your plea unless you enter it freely, voluntarily,
4 knowingly and intelligently. If you want to speak
5 with your attorney as we go through this, you can
6 you do that, do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If somebody says something
9 that you do not agree with, or you don't
10 understand, you let your lawyer know, and he will
11 let me know. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: According to the information I
14 have, you are 36 years old?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: I received my GED.

18 THE COURT: And how long have you been in
19 jail?

20 THE DEFENDANT: Going on 5 months.

21 THE COURT: Is that on these charges?

22 THE DEFENDANT: That's on these charges
23 right here.

24 THE COURT: Have you ever been treated for
25 drug problems?

1 THE DEFENDANT: No, sir, Your Honor.

2 THE COURT: Alcohol?

3 THE DEFENDANT: No, sir.

4 THE COURT: Mental problems?

5 THE DEFENDANT: No, sir.

6 THE COURT: What kind of work did you do
7 before you went to jail?

8 THE DEFENDANT: Brick mason. I also draw.

9 THE COURT: You also what?

10 THE DEFENDANT: Draw.

11 THE COURT: Draw?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you have a history of
14 mental problems?

15 THE DEFENDANT: No, sir, Your Honor.

16 THE COURT: Do you take medication?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you have any condition
19 today that would keep you from being able to
20 understand what you are doing?

21 THE DEFENDANT: No, sir, Your Honor.

22 THE COURT: There are 8 counts on this
23 Indictment that your lawyers have told me you want
24 to plead guilty to.

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: The first count is
2 distribution of crack cocaine.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It is dated May 14th 2009. It
5 says you committed that offense by distributing to
6 a confidential informant a quantity of crack
7 cocaine.

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Do you recall that May 14th?
10 Also on Count 3, that they are dismissing. It
11 says that you distributed that substance to that
12 informant, which was within one half mile of a
13 school; specifically, Bishopville Primary School.
14 Do you understand that?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Distribution of crack cocaine
17 is being treated as a second offense, is that
18 right?

19 MR. FATA: Yes, sir, Your Honor.

20 THE COURT: That carries with it a term of
21 imprisonment of a minimum of 5 years and maximum
22 of 30. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And the proximity charge doing
25 that within a half of a mile school. That carries

1 10 to 15. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: It's also considered what we
4 call a serious offense under our three strikes
5 law. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Does he have any strikes now?

8 THE DEFENDANT: Yes, sir. He has two
9 serious strikes. This would be a life without
10 parole case but it's within the Solicitor's
11 discretion. And in light of the plea, we have
12 chosen not to seek life without parole.

13 THE COURT: What are his other serious
14 offenses?

15 MR. FATA: He has a manufacturing -- he
16 has a distribution of proximity in 1996. That was
17 the second most -- second serious, excuse me. And
18 he also has a burglary second violent in 1991.

19 THE COURT: So you understand that you
20 have run out of strikes. Do you understand that?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: You are not going to get life
23 with this. They don't have to seek it if they
24 don't want to. But they could if they wanted to.
25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: So if you get out of prison on
3 this round of charges, and you get another serious
4 offense, or a most serious offense, you again are
5 facing life without parole. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: The fourth count of the
9 indictment is distribution of crack cocaine. It
10 says that a day later, May 15th of 09, you
11 distributed crack cocaine to a confidential
12 informant. Count 5 says that you did that within
13 a half mile of Bishopville Primary School. Count
14 6 says you did the same thing on May 21st. You
15 distributed crack to a confidential informant.
16 Count 7 you did that within a half mile of
17 Bishopville Primary School. Count 8, different
18 dates, the same thing. Distribution of crack
19 cocaine on May 29th. And then Count 9 says you
20 did that within a half mile of Bishopville Primary
21 School. All those carry the same sentences that I
22 indicated earlier. Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: When you plead guilty, and by
25 the way, if you ever get convicted of drug

1 offenses in the future, it will be treated as a
2 third or subsequent depending upon the time and
3 the nature of the offense. Do you understand
4 that?

5 THE DEFENDANT: Yes, sir, I do.

6 THE COURT: When you plead guilty, you
7 give up some rights. One of those is your right
8 to remain silent. You have the right to say
9 nothing. Do you understand that?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: You also have a right to a
12 jury trial. Have you ever had one?

13 THE DEFENDANT: No, sir.

14 THE COURT: 12 people could be on your
15 jury. It would be their job to determine whether
16 or not you are guilty or not guilty. They would
17 make that decision after listening to and
18 considering all the evidence and the law in this
19 case. And you couldn't be found guilty unless you
20 were -- unless all the jurors agreed beyond a
21 reasonable doubt that you were guilty. And you
22 would not have to prove anything. You wouldn't
23 have to disprove anything.

24 And you wouldn't even have to present any
25 evidence. The State would have the sole burden of

1 proving the reasonable doubt standard. And it is
2 a high burden. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The other rights you have is
5 your right to confront witnesses the State calls
6 against you. You have the right to be present,
7 listen to the witnesses. And then you through
8 your lawyer, could cross examine those witnesses.
9 Your lawyer, you don't have to, you could call
10 your own witnesses during that proceeding. Do you
11 understand all of those rights that I have
12 explained to you?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: Do you want to give up each
15 one of those rights and plead guilty?

16 THE DEFENDANT: I am going to give up the
17 right and plead guilty today, Your Honor.

18 THE COURT: If you have any defenses, I
19 don't know if you do, but if you do, you
20 understand that when you plead guilty you give up
21 those defenses?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And if you made any
24 statements to the police that were incriminating,
25 do you understand that when you plead guilty, you

1 give up the right to challenge the admissibility
2 of those statements?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Are you guilty? I am going
5 through these things by count and date. Count 1
6 and Count 3, distribution of crack cocaine. And
7 doing that within a half mile of Bishopville
8 Primary on May 14th 2009. Are you guilty or not
9 guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: All right. And distribution
12 of crack cocaine and distribution of crack cocaine
13 within a half mile of Bishopville Primary counts 4
14 and 5, May 15th 2009. Guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Counts 6 and 7, distribution
17 of crack cocaine and doing that within a half mile
18 of Bishopville Primary on May 21st 2009. Guilty
19 or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Counts 8 and 9, distribution
22 of crack cocaine and distribution within a half
23 mile of Bishopville Primary School. Guilty or not
24 guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: That's May 29th. Guilty or
2 not guilty?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you truly guilty of all 8
5 of these offenses?

6 THE DEFENDANT: I am.

7 THE COURT: Has anybody promised you
8 anything to get you to plead guilty?

9 THE DEFENDANT: No, sir, Your Honor.

10 THE COURT: Has anybody used any threats,
11 force or intimidation to get you to plead guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Well the recommendation is
14 that I give you 15 years on all of these and that
15 you would serve them at the same time. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is that your understanding of
19 the recommendation?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: Is that right, Ms. Butcher?

22 MS. BUTCHER: Yes, sir.

23 THE COURT: I don't have to follow it if I
24 don't want to. Do you understand that?

25 THE DEFENDANT: Yes, sir, I understand.

1 THE COURT: Okay. Is your lawyer making
2 you plead guilty?

3 THE DEFENDANT No, sir, Your Honor.

4 THE COURT: Have you had enough time to
5 make up your mind?

6 THE DEFENDANT: I have had enough time to
7 make up my mind.

8 THE COURT: And nobody has used any force
9 to get you to do this?

10 THE DEFENDANT: None whatsoever.

11 THE COURT: Are you satisfied with the
12 manner in which Ms. Butcher has represented you?

13 THE DEFENDANT: I am very pleased, Your
14 Honor.

15 THE COURT: Has she done everything you
16 think she could have reasonably done to represent
17 you?

18 THE DEFENDANT: I believe she has.

19 THE COURT: Do you need to talk to her any
20 more?

21 THE DEFENDANT: No, sir, Your Honor.

22 THE COURT: Have you understood all your
23 conversations with her?

24 THE DEFENDANT: All of them, sir.

25 THE COURT: Do you understand that you

1 have 10 days to appeal these pleas and the
2 sentences that I give you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And have you understood
5 everything we have been over so far?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 MR. FATA: Thank you, Your Honor. On, I
8 am taking these in order. On May 14th 2009, in
9 the City of Bishopville, Lee County. The City of
10 Bishopville Police Department was undertaking an
11 undercover operation. They had a CI that they
12 wired with a microphone and video camera. And
13 sent him out to sell, to purchase drugs. He went
14 to : Mr. Marshall's address.
15 And purchased a quantity of crack cocaine.

16 Mr. Marshall's house is within a half mile
17 of a primary school. He returned to the location
18 where the police were waiting. He turned the
19 drugs in to them. The drugs were analyzed by the
20 Sumter County's Sheriff's Office. And excuse me,
21 was determined to be .15 grams of cocaine base.

22 On May 15th 2009, the City was still
23 engaged in the undercover sting operation. Sent
24 the same CI out to to see
25 Mr. Marshall. And bought -- they gave him some

1 money. I think it was \$20. Gave him some money.
2 Had him make a purchase from Mr. Marshall of crack
3 cocaine. It was sent to the Sumter County
4 Sheriff's lab. And it was determined to be
5 .15 grams of cocaine base. On May 21st 2009, the
6 City was still doing the same undercover. They
7 send out their CI. The CI goes to 206 Munnerlyn
8 Street and sees Mr. Marshall. Purchases a
9 quantity of what is alleged to be crack cocaine.
10 He comes back to the rendezvous point. The CI
11 gives the stuff to the police. The police send it
12 to the Sheriff's Office in Sumter County for
13 analysis. It comes back .11 grams of cocaine
14 base.

15 On May 29th 2009, the City is still doing
16 the undercover operation. The same CI. Sometimes
17 this CI is on a bicycle. Sometimes he's on a
18 moped. Anyway, he goes to
19 Purchases a quantity of crack cocaine. And the
20 Police Department take it to the sheriff's lab in
21 Sumter and have it analyzed. And it comes back to
22 be -- It might have been -- yeah here it is. It
23 comes back to be 6.39 grams of cocaine base.

24 All of this, this address is within one
25 half mile of the Bishopville Primary School here

1 in Bishopville, Lee County. Mr. Marshall's record
2 is as follows: In 1996, he has a manufacturing,
3 distribution of ice, crank or crack cocaine first.
4 He received 6 years or a \$25,000 fine. They
5 recommended that he attend the ATU unit. Also at
6 that time he had a distribution within the
7 proximity and he got 5 years for that.

8 He had -- in 1991, he had a burglary
9 second degree. In 2008, he had a possession
10 of one gram of meth or cocaine base. And he
11 received 3 years and a \$1,000 fine. Suspended to
12 time served and a \$100 fine and 3 years probation.
13 That would have made this a third -- that makes
14 these a third offense.

15 THE COURT: Third strike?

16 MR. FATA: Well this makes -- well this a
17 third serious. It also makes it a third drug
18 offense. But we are accepting the plea to a
19 second.

20 THE COURT: Are all those facts, correct
21 Mr. Marshall.

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: What is the probation issue?
24 Let's get that on the record. Do you admit that
25 these new convictions are a violation of your

1 probation?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: Did you serve any jail time?

4 Just for the record, I am going to accept the

5 plea. All eight of these pleas are entered

6 freely, voluntarily, knowingly and intelligently.

7 You are represented by an attorney with whom you

8 say you are satisfied. And there is a substantial

9 factual basis. All right, so you admit you

10 violated your probation?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: And you are facing 3 years on

13 that, is that right?

14 PROBATION AGENT: Yes, sir.

15 THE COURT: I find he is violation of his

16 probation as well. Anything you would like to

17 tell me, Ms. Butcher?

18 MS. BUTCHER: Yes, Your Honor. Your

19 Honor, Mr. Marshall has a drug problem. I believe

20 he has had it for some time. He tells me that

21 what led him to the distribution was to support

22 his habit and pay his bills. I think it's a very

23 typical situation as far as that goes. Your

24 Honor, he pays child support. And which he stays

25 current. And in his favor. Your Honor, he has

1 been very up front with me about this. He does
2 have family support. This is his sister who is
3 here with him today. Throughout, I have had
4 multiple conversations with him. He is very up
5 front. Very remorseful. And I think a lot of
6 that is, that he realizes that he has to change.
7 He is also getting older, Your Honor. He said
8 he's thrown away a good portion of his life. He
9 realizes he is going to throw away a bit more of
10 it.

11 Your Honor, I don't think he has a
12 horrible record though he has serious offenses on
13 it. We would ask, Your Honor, to consider less
14 than the 15 years as recommended by the State. We
15 very much appreciate what they have come down to.
16 He understands he is going to be doing some time
17 on this, Your Honor, but we would ask you to
18 consider less than that. And he would also like
19 to speak to Your Honor. So would his sister.

20 THE COURT: Mr. Marshall, is there
21 anything you would like to tell me?

22 THE DEFENDANT: I would just like to say,
23 I am extremely remorseful for what I have done.
24 And I know I have made some very, very terrible
25 mistakes. I had a lot to say today. But It all

1 sums up that I am real sorry for mostly what I
2 have done. And I just wish you could show me
3 mercy in the sentencing guideline. That's all I
4 have to say.

5 THE COURT: Your name, please, ma'am.

6 MS. BROWN: Erin Brown.

7 THE COURT: Anything you would like to
8 say?

9 MS. BROWN: Well all I can say, Your
10 Honor, is that he takes care of my mom. She is
11 disabled. And when it comes to his sentence, we
12 support him, he is all around good. We all make
13 mistakes. And he just got caught up. But
14 altogether he is a good person.

15 THE COURT: What is the -- Mr. Marshall,
16 do you understand that whatever amount of time,
17 you have to assume you will do the entire amount
18 of time in prison. I don't have anything to do
19 with early release. Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: I am checking on this box on
22 your sentencing sheets that gives you credit for
23 the time you have served. But I don't have
24 anything to do with calculating how much that is.
25 Okay?

1 THE COURT: Yes, ma'am.

2 MS. BUTCHER: Your Honor, I would like to
3 ask them if he has been through ATU. But as you
4 know, I think cocaine is one of those things that
5 the addiction stays with you. It is not one that
6 is easily going to shake it; that he does get some
7 drug help.

8 THE COURT: Well they don't have the ATU
9 program in SCDC anymore. I can recommend drug
10 treatment if available.

11 MS. BUTCHER: What's what I am asking for,
12 Your Honor.

13 THE COURT: Anything else Mr. Fata?

14 MR. FATA: Nothing else from the State,
15 Your Honor.

16 THE COURT: From the standpoint of law
17 enforcement is Mr. Marshall a big dealer in the
18 community or do you know?

19 MR. FATA: Your Honor, I have no firsthand
20 knowledge of that. They were able to make four
21 buys from him on four separate occasions in one
22 month. And he has prior distribution. Your
23 Honor, I think the record speaks for itself, Your
24 Honor.

25 THE COURT: Mr. Marshall, all of these

1 will be concurrent. I do find you violated your
2 probation. And you are aware of the nature of the
3 proceeding. I will revoke 3 years on the
4 possession of cocaine, or possession of crack
5 cocaine. And I think at some point push has to
6 come to shove. And I think that the
7 recommendation of the State is eight concurrent 15
8 years sentences is appropriate. So I am going to
9 impose that sentence and give you credit for time
10 served. I have written on here recommending drug
11 treatment from SCDC if available. I don't take
12 the pleasure of sending you to prison, but at some
13 point a record like yours, even if these are the
14 only things you have never done, even in light of
15 possession of crack cocaine, the sentence would
16 probably have been somewhere in the neighborhood
17 of 7 or 8 at least in my view. I can't ignore
18 your prior record. All right, thank you

19 THE COURT: All right thank you.

20 -----End of Requested Transcript of Record---

21

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24

25

C-E-R-T-I-F-I-C-A-T-E

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State of South Carolina
County of Lee,

I, Margaret T. Sullivan, Official Court Reporter
for the Third Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in General Sessions
Court on October 6, 2010, for Lee County, Bishopville,
South Carolina.

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

September 2, 2010
Date

Margaret T. Sullivan

Margaret T. Sullivan, Court Reporter
My commission expires October 3, 2011

FORM 5

STATE OF SOUTH CAROLINA)
County of LEE)
LAQUAN L. MARSHALL (241645))
Full name and prison number (if any) of Applicant)

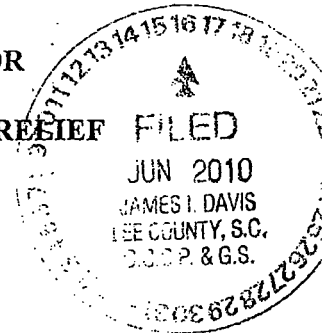
IN THE COURT OF COMMON PLEAS

10-CP-31-122

v.

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF



INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL Institution, 990 WISACKY HWY Bishopville S.C. 29010
2. Name and location of Court which imposed sentence LEE Co. Court House P.O. Box 387 BISHOPVILLE S.C. 29010
3. Name(s) of co-defendant(s) (if any) VELMA ADDISON
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) INDICTMENT/CASE # 2009-GS-31-0098
 - (b) DISTRIBUTION OF COCAINE BASE (FIVE COUNTS)

(c) DISTRIBUTION OF COCAINE BASE WITHIN PROX. OF A SCHOOL (FOUR COURT

5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) OCTOBER 16/2009
 - (b) COMMITTED TO S.C.D.C. FOR A TERM OF 15 YRS.
 - (c) NON-VIOLENT / W 85%

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?
Applicant is NOT on ANY APPEAL. Applicant is Filing P.C.R.

8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Applicant PLEAD Guilty. Applicant NOW SEEKS
 - (b) RELIEF in P.C.R. PROCEEDINGS.

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (INVOLUNTARY PLEA) (IMPROPER COMM MI CON)

(a) INEFFECTIVE ASSISTANCE OF COUNSEL, PROSECUTORIAL

(b) FOURTH AMENDMENT VIOLATION, FIFTH AMENDMENT VIOLATION

(c) FOURTEENTH AND SIXTH AMENDMENT VIOLATION

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

(a) APPLICANT HAS ATTACHED ALLEGATIONS AND GROUNDS

(b) ON TYPE WRITTEN PAPER.

(c) SEE ATTACHMENT..

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. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

- (a) NONE OF THE GROUNDS HAVE BEEN PREVIOUSLY PRESENTED TO ANY CO
- (b) STATE, OR FEDERAL BECAUSE THIS IS APPLICANT FIRST TIME FILE
- (c) AND CHALLENGING THIS MATTER.

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

- (a) your arraignment and plea? NO
- (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. DEBORAH BUTCHER
 - CAMDEN LAW FIRM
 - ii. P.O. BOX 610
 - CAMDEN, S CAROLINA 29021
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. GUILTY PLEA SENTENCING PROCEDURE
 - ii. _____
 - iii. _____

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

Applicant SEEKS RELIEF In a SENTENCING RECONSIDER-
ation UNDER THE TERMS THAT HS A FULL AND COMPLETE
NON-VIOLENT (51%) SENTENCE. (goodtime, WORK RELEASE, WORKCRED

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

No.

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

I, _____, 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.

LAQUAN L. MARSHALL

SWORN to and subscribed before me this 15
day of June 2015.
Debra Sures (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

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

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

LAQUAN L. MARSHAL
Applicant

SWORN or affirmed to and subscribed before me this

15 day of June, 2015.

Debra Jones
Notary Public

My Commission Expires: 11-4-2015

Applicant submits and alleges ineffective assistance of counsel. Applicant views procedures used in conviction as unfair, unreasonable, and un-constitutional.

Applicant pled guilty under the complete assumption that the 15 year sentence would be completely non-violent, based on lawyer's expert knowledge of the law and sentencing guidelines. Good time, work credits, and 51% of sentence

Counsel falsely insured and verbally guaranteed applicant a complete non-violent term, having a thorough knowledge of prosecutorial procedures and efforts to enhance sentence based on prior convictions during sentencing phase.

Exhibit A: Non-violent with 85%

Exhibit B: CDR Code

Counsel failed completely to present client with any facts or helpful knowledge before his plea, concerning the current state of his case; as it clearly was in the best of his interest to make a rational and intelligent decision on whether (by law and not circumstances) he was "truly" innocent or guilty

Exhibit A: Motion of Discovery

Exhibit B: Video/Audio

Counsel failed to locate or interview co-defendant concerning case, even though co-defendant was locked up in same jail facility at that current time, and up until applicant plea.

Exhibit A: Vhelma E. Addison

Counsel failed to interrogate or address to applicant the validity of the search warrant; even though applicant expressed that he did not sign or receive a copy upon arrest. Plea counsel mentions absolutely nothing about search warrant before plea.

Counsel indicates to applicant that the viewing of audio/video was prohibited to applicant, unless applicant were to go to trial.

Applicant believed that counsel deliberately held valuable information regarding this procedure. Information which could of very well changed the decision made by applicant.

Counsel offered no alternative option in briefing applicant except the remark "you are going to jail" after mere moments of meeting client.

Applicant alledges "prosecutorial misconduct". Applicant accusations and findings are based upon court-typed transcripts, recorded on applicant sentencing date at Lee County Courthouse, October 6, 2009. Applicant raises issues of misconduct. Applicant uses court transcripts as reference and proof of alledged "prosecutorial misconduct".

1. Judge asked prosecutor was applicant a "big time drug dealer". Applicant believes remark was unfair and unreasobable during guilty plea sentencing. Applicant believes remark required expert knowledge and is a direct denial of due process concerning "improper comments".

2. Prosecutor insisted and confirmed in his own personal opinion that applicant possessed a certain status in his alledged drug activity. Such personal opinions (unlawfully) could present false testimony in which applicant believes hindered him from a fair and reasonable outcome in his guilty plea sentencing phase.

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT

COUNTY OF LEE)

LAQUAN L. MARSHALL, 246645)

Applicant)

DOCKET NO.: 2010-CP-31-122

AMENDED APPLICATION FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA)

Respondent,)

The Applicant through undersigned Counsel wishes to Amend his Application for Post Conviction Relief and to add the following to that application asserting that his constitutional rights under the Fourth, Sixth, and Fourteenth Amendments of the United State Constitution have been violated:

Applicant alleges prosecutorial misconduct. Applicant's allegations and findings are based on guilty plea sentencing in applicant's transcripts and other articles of facts (Warrants and indictments). Transcripts were recorded and typed on applicant's sentencing date at Lee County Court House. Applicant raises and presents allegations of "Prosecutorial Misconduct" and also raises grounds of constitutional violations such as the Fourth, Sixth and Fourteenth amendments regarding due process.

1. Prosecutor willingly (at the discretion of the Judge) presented false statement, allegations as well as false testimony to the court (Judge) alleging that Applicant "Sold and distributed 6.39 grams of cocaine base (pg 16, May 29, 2009, lines 15-23) on count eight (8) and Nine (9) to undercover C.I. working on behalf of the Bishopville Police Department.

Prosecutor deliberately enhanced applicant's alleged drug activity to methodically produce unfair sentencing results.

Exhibit A: Warrant K 24396 Accurately indicates it was recovered in top dresser drawer of applicant's home. (the alleged nearly 7 Grams).

Exhibit B: Supplementary Incident report Bishopville Police Department (case number 09050142)

Exhibit C: Incident Report (Bishopville Police Department) Case No. 09050142 also declares this 7 grams was recovered from applicant's residence.

2. Prosecutor consistently presented false testimony (pg. 17, Line 15-19) and alleged applicant was on third serious strike (drug offense). A method he deliberately stated, presented and falsified to calculate unfair and unreasonable sentencing results.

Exhibit A: 2nd Drug offense, case SC0310/Cit.44-53-375(A) Misdemeanor criminal record

Exhibit B: (1st) Drug offense Doc 96-GS-31-00274, Criminal record

Applicant submitted and alleges ineffective assistance of counsel. Applicant views procedures used in conviction as unfair unreasonable and unconstitutional.

Trial counsel was ineffective and failed to orchestrate reliability of the facts of applicants case based on his warrants and indictment, which are visibly recognizable by applicant. Applicant alleges insufficient indictment on count 8 and 9.

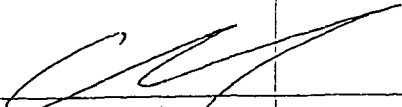
Exhibit A: Count 8 and 9 are lawfully incorrect and insinuate applicant sold and distributed to undercover C.I. on May 29, 2009.(Transcript pg 9, Line 17-21)

Exhibit B: Warrant K-243799; Alleged one Laquan Marshall did commit the crime of PWID crack cocaine.

Trial counsel failed to alert or instruct applicant of an appeal process.

Applicant was under the complete assumption during sentencing that an appeal was not procedurally offered to someone who pleads guilty.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, LaQuan Marshall



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

February 3, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS

2010-CP-31-0122

Laquan Marshall, #241645,)
Applicant,)

v.)

RETURN
(Appointment of Counsel Requested)

State of South Carolina,)
Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 16, 2010, 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 Lee County Clerk of Court. The Applicant was indicted for five (5) counts of Distribution of Cocaine Base (Counts 1, 2, 4, 6, and 8) and four (4) counts of Distribution of Cocaine Base within Proximity of a School (Counts 3, 5, 7, and 9) (2009-GS-31-0098). Applicant was represented by Deborah Butcher, Esquire. On October 6, 2009, the Applicant pled guilty before the Honorable George C. James, Jr. Applicant was sentenced to fifteen (15) years incarceration for each count of Distribution of Cocaine Base and to fifteen (15) years incarceration for each count of Distribution of Cocaine Base within Proximity of a School, sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Lee County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "Applicant pled guilty under the complete assumption that the 15 year sentence would be completely non-violent, based on lawyer's expert knowledge of the law and sentencing guidelines. Good time, work credits, and 51% of sentence."
 - b. "Counsel failed completely to present client with any facts or helpful knowledge before his plea, concerning the state of his case..."
 - c. "Counsel failed to locate or interview co-defendant concerning case..."
 - d. "Counsel failed to interrogate or address to applicant the validity of the search warrant..."
 - e. "Counsel indicates to applicant that the viewing of audio/video was prohibited to applicant unless applicant were to go to trial..."
 - f. "Counsel offered no alternative option in briefing applicant except the remark 'you are going to jail' after mere moments of meeting client."
2. Involuntary guilty plea.
3. Prosecutorial misconduct.
 - a. "Judge asked prosecutor was applicant a 'big time drug dealer.' Applicant believes remark was unfair and unreasonable during guilty plea sentencing..."
 - b. "Prosecutor insisted and confirmed his own personal opinion that applicant possessed a certain status in his alleged drug activity..."
4. Violation of various Constitutional amendments.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant

bears the burden of proving the allegations in his 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (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 hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Feb. 17, 2011.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEE)
)
)
)
 LAQUAN MARSHALL, 241645,)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2010-CP-31-0122

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:

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter, SC 29150

DATED this 17th day of February, 2011.

Lauren Meara

 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LEE

Court of Common Pleas
2010-CP-31-00122

Laquan Marshall

-vs-

State of South Carolina

:
:
: Transcript of Record
:
:

Tuesday, October 25, 2011
Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge.

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

Charles T. Brooks, III, Esquire
Attorney for the Applicant

Robert D. Corney, Assistant Attorney General
Attorney for the State

Dianne A. Rutledge
Circuit Court Reporter

1	I N D E X			
2	WITNESS	DIRECT	CROSS	REDIRECT RECROSS
3	Laquan Marshall			
4	Mr. Brooks	4		
5	Mr. Corney		9	
6	Deborah Butcher			
7	Mr. Brooks	17		
8	Mr. Corney		18	
9	Certificate of Court Reporter		21	

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E-X-H-I-B-I-T-S

(No exhibits were introduced during the hearing.)

1 MR. CORNEY: Laquan Marshall, Docket No. 2010-CP-31-
2 0122. Mr. Marshall was indicted August 2009 by the Lee
3 County grand jury for 5 counts of distribution of cocaine
4 base and 4 counts of distribution of cocaine base within
5 proximity of a school.

6 He pled guilty as indicted on October 6, 2009 before
7 Judge James, was given 15 years on each charge, all to run
8 concurrent.

9 I apologize. I said he pled as indicted, but 1 count
10 of distribution of crack was not proessed as part of the
11 plea.

12 So he pled to 4 counts of distribution of crack and 4
13 counts of distribution of crack within proximity.

14 No appeal was filed, and he filed a timely P.C.R.
15 application June 16, 2010. And he's represented today by
16 Mr. Charles Brooks.

17 THE COURT: Okay. Yes, sir.

18 MR. BROOKS: Ready to proceed, Judge?

19 THE COURT: Okay.

20 MR. BROOKS: We call Mr. Marshall to the stand.

21 LAQUAN MARSHALL, being first
22 duly sworn, testified as follows:

23 CLERK: State your name and spell your last name for
24 the record, please, sir.

25 MR. MARSHALL: Laquan Marshall, M-a-r-s-h-a-l-l.

1 DIRECT EXAMINATION BY MR. BROOKS:

2 Q Laquan.

3 A How you doing?

4 Q All right. You had Ms. Butcher as your attorney?

5 A Yes, I did.

6 Q And you pled guilty to these charges?

7 A Yes, I did, Mr. Brooks.

8 Q All right. I want to make sure we're clear about
9 this. You understand that if Judge Cothran granted a post
10 conviction relief you understand what you're facing if you
11 go back?

12 A Yes, I understand.

13 Q Okay. And knowing that, it's still your desire to go
14 forward and ask for a new trial?

15 A Yes. Yes, I do.

16 Q Okay. Now, Laquan, why did you plead guilty?

17 A I pled guilty under quite a few circumstances. For
18 one, during one of the first initial conversations with my
19 lawyer, Ms. Deborah Butcher, we -- during my first initial
20 conversation with her, we spoke briefly about my past
21 criminal history, my age, and certain things of that
22 nature.

23 And she asked me a few questions about my criminal
24 history.

25 And I told her that I had prior narcotics violations.

Mr. Marshall - Direct by Mr. Brooks

5

1 And she said, well -- one of the first signs that she
2 told me that, well, you -- you -- you going back to prison.

3 So after she had told me that, I felt like really
4 before I ran the race, I lost it. So under those
5 circumstances, along with some other personal issues and
6 circumstances that was above my head, I pled guilty.

7 Q Okay. So now you're saying now -- you go back all
8 over again, you are going to take these charges to trial?

9 A If -- if I fully understood what I was facing, I -- I
10 really didn't have any first-hand knowledge about what --
11 what I was really looking at. I hadn't ---

12 Q What do you know now what you looking at if you'd
13 gotten a trial?

14 A Well, for one, I would -- I would look at the drug --
15 the drugs analyst and those circumstances. And like I
16 said, not only was I reluctant to fight these charges, but
17 some other personal circumstances also was above my head,
18 like ---

19 Q What circumstances that affected your -- impacted your
20 pleading guilty?

21 A Well, for one, my prior narcotics history was one of
22 them, my age. I'm a father of 4 beautiful kids. And under
23 those circumstances I just -- I just felt like I should be
24 -- think about those situations which were very important
25 to me at that time -- still is important. And just do what

1 I think was in my best interest.

2 Q All right. Now, what do you know now that if you had
3 known then would have been caused you to make a different
4 decision?

5 A Well, for one -- for one, I -- I -- I spoke to you
6 briefly and I told you that I believe that if I would have
7 taken (phonetic) the trial, they obviously would have
8 found me guilty because of my prior history and certain
9 things that surround me in the town of Bishopville. And I
10 just felt like the deck was stacked against me at that
11 time. Lawfully, I can't tell you because lawfully I don't
12 know or have any type of first-hand type of knowledge of
13 where I actually stood at that time lawfully. But I really
14 was looking more of a circumstantial value than anything
15 else.

16 Q So do you think you -- for what you know now, do you
17 think you would be able to take this case to trial and beat
18 it?

19 A In my own personal opinion, I don't believe that I
20 would be able to win it. I have to be honest with you.

21 Q Okay. Now, I have to ask you ---

22 A I have to be honest with you.

23 Q Knowing that, is it still your desire to ask for a new
24 trial knowing that if you went back to trial in your words,
25 you would probably be found guilty, and you could get a

Mr. Marshall - Direct by Mr. Brooks

7

1 whole heap of more time than you got?

2 A Well, yes, I gave it much thought. And to be honest
3 with you, my approach to my P.C.R. application was not so
4 much as a take a trial of that nature, but to actually use
5 my P.C.R. application as a spring board to achieve what I
6 really didn't knew in the beginning, like an appeal
7 process. I had no idea ---

8 Q Well, let me explain this. And the judge can confirm
9 it. The only relief you can get here today is a new trial.
10 Remember, we talked about playing a computer game ---

11 A Yes.

12 Q It's the same game. Remember that?

13 A Yes.

14 Q The judge will tell you that the only thing he can do
15 is give you a new trial and start over. And those charges
16 that might have been nol prossed, they also start over.
17 Now, knowing all of that and knowing what you said about
18 what the likely outcome of a trial would be, is it still
19 your desire to have a new trial?

20 A It's not my desire to have a new trial, but to have
21 certain issues and allegations taken under consideration
22 and have a possible re-consider my certain facts about my
23 guilty plea sentencing.

24 Q Now, I'm going to ask you this. Okay? I have to ask
25 you this because everybody in the courtroom has probably

1 got this question. What is it that you want out of your
2 P.C.R.?

3 A I wanted to achieve a reconsideration.

4 Q Now, knowing that you can't get that on P.C.R., and
5 the only thing you can get is a new trial?

6 A I go forward.

7 Q Okay. Are still want that new ---

8 A I go forward.

9 Q Even though you said what you said about that trial?

10 A I go forward.

11 Q Okay. All right. So now you feel that Ms. Butcher
12 convinced you to plead guilty to these charges?

13 A Well, she didn't actually -- if you put it in that
14 sense -- you could put it in that sense. She told me in
15 our few conversations before I took the guilty plea, she
16 came back to me quite a few times -- the first initial
17 plea, I think was 20 years. And I felt like that was a
18 little too steep. So, actually, she said, Mr. Marshall, if
19 you take the 20 years, it would be non-violent, 51 percent.
20 You'll be home in 10 years.

21 I felt like 10 years still is a little bit too steep.

22 So she came back maybe 30 minutes later and she said,
23 well, the prosecution is willing just to pull the plug and
24 just take you to trial. I think 15 would be appropriate.

25 So I asked her various times. And I didn't really

Mr. Marshall - Cross by Mr. Corney

9

1 want to keep asking her, because I didn't know any sort of,
2 you know, expert knowledge of the sentencing guidelines.

3 But she told me I would get a state recommendation of
4 15 years, and I would be home in 7 1/2.

5 When -- when I got to where I was going, I fully
6 understood that I was actually covered into accepting a 15-
7 year plea that was 85 percent instead of 51.

8 Q All right. So that's really your beef here today?

9 A That's really -- that's really my argument today, yes.

10 Q Is there ---

11 A I was promised one thing and got another.

12 Q Is there anything else you want to tell the judge that
13 we haven't told him today?

14 A I -- I -- not right now.

15 MR. BROOKS: Okay. Answer any questions of the
16 attorney.

17 CROSS EXAMINATION BY MR. CORNEY:

18 Q Mr. Marshall, during your plea hearing, Judge James
19 advised you of your constitutional rights on the record,
20 right?

21 A Yes.

22 Q He did. Okay. He told you that if you pled, you'd be
23 giving up some of those rights?

24 A Yes.

25 Q Okay. One of those was the right to present defenses

1 and challenge the warrant, those types of things, right?

2 A He might have said that, yeah.

3 Q All right. You said you wanted to waive those rights
4 at that time and enter your plea, right?

5 A Yes.

6 Q And that's because you are in fact guilty of these
7 crimes you're charged with?

8 A Yes.

9 Q Okay. You told Judge James that you were satisfied
10 with Ms. Butcher's representation of you as well at that
11 plea hearing?

12 A Based on her expert knowledge of what she told me, I
13 had no other choice but to believe her expert knowledge of
14 what she was telling me. She was my lawyer at the time.
15 She was representing me, so I took her word as 100 percent.

16 Q So you were satisfied with her services at that time
17 of the plea hearing?

18 A At that time I was.

19 Q And it's fair to say that if you were convicted of all
20 these charges that you were indicted on and the judge was
21 to sentence you consecutively, you were facing well over
22 100 years in prison, right?

23 A Uh-huh.

24 Q Okay. So you were facing some serious time, right?

25 A (Nods head.)

Mr. Marshall - Cross by Mr. Corney

11

1 Q You have to answer yes or no.

2 A Yes. Yes.

3 Q Okay. And the state recommended 20 years first, you
4 said?

5 A At first I believe it was 20 years. She came to me,
6 she said it was a 20 year plea. And we -- she talked to
7 them. Roughly about 30 minutes later she came back to me,
8 told me the state recommendation that I perform a 15 -- a
9 15 year sentence, based on 51 percent and parole
10 eligibility.

11 Q So it ended up 15 years when she went back and
12 negotiated again for you. So Ms. Butcher did a pretty good
13 job. 15 years on something you were facing well over 100
14 years on, right?

15 A I think she did, yeah.

16 Q Okay. And it doesn't hurt also that you concede that
17 you probably would have lost the trial, right?

18 A I believe I would have, yeah.

19 Q Okay. So it's probably best for you to enter this
20 plea at that point in time. Okay. Judge James also
21 advised you at that plea hearing that The Court had nothing
22 to do with your early release from prison, didn't he?

23 A Re -- repeat that again?

24 Q Judge James in your plea hearing, didn't he go over
25 with you and say -- he said, The Court has nothing to do

1 with when you actually get released from prison. You
2 should expect to do every day he's going to sentence you
3 to?

4 A Well, yeah, he stated that. But under certain -- they
5 -- the guidelines that I would follow once I got into
6 S.C.D.C. -- in order for me to be non-violent and perform
7 85 percent of my sentence, he had to initiate that on my
8 sentencing sheet according to the C.D.R. code.

9 Q Didn't Judge James tell you, whatever days I tell you
10 right now you're going to get, you should just go ahead and
11 accept the fact that you're going to serve every day of it
12 as far as I'm concerned? Isn't that what he told you?

13 A He said that I would perform 100 percent of my time;
14 that's in the transcript.

15 Q Okay.

16 A And even at that time when he was saying that, I was
17 actually comparing mental notes to what Ms. Butcher was
18 actually -- she told me in the back room. And at the time
19 I just wanted the guilty plea sentencing to go as natural
20 as possible, I didn't want to corrupt it. I didn't -- you
21 know, feel like we had gone too far. And there was really
22 no need to ask any questions or anything of that -- of that
23 sort. But in my mind what he said was conflicting of what
24 Ms. Butcher told me in the room. Ms. Butcher told me I
25 would perform 51 percent. He told me I would perform 100

Mr. Marshall - Cross by Mr. Corney

13

1 percent, which I have no idea how you perform 100 percent
2 of a sentence. My guidelines is 85 percent right now.

3 Q But you entered the plea under the knowledge of Judge
4 James that he said, whatever I give you, plan on doing
5 every day of what I give you.

6 And you said, I want to go forward with this plea with
7 him having said that to you?

8 A Yes.

9 Q Okay. And like you said a minute ago, you got up
10 there and you just said what you had to say to get the
11 plea, right? You didn't want to ask any questions. You
12 didn't want to go against the judge. You just said
13 whatever you had to to get this plea in the books, right?

14 A I just said what I wanted to say. Everything I said
15 was truthful. He asked me a question, I gave him an
16 answer.

17 Q Didn't ---

18 A To the best of my knowledge. But even at that time I
19 didn't even have the fundamentals of -- of -- of any type
20 of law. I was just going on he asked me a question. Like
21 for example, he asked me certain questions about my
22 criminal history. Some things that he asked me, I was not
23 even aware of it, but I said yes to it so we could proceed.

24 Q Okay. In reference to your prior criminal record, you
25 do have a prior criminal record?

1 A Yes. Yes, I do.

2 Q Burglary second, 1991?

3 A 1991.

4 Q And manufacturing crack first and distribution and
5 proximity in 1996?

6 A I believe that -- I wrestled with that. I was charged
7 with possession with intent to distribute in 1996. I was
8 sentenced to 6 years non-violent for that one.

9 2007 was another narcotics violations. I was
10 sentenced to 5 years, 3 years probation; that's a
11 misdemeanor. And this is unfortunately my first controlled
12 buy, my first distribution -- actual distribution charge.

13 Q Okay. At that plea hearing the solicitor rattled off
14 your previous criminal record?

15 A Yeah.

16 Q And said that those were your 2 former strikes,
17 leading up to this one. And you agreed with that on the
18 record, right?

19 A Yeah, but he said this was my first serious strike. A
20 misdemeanor is not a serious strike.

21 Q You agreed with that on the record when he said ---

22 A I had no idea at the time. I had no idea what he was
23 actually saying. I did not understand the fundamentals of
24 what he was actually saying about my criminal history.

25 Q Okay. But, again, you just said what you had to say,

Mr. Marshall - Cross by Mr. Corney

15

1 you didn't speak up and say I don't understand. You just
2 said, oh, sure, that's fine, yeah. Previous strikes, I'll
3 agree with it, whatever.

4 A My lawyer should advise me on that. She was
5 representing me. She should have dug into my criminal
6 history and advise me of certain aspects of -- of
7 distribution, misdemeanor and -- and -- and my 1996
8 conviction. I had no idea, you know, the pacifics
9 (phonetic) about them. I just knew they were drug charges
10 and I was sentenced.

11 Q Okay. This plea hearing you sat through and
12 apparently didn't raise your voice at any point in time to
13 all this inconsistencies or all the statements given on the
14 record. You clearly wanted this plea pretty bad and now
15 you're here today to say I don't want that plea any more?

16 A I wanted what was promised to me, yeah. I actually
17 did. I wanted what she said I was going to receive.
18 You're absolutely right. She said I would receive a non-
19 violent sentence and I perform 51 percent. When I got to
20 LCI and I went to my program services, they advised me that
21 that wasn't in the cards for me.

22 Q Okay. That's just disregarding Judge James' comments,
23 plan on serving every day I give you, right?

24 A He told me I be serving 100 percent.

25 MR. CORNEY: Okay. That's all the questions I have.

1 THE COURT: Okay. Anything further, Mr. Brooks?

2 MR. BROOKS: No other questions, Your Honor.

3 THE COURT: So you had 2 prior drug offenses, so did
4 you plead to third or second?

5 MR. MARSHALL: Well, under -- what -- what they
6 negotiated they had me to plead to a second offense.

7 THE COURT: Okay. Does the state agree with that?

8 MR. CORNEY: Your Honor, I'm sorry. I believe ---

9 THE COURT: The sentencing sheet -- did he plead to a
10 second or a third drug offense?

11 MR. CORNEY: I believe it's to a -- it doesn't say on
12 the sentencing sheet other than the code, it's 44-53-375
13 (B) (2).

14 THE COURT: What's the C.D.R. code?

15 MR. CORNEY: The C.D.R. code is a 3015.

16 THE COURT: 3015?

17 MR. CORNEY: Yes, sir.

18 THE COURT: Okay.

19 (Pause.)

20 MR. CORNEY: Second offense, Your Honor.

21 THE COURT: Okay. I don't have any questions. Do you
22 have any?

23 MR. BROOKS: No questions.

24 THE COURT: You can step down.

25 (The witness leaves the witness stand.)

Ms. Butcher - Direct by Mr. Brooks

17

1 MR. BROOKS: We would call Ms. Butcher to the stand.

2 DEBORAH BUTCHER, being first

3 duly sworn, testified as follows:

4 CLERK: State your name and please spell your last
5 name for the record.

6 MS. BUTCHER: Deborah Butcher, B-u-t-c-h-e-r.

7 DIRECT EXAMINATION BY MR. BROOKS:

8 Q Ms. Butcher, you represented Mr. Marshall?

9 A Yes, I did.

10 Q Court appointed?

11 A Yes.

12 Q Can you give us a brief summary of the state's case
13 against Mr. Marshall?

14 A It's been a while. I know he had the distributions
15 and the proximities, and also some drugs that were found, I
16 believe, in his bedroom. Paul Fata was the prosecutor.
17 And I remember going back and forth trying to negotiate a
18 lower sentence. They had video tape on these. I did
19 advise Mr. Marshall of the evidence against him was
20 overwhelming. And our best option was to work out a plea,
21 which he agreed.

22 I don't believe I -- I, as a practice, do not tell
23 them specifically what percentage of time that they serve.
24 I don't think anything carries 51 percent. It's 65, 85,
25 but it depends on how they handle themselves in prison.

1 We discussed it. He felt very comfortable going
2 forward, and we went forward with the plea. He was facing
3 life if they had decided to do that, had he gone to trial.

4 Q Did you explain the plea process to him?

5 A Yes, we went over it. Also as I tell everyone, if you
6 have a question, we'll step back and discuss it then. He
7 did not tell me he wanted to appeal this. I saw no need to
8 appeal it. I as a practice always discuss that with them.
9 And I know the judge also discusses it with him. He never
10 had any questions about that.

11 MR. BROOKS: All right. Beg The Court's indulgence.

12 (Pause.)

13 MR. BROOKS: No other questions, Judge.

14 THE COURT: Okay.

15 MR. CORNEY: Just very briefly, Your Honor.

16 CROSS EXAMINATION BY MR. CORNEY:

17 Q Ms. Butcher, do you recall receiving his discovery
18 file from the state?

19 A I do.

20 Q Okay. And you had the opportunity to review that with
21 him?

22 A Yes.

23 Q Do you recall if there was an audio/video tape as part
24 of that?

25 A Yes, there was.

Ms. Butcher - Cross by Mr. Corney

19

1 Q Okay. And did you have the opportunity to review that
2 video tape?

3 A Yes.

4 Q And did you have the opportunity to review it with Mr.
5 Marshall?

6 A I did. I believe that -- it's hard to remember. But
7 I believe that may have been the basis for dropping one of
8 them, that it wasn't a good audio or video.

9 Q Okay. Do you recall having discussions with him about
10 his prior criminal record?

11 A Yes.

12 Q Okay. And based on the those discussions, do you
13 remember if he had anything that would constitute strikes
14 in the two/three-strike law?

15 A I believe there was. I don't have that in front of
16 me. If I do, I haven't flipped through it. But I do
17 recall that he was someone who could have gone off for
18 life.

19 Q And do you recall whether that was a big concern of
20 yours to enter into these plea negotiations?

21 A It was for me.

22 Q Okay. Did you talk about the difference between
23 violent and non-violent crime?

24 A Yes, we talked about the strike system.

25 MR. CORNEY: I believe that's all I have, Your Honor.

1 THE COURT: Okay. Anything?

2 MR. BROOKS: No other questions, Judge.

3 THE COURT: You can step down.

4 (The witness leaves the witness stand.)

5 MR. BROOKS: Judge, that's applicant's case.

6 THE COURT: Okay.

7 MR. CORNEY: Nothing from the state.

8 THE COURT: Okay. Anything else any of you all want
9 to tell me?

10 (No response.)

11 THE COURT: All right. I will review these facts and
12 let you all know.

13 MR. BROOKS: Thank you, Judge.

14 --- End of transcript of record. ---

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1 I, the undersigned Dianne A. Rutledge, official court
 2 reporter for the Fifth Judicial Circuit of The State of
 3 South Carolina, do hereby certify that the foregoing is a
 4 true, accurate, and complete transcript of the record of
 5 the proceedings had and evidence introduced in the hearing
 6 of the captioned case, relative to appeal, in the Circuit
 7 Court for Lee County, South Carolina on the 25th day of
 8 October 2011.

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

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April 18, 2012

Dianne A. Rutledge

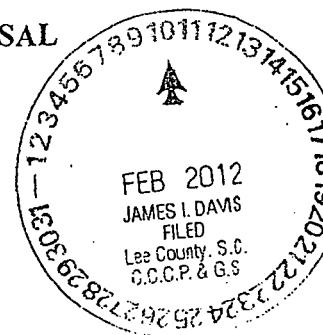
Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF LEE)
)
)
 Laquan Marshall, # 241645,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

2010-CP-31-0122

ORDER OF DISMISSAL



PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 16, 2010. The Respondent made its Return on February 17, 2011. An evidentiary hearing into the matter was convened on Tuesday, October 25, 2011, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Deborah Butcher, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Lee County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. The Applicant was indicted for five (5) counts of Distribution of Cocaine Base (Counts 1, 2, 4, 6, and 8) and four (4) counts of Distribution of Cocaine Base within Proximity of

a School (Counts 3, 5, 7, and 9) (2009-GS-31-0098). Applicant was represented by Deborah Butcher, Esquire. On October 6, 2009, the Applicant pled guilty before the Honorable George C. James, Jr. Applicant was sentenced to fifteen (15) years incarceration for each count of Distribution of Cocaine Base and to fifteen (15) years incarceration for each count of Distribution of Cocaine Base within Proximity of a School, sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

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

1. Ineffective assistance of counsel.
 - a. "Applicant pled guilty under the complete assumption that the 15 year sentence would be completely non-violent, based on lawyer's expert knowledge of the law and sentencing guidelines. Good time, work credits, and 51% of sentence."
 - b. "Counsel failed completely to present client with any facts or helpful knowledge before his plea, concerning the state of his case..."
 - c. "Counsel failed to locate or interview co-defendant concerning case..."
 - d. "Counsel failed to interrogate or address to applicant the validity of the search warrant..."
 - e. "Counsel indicates to applicant that the viewing of audio/video was prohibited to applicant unless applicant were to go to trial..."
 - f. "Counsel offered no alternative option in briefing applicant except the remark 'you are going to jail' after mere moments of meeting client."
2. Involuntary guilty plea.
3. Prosecutorial misconduct.
 - a. "Judge asked prosecutor was applicant a 'big-time drug dealer.' Applicant believes remark was unfair and unreasonable during guilty plea sentencing..."
 - b. "Prosecutor insisted and confirmed his own personal opinion that applicant possessed a certain status in his alleged drug activity..."
4. Violation of various Constitutional amendments.

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 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCPP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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, 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Ineffective Assistance of Counsel

Applicant alleges that counsel was ineffective in her representation and, but for her deficiencies, he would not have pled guilty but rather would have proceeded to jury trial. At the PCR hearing, Applicant testified that although he believed a jury would have found him guilty beyond a reasonable doubt had he proceeded to trial, he might have done so had he fully understood the sentence that he was facing on the charges. Applicant went on to say that his previous narcotics charges and criminal history affected his decision to plea, but overall he

cannot "give any lawful reason why" he wants to have his PCR granted to receive a new trial. Applicant stated he felt he was promised one thing by his attorney and the court, and received something different upon entry of his plea. Applicant stated that the relief he is seeking through this PCR action is a "reconsideration of his case", despite conceding that plea counsel did not convince or coerce him in any way to accept the plea that he did. Applicant conceded that the plea judge reviewed his Constitutional rights, waiver of jury trial, waiver of any defenses that could be raised at trial, and potential sentences with him at the plea hearing. Applicant also conceded that he admitted his guilt to the charges at the plea hearing and told the plea judge that he was satisfied with counsel's representation.

Counsel stated that she was appointed to represent Applicant on the charges. She went on to say the State's case was based on overwhelming evidence of Applicant's guilt, including a videotape and drugs seized from Applicant's bedroom. Counsel testified she reviewed all discovery materials with Applicant, discussed the impact of Applicant's prior criminal record with Applicant and discussed thoroughly the two/three strike laws in South Carolina with Applicant. Counsel articulated that Applicant's prior criminal record was a major concern of hers in this case, and that Applicant was facing the equivalent of a life sentence on the charges if he proceeded to trial and was convicted. Counsel said she never promises any of her clients a particular percentage of their sentence that they should expect to serve. Finally, counsel stated that prior to the plea hearing, she explained the plea process to Applicant and told him that, should he have any questions or concerns during the plea, to let her know so they could take a moment out of the courtroom to discuss them. Counsel finished by stating that Applicant never

This Court finds Counsel's testimony to be credible. Conversely, I find Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the

charges he was facing, including the facts giving rise to the charges, potential sentences he was facing, the state's evidence against him, the consequences of rejecting this plea to proceed to trial and the consequences of the two/three strike law in relation to his criminal record. Additionally, counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea. Further, the plea judge also advised Applicant of the potential sentences he was facing, his right to jury trial, his plea's effect on his ability to present defenses to the charges at trial, and even advised Applicant to be prepared to serve every day of the sentence he received under the plea. Applicant conceded his guilt and articulated his satisfaction with his attorney at the plea as well.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in her representation, as neither deficiency nor resulting prejudice were proven. Further, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

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.

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a

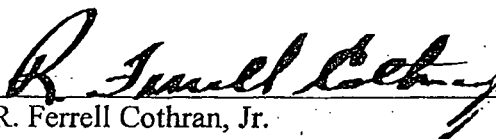
voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

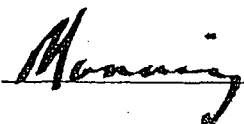
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a 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 this 3 day of Feb, 2012


 R. Ferrell Cothran, Jr.
 Presiding Judge
 Third Judicial Circuit

, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM Lee COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No: 2010-CP-31-0122

Laquan Marshall.....Appellant
S.C.D.C. No.: 241645

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 15th day of February, 2012, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 15, 2012 addressed to the following as indicated below:

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Robert Corney, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Laquan Marshall, 241645
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

Dated: February 15, 2012



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

WITNESSES

BISHOPVILLE POLICE DEPARTMENT

Investigator D. A. Adams

DOCKET NO. 2009-GS-31- 98

The State of South Carolina

County of LEE

COURT OF GENERAL SESSIONS

AUGUST TERM 2009

THE STATE
vs.

LAQUAN MARSHALL

ARREST WARRANT NUMBER

K243720 (1); K243727(2); K243728 (3);
K243726 (4); K243725(5); K243790 (6);
K243791 (7); K243796 (8); K243797 (9)

D/A: 05/14/09; 05/15/09; 05/21/09; 05/29/09

ACTION OF GRAND JURY

True Bill

[Signature]

representative of Grand Jury

Date:

VERDICT

representative of Petit Jury

Date:

Indictment for

DISTRIBUTION OF COCAINE BASE
(FIVE COUNTS); DISTRIBUTION OF
COCAINE BASE WITHIN THE
PROXIMITY OF A SCHOOL (FOUR
COUNTS)

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (FIVE
COUNTS); DISTRIBUTION OF COCAINE BASE
WITHIN THE PROXIMITY OF A SCHOOL (FOUR
COUNTS)

At a Court of General Sessions, convened on August 6, 2009, the Grand Jurors
of LEE County present upon their oath:

COUNT ONE – DISTRIBUTION OF COCAINE BASE

That LAQUAN MARSHALL did in Lee County on or about May 14, 2009,
distribute to a confidential informant, 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; and such being more
than a first offense.

COUNT TWO – DISTRIBUTION OF COCAINE BASE

That LAQUAN MARSHALL did in Lee County on or about May 14, 2009,
distribute to a confidential informant, 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; and such being more
than a first offense.

COUNT THREE – DISTRIBUTION OF COCAINE BASE WITHIN THE PROXIMITY OF
A SCHOOL

That LAQUAN MARSHALL did in Lee County on or about May 14, 2009,
distribute to a confidential informant, 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:
Bishopville Primary School.

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



SOLICITOR

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR DISTRIBUTION OF COCAINE BASE (FIVE COUNTS) AND DISTRIBUTION OF COCAINE BASE WITHIN THE PROXIMITY OF A SCHOOL (FOUR COUNTS) WITH THE AFORESAID NAME OF LAQUAN MARSHALL SHOWN THEREON:

COUNT FOUR – DISTRIBUTION OF COCAINE BASE

That LAQUAN MARSHALL did in Lee County on or about May 15, 2009, distribute to a confidential informant, 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; and such being more than a first offense.

COUNT FIVE – DISTRIBUTION OF COCAINE BASE WITHIN THE PROXIMITY OF A SCHOOL

That LAQUAN MARSHALL did in Lee County on or about May 15, 2009, distribute to a confidential informant, 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: Bishopville Primary School.

COUNT SIX – DISTRIBUTION OF COCAINE BASE

That LAQUAN MARSHALL did in Lee County on or about May 21, 2009, distribute to a confidential informant, 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; and such being more than a first offense.

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

C. Kelly Jackson

SOLICITOR

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR DISTRIBUTION OF COCAINE BASE (FIVE COUNTS) AND DISTRIBUTION OF COCAINE BASE WITHIN THE PROXIMITY OF A SCHOOL (FOUR COUNTS) WITH THE AFORESAID NAME OF LAQUAN MARSHALL SHOWN THEREON:

COUNT SEVEN – DISTRIBUTION OF COCAINE BASE WITHIN THE PROXIMITY OF A SCHOOL

That LAQUAN MARSHALL did in Lee County on or about May 21, 2009, distribute to a confidential informant, 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: Bishopville Primary School.

COUNT EIGHT – DISTRIBUTION OF COCAINE BASE

That LAQUAN MARSHALL did in Lee County on or about May 29, 2009, distribute to a confidential informant, 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; and such being more than a first offense.

COUNT NINE – DISTRIBUTION OF COCAINE BASE WITHIN THE PROXIMITY OF A SCHOOL

That LAQUAN MARSHALL did in Lee County on or about May 29, 2009, distribute to a confidential informant, 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: Bishopville Primary School.

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

P. Kelly Jackson
SOLICITOR