

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO THE COURT OF APPEALS
Appeal from Lexington
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2016-UP-011 (S.C. Ct. App. filed January 13, 2016)

JAMES C. HELMS, #341440,

RESPONDENT,

v.

THE STATE,

PETITIONER.

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on
Indigent Defense
Division of Appellate Defense
P.O. 11589
Columbia, SC 29211
(803) 734-1330

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

PATRICK L. SCHMECKPEPER
Assistant Attorney General

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

ATTORNEYS FOR PETITIONER

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

3
4
5 STATE OF SOUTH CAROLINA)

6 -vs-)

TRANSCRIPT OF RECORD

7 JAMES HELMS,)

09-GS-32-463-465

8 Defendant.)

9
10 June 21, 2010
11 Lexington, South Carolina

12
13
14 B E F O R E:

15 HONORABLE R. KNOX MCMAHON, Judge.
16
17

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

19 MICHAEL DOUGLAS ROSS, Asst. Solicitor
20 LAWRENCE G. WEDEKIND, Asst. Solicitor
Attorneys for the State

21 GENE STOCKHOLM, Esquire
22 Attorney for the Defendant
23
24

25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 June 21, 2010.)

3 THE COURT: You may call your first case for
4 trial.

5 MR. ROSS: Thank you, Your Honor. May it
6 please the Court. The State calls Indictments
7 2010-GS-32-463, 464, and 465. These are cases for
8 manufacturing methamphetamine, possession with intent to
9 distribute marijuana, and possession of pseudoephedrine
10 between 100 and 200 grams. This is a case against James
11 Helms, Your Honor.

12 (Hands to Court.)

13 THE COURT: Thank you, Solicitor.

14 Ladies and gentlemen of the jury panel, if you
15 would give me your complete and undivided attention.
16 Please consider yourselves under oath. We are going
17 through a procedure whereby we will select a jury for
18 the first case for trial.

19 I will be asking you a number of questions in
20 that regard, and because I am going to ask you some
21 questions, I am going to read or publish to you the
22 indictments in this case.

23 Now, the indictments are not evidence. The
24 indictments are the formal charging documents by which
25 an individual is placed on notice of the charges that

1 have been brought against him or her. I publish these
2 indictments to you or read them to you, as I say,
3 because I will ask you certain questions concerning the
4 indictments.

5 The first indictment, 2010-GS-32-00463, reads
6 that James Helms did in Lexington County, on or about
7 May 21st of 2009, unlawfully manufacture or otherwise
8 aid, abet, attempt or conspire to manufacture a quantity
9 of methamphetamine, a controlled substance under the
10 provisions of 44-53-110 in violation of our drug laws.
11 This is an indictment for manufacturing methamphetamine.

12 The next indictment, 2010-GS-32-be 00464,
13 reads that James Helms did in Lexington County, South
14 Carolina, on or about that same date of May 21, '09,
15 knowingly, intentionally, willfully and unlawfully
16 possess with intent to distribute marijuana, a schedule
17 I (d) controlled substance under provisions of 44-53-190
18 of the Code of Laws of South Carolina. That is an
19 indictment for possession with intent to distribute
20 marijuana.

21 The next indictment, 2010-GS-32-00465, reads
22 that James Helms did in Lexington County, on or about
23 that same date of May 21, 2009, not being a
24 manufacturer, practitioner, dispenser, distributor or
25 retailer did knowingly, willfully, and unlawfully

1 possess a product containing more than 100 grams but
2 less than 200 grams of ephedrine, pseudoephedrine or
3 phenylpropanolamine.

4 They are salts, isomers or salts of isomers
5 or a combination of any of these substance in violation
6 of 44-53-375(E)(1)(c). That is an indictment for
7 possession of pseudoephedrine between 100 and 200
8 grams.

9 Again, ladies and gentlemen, these are the
10 formal charging documents by which an individual is
11 placed on notice of the charges that have been brought
12 against him or her. They contain mere allegations and
13 are in no way any evidence of the allegation contained
14 therein.

15 The State is represented by Assistant
16 Solicitors Ross and Wedekind. If you would please stand
17 and introduce yourself to the jury panel and any other
18 members of the Solicitor's Office staff that are going
19 to assist you in the prosecution of this case.

20 MR. ROSS: Good morning. I'm Mike Ross with
21 the Lexington County Solicitor's Office. We will be
22 trying this case on behalf of the State. To my right is
23 Larry Wedekind. He is my co-counsel.

24 THE COURT: Thank you. Thank you very much.
25 The Defendant is represented by Mr. Gene Stockholm.

1 Mr. Stockholm, if you would please stand, introduce
2 yourself and your client to the jury panel.

3 MR. STOCKHOLM: My name is Gene Stockholm with
4 the Oswald law firm, Billy Oswald and Robin McClain.
5 This is my client, Mr. James Helms.

6 THE COURT: Would you stand and face the jury
7 panel, Mr. Helms.

8 (The Defendant stands.)

9 THE COURT: Thank you, Mr. Stockholm and
10 Mr. Helms.

11 Is any member of the jury panel related by
12 blood or marriage or close personal friends of either
13 Assistant Solicitor Ross or Wedekind or any member or
14 employee of the Lexington County Solicitor's Office? If
15 so, please stand.

16 (There is no response.)

17 THE COURT: Is any member of the jury panel
18 related by blood or marriage or close personal friends
19 of Mr. Gene Stockholm, the attorney for the Defendant in
20 this matter, Mr. Helms, or any member of Mr. Stockholm's
21 firm? I believe he said it is the Oswald law firm in
22 West Columbia. If so, please stand.

23 (There is no response.)

24 THE COURT: Has any member of the jury panel
25 or any member of your immediate family ever been

1 represented by or prosecuted by either Assistant
2 Solicitor Ross or Wedekind or represented by
3 Mr. Stockholm? If so, please stand.

4 (There is no response.)

5 THE COURT: The indictments that I read,
6 ladies and gentlemen, allege an incident which occurred
7 on May 21, 2009, in Lexington County involving
8 methamphetamine -- allegedly involving
9 methamphetamine -- marijuana, and pseudoephedrine. Does
10 any member of the jury panel have any knowledge about
11 the case? If so, please stand.

12 (There is no response.)

13 THE COURT: Does any member of the jury panel
14 have any bias or prejudice towards the parties or the
15 subject matter involved in the case? If so, please
16 stand.

17 (Juror stands).

18 THE COURT: Your number and name, please?

19 PROSPECTIVE JUROR: Jim Hanks is my name. My
20 number is 74.

21 THE COURT: Would you come forward for me,
22 please, sir.

23 (Whereupon a bench conference with the Court,
24 counsel, and the juror is reported as follows.)

25 THE COURT: Your number is 74, I believe.

1 Tell me your situation.

2 PROSPECTIVE JUROR: It's just that I don't
3 believe the State has the right to do anything about
4 drugs. I don't think there is any victim. You asked if
5 you had anyone on the jury, and I couldn't agree with
6 that. Since you asked, it's my duty to tell you I
7 wouldn't be able to.

8 THE COURT: I think it is, too, under your
9 oath to tell me. That's the whole purpose of this
10 proceeding. So if I understand it, your belief is that
11 the State should not be in the business of prosecuting
12 individuals for drug offenses if there are no victims?

13 PROSPECTIVE JUROR: I don't consider that
14 there is a victim. It's a victimless crime and I
15 couldn't in good conscience convict, put somebody in
16 jail. When I was a young man, I smoked marijuana.

17 THE COURT: You are still a young man in my
18 opinion.

19 PROSPECTIVE JUROR: Thank you, sir. But under
20 the circumstances I don't know if you wanted me on the
21 jury or not. It would be fine but it would be a pretty
22 foregone conclusion that if that's all they did, were
23 accused of, I couldn't put him in jail.

24 THE COURT: Well, it's not a matter of putting
25 him in jail or not putting him in jail. It's a matter

1 of guilty or not guilty based on the evidence. You are
2 saying because of your beliefs you couldn't do that?
3 You couldn't be a fair and impartial juror to both the
4 State and the defense?

5 PROSPECTIVE JUROR: I would be, but I would
6 consider the law to be violating his constitutional
7 rights.

8 THE COURT: And therefore couldn't follow the
9 law?

10 PROSPECTIVE JUROR: As I see it, it would be
11 following the law.

12 THE COURT: You would be following your law.
13 I'm not debating this with you.

14 PROSPECTIVE JUROR: I wouldn't want to do that
15 either. I will do it in your judgment.

16 THE COURT: I will set you aside for the trial
17 of this case. I certainly respect your opinions and
18 beliefs. Do not mention those to any of your fellow
19 jurors. Number 76 is set aside for the trial of this
20 case.

21 (The bench conference is concluded.)

22 THE COURT: Has any member of the jury panel
23 heard or know anything about the case from any source
24 whatsoever? If so, please stand.

25 (There is no response.)

1 THE COURT: I will call a list of names of
2 potential witnesses in the trial of this case. If any
3 of these individuals are present when I call your name,
4 I would ask you to please stand and face the jury panel.

5 I would advise the jury panel that the
6 witnesses don't have to be present during this
7 procedure. So you may hear names called and no one
8 stands. The question, of course, is any member of the
9 jury panel related by blood or marriage or close
10 personal friends with any of these individuals whose
11 names I now call.

12 The first is Jill Beza, B-E-Z-A, Irmo Police
13 Department. Franklin Finch, Lexington County Narcotics
14 Enforcement Team. Mike Ford, Lexington Police
15 Department. This is Officer Ford to my front right.
16 Thank you, Officer Ford. Beth Harmon, Lexington County
17 Sheriff's Department. Emily Homer, Lexington County
18 Sheriff's Department.

19 The next five names -- and again the question
20 is, is any member of the jury panel related by blood or
21 marriage or close personal friends with any of these
22 individuals. If so, please stand.

23 The next names are Candy Kyzer, Lexington
24 County Sheriff's Department. Billy Laney, Lexington
25 County Narcotics Enforcement Team. Travis Lloyd. John

1 Moore, Lexington County Narcotics Enforcement Team.

2 This is Sergeant Moore to my front right.

3 Thank you, Sergeant Moore. Cal Thomas, Lexington County

4 Narcotics Enforcement Team, to my front right. Thank

5 you. Victoria Threatt. Dennis Tracy, Lexington County

6 Narcotics Enforcement Team.

7 Again, is any member of the jury panel related
8 by blood or marriage or close personal friends with any
9 of those individuals whose names I just called? If so,
10 please stand.

11 (Juror stands.)

12 THE COURT: Your number and name, please?

13 PROSPECTIVE JUROR: Jo Marie Brown, 118.

14 THE COURT: Would you come forward. Any
15 others?

16 (There is no response.)

17 (The following bench conference with the
18 Court, counsel, and the juror is reported).

19 THE COURT: Jo Marie Brown. Tell me your
20 situation, Ms. Brown.

21 PROSPECTIVE JUROR: I know Jill Beza and
22 Mr. Ford.

23 THE COURT: With the Irmo Police Department
24 and Mr. Ford with the Lexington Police Department?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: How do you know them?

2 PROSPECTIVE JUROR: My husband used to work
3 with them two years ago.

4 THE COURT: Was he an officer?

5 PROSPECTIVE JUROR: He was back then.

6 THE COURT: The fact that your husband worked
7 with Officer Beza, if I pronounced that correctly, and
8 Officer Ford, could you still be a fair and impartial
9 juror to both the State and the defense?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Thank you. You may stay with us
12 and have a seat. Please do not say anything to your
13 fellow jurors.

14 (The bench conference is concluded.)

15 THE COURT: Any requested voir dire from the
16 State?

17 MR. ROSS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. STOCKHOLM: No, Your Honor.

20 THE COURT: So finally, ladies and gentlemen,
21 you know yourself best. Does any member of the jury
22 panel know any reason whatsoever why you feel like you
23 could not be a fair and impartial juror in the trial of
24 this case for both the State and the defense? If so,
25 please stand.

1 (There is no response.)

2 THE COURT: There was one lady I protected for
3 tomorrow, 154, Madame Clerk. So I don't think she
4 should be included on the panel. If you would give us a
5 jury please, Madame Clerk.

6 CLERK: Yes, sir, Your Honor. Juror
7 Number 114, David McKee.

8 (The juror, a white male, comes forward.)

9 CLERK: What say you for the State?

10 MR. ROSS: Please present Mr. McKee.

11 CLERK: What say you for the defense?

12 MR. STOCKHOLM: Please seat.

13 CLERK: Have a seat in the jury box, please,
14 sir.

15 THE COURT: That was perfect, Mr. McKee,
16 perfect.

17 CLERK: Juror Number 118, Kimberly Mills.

18 (The juror, a white female, comes forward.)

19 CLERK: What say you for the State?

20 MR. ROSS: Please present Ms. Mills.

21 CLERK: What say you for the defense?

22 MR. STOCKHOLM: Please excuse Ms. Mills.

23 CLERK: Please return to your seat.

24 THE COURT: What are the strikes, five and
25 five?

1 MR. ROSS: Yes, sir, that's my understanding.

2 THE COURT: Is that correct, Mr. Stockholm?

3 MR. STOCKHOLM: Yes, sir.

4 THE COURT: Thank you.

5 CLERK: Juror Number 18, Jo Marie Brown.

6 (The juror, a white female, comes forward.)

7 CLERK: What say you for the State?

8 MR. ROSS: Please present Ms. Brown.

9 CLERK: What say you for the defense?

10 MR. STOCKHOLM: Please excuse her from this
11 trial.

12 CLERK: Return to your seat, please, ma'am.
13 Juror Number 98, Michael Jumper.

14 (The juror, a white male, comes forward)

15 CLERK: What say you for the State?

16 MR. ROSS: Please excuse Mr. Jumper.

17 CLERK: Please return to your seat, sir.

18 Juror Number 73, Renita Hailey.

19 (The juror, a white female, comes forward.)

20 CLERK: What say you for the State?

21 MR. ROSS: Please present Ms. Hailey.

22 CLERK: What say you for the defense?

23 MR. STOCKHOLM: Please seat.

24 CLERK: Have a seat in the jury box, please,
25 ma'am. Juror Number 77, Pamela Hanson.

1 (The juror, a white female, comes forward.)

2 CLERK: What say you for the State?

3 MR. ROSS: Please present Ms. Hanson.

4 CLERK: What say you for the defense?

5 MR. STOCKHOLM: Please seat.

6 CLERK: Have a seat in the jury box, please,

7 ma'am. Juror Number 13, Barret Boozer.

8 (The juror, a white male, comes forward.)

9 CLERK: What say you for the State?

10 MR. ROSS: Please present Mr. Boozer.

11 CLERK: What say you for the defense?

12 MR. STOCKHOLM: Please seat.

13 CLERK: Have a seat in the jury box, please.

14 Juror Number 164, Charles Sox.

15 (The juror, a white male, comes forward.)

16 CLERK: What say you for the State?

17 MR. ROSS: Please excuse Mr. Sox.

18 CLERK: Please return to your seat, sir.

19 Juror Number 67, Rebecca Goudelock.

20 (The juror, a white female, comes forward.)

21 CLERK: What say you for the State?

22 MR. ROSS: Please present Ms. Goudelock.

23 CLERK: What say you for the defense?

24 MR. STOCKHOLM: Please seat.

25 CLERK: Please have a seat in the jury box,

1 ma'am. Juror Number 49, Hannah Engroos.

2 (The juror, a white female, comes forward.)

3 CLERK: What say you for the State?

4 MR. ROSS: Please present Ms. Engroos.

5 CLERK: What say you for the defense?

6 MR. STOCKHOLM: Please seat.

7 CLERK: Have a seat in the jury box, ma'am.

8 Juror Number 20, Thomas Burdick.

9 (The juror, a white male, comes forward.)

10 CLERK: What say you for the State?

11 MR. ROSS: Please present Mr. Burdick.

12 THE COURT: What say you for the defense?

13 MR. STOCKHOLM: Please seat.

14 CLERK: Please have a seat in the jury box,

15 sir. Juror Number 123, Kristina Morgan.

16 (The juror, a white female, comes forward.)

17 CLERK: What say you for the State?

18 MR. ROSS: Please present Ms. Morgan.

19 CLERK: What say you for the defense?

20 MR. STOCKHOLM: Please excuse Ms. Morgan.

21 CLERK: Return to your seat, please, ma'am.

22 Juror Number 70, Michelle Guss.

23 (The juror, a white female, comes forward.)

24 CLERK: What say you for the State?

25 MR. ROSS: Please present Ms. Guss.

1 CLERK: What say you for the defense?

2 MR. STOCKHOLM: Please seat.

3 CLERK: Have a seat in the jury box, ma'am.

4 Juror Number 133, Ismael Pacheco.

5 (The juror, an Hispanic male, comes forward.)

6 CLERK: What say you for the State?

7 MR. ROSS: Please present Mr. Pacheco.

8 CLERK: What say you for the defense?

9 MR. STOCKHOLM: Please seat.

10 CLERK: Please have a seat in the jury box.

11 Juror Number 172, Tawnya Tipper.

12 (The juror, a white female, comes forward.)

13 CLERK: What say you for the State?

14 MR. ROSS: Please present Ms. Tipper.

15 CLERK: What say you for the defense?

16 MR. STOCKHOLM: Please seat.

17 CLERK: Please have a seat in the jury box,

18 ma'am. Juror Number 9, Lisa Barton.

19 (The juror, a white female, comes forward.)

20 CLERK: What say you for the State?

21 MR. ROSS: Please present Ms. Barton.

22 THE WITNESS: What say you for the defense?

23 MR. STOCKHOLM: Please seat.

24 CLERK: Please have a seat in the jury box,

25 ma'am. Juror Number 166, Cecile Strait.

1 (The juror, a white female, comes forward.)

2 CLERK: What say you for the State?

3 MR. ROSS: Please present Ms. Strait.

4 CLERK: What say you for the defense?

5 MR. STOCKHOLM: Please seat.

6 CLERK: Please have a seat in the jury box.

7 Alternates, Your Honor?

8 THE COURT: One alternate. The strikes are
9 one and two.

10 CLERK: Juror Number 33, Travis Cobb.

11 (The juror, a white male, comes forward.)

12 CLERK: What say you for the State?

13 MR. ROSS: Please present Mr. Cobb.

14 CLERK: What say you for the defense?

15 MR. STOCKHOLM: Please seat.

16 CLERK: Please have a seat in the jury box,
17 sir.

18 (The jury is impaneled at 11:09 a.m.)

19 THE COURT: Any motions regarding the jury
20 selection process from the State?

21 MR. ROSS: No, Your Honor.

22 THE COURT: From the defense?

23 MR. STOCKHOLM: No, Your Honor.

24 THE COURT: Ladies and gentlemen of the jury
25 panel, momentarily I will have you step to your jury

1 room with the bailiff. During this brief recess, I
2 remind you, you are not to discuss this case with
3 anyone. That includes your fellow jurors or anyone
4 else.

5 If anyone tries to talk with you about the
6 case, please let me know immediately. You would not be
7 authorized to discuss the case with anyone until you
8 have heard all the evidence and testimony in the case,
9 the closing arguments by the attorneys, and the
10 instruction on the law by the Court and then directed by
11 the Court to begin your deliberations with your fellow
12 jurors in your jury room.

13 However, I am going to give you your first
14 assignment as a jury and ask you to please select one
15 among your number as the foreperson of the jury. That
16 person would be the jury's spokesperson in the courtroom
17 and would also be responsible for writing and signing
18 and dating the verdict.

19 It can be any one of your number except
20 Mr. Cobb. Although I'm sure Mr. Cobb would make a fine
21 jury foreperson, at this time he is in the status of an
22 alternate juror. So it would have to be one of the
23 first 12 selected.

24 So if y'all would please make that selection
25 during this brief recess. Once that election is over,

1 if you would write the name down of the jury foreperson,
2 knock on the jury room and give it to the bailiff that
3 will be stationed outside of your jury room. We will
4 then receive you back into the courtroom.

5 I must give some instructions to your fellow
6 colleagues that have not yet been fortunate enough to be
7 selected as a member of a trial jury. With that being
8 said, if you would please go with Mr. Corley, your
9 bailiff, to your jury room. Thank you very much.

10 (The jury retires to the jury room.)

11 (The jury panel is excused.)

12 THE COURT: As to Mr. Helms, Mr. Stockholm,
13 what is the status of it now?

14 MR. ROSS: Your Honor, I imagine this is going
15 to be a plea. I should know something in the next 15 or
16 20 minutes. It would take that long to fill out the
17 sentencing sheets.

18 THE COURT: All right. I will leave the jury
19 in their jury room and have the bailiff advise them that
20 we will be a few more minutes.

21 MR. ROSS: Yes, sir.

22 (Whereupon there is a recess.)

23 THE COURT: Solicitor.

24 MR. ROSS: Your Honor, we call the case of
25 James Helms again.

1 THE COURT: Madame Clerk.

2 CLERK: Indictment 2010-GS-32-463, the State
3 versus James Helms, indicted for manufacturing
4 methamphetamine, he is pleading as charged.

5 Indictment 2010-GS-32-464, the State versus
6 James Helms, indicted for possession with intent to
7 distribute marijuana, he is pleading as charged.

8 Indictment 2010-GS-32-465, the State versus
9 James Helms, indicted for possession of pseudoephedrine
10 between 100 and 200 grams, he is pleading to possession
11 of ephedrine 28 to 100 grams first. The indictments
12 have been true billed, and he is represented by
13 Mr. Stockholm.

14 Please raise your right hand.

15 JAMES HELMS is first duly
16 sworn.

17 THE COURT: Mr. Stockholm, you represent James
18 Helms?

19 MR. STOCKHOLM: Yes, Your Honor.

20 THE COURT: Have you explained to him the
21 charges in the indictments, the possible punishment, and
22 his rights, including his right to a jury trial?

23 MR. STOCKHOLM: Yes, Your Honor, I have.

24 THE COURT: In your opinion does he understand
25 the charges and the punishment and his rights?

1 MR. STOCKHOLM: Yes, sir.

2 THE COURT: How does he indicate he intends to
3 plead to manufacturing of methamphetamine first offense,
4 guilty or not guilty?

5 MR. STOCKHOLM: Guilty, Your Honor.

6 THE COURT: How does he indicate that he
7 intends to plead to possession with intent to distribute
8 marijuana first offense, guilty or not guilty?

9 MR. STOCKHOLM: Guilty, Your Honor.

10 THE COURT: How does he indicate he intends to
11 plead to possession of ephedrine 28 to 100 grams first
12 offense?

13 MR. STOCKHOLM: Guilty, Your Honor.

14 THE COURT: Thank you. Are you James Helms?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Helms, before I can accept a
17 plea of guilty, it's necessary for me to determine if
18 your plea is being given freely and voluntarily.
19 Therefore, I need to ask you some questions.

20 If you do not understand my questions, please
21 let me know and I will try to explain them to you. If
22 at any time you wish to talk with your attorney, please
23 let me know and I will allow you to do so. Do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How old are you, Mr. Helms?

2 THE DEFENDANT: Forty-six.

3 THE COURT: Forty what?

4 THE DEFENDANT: Six.

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

6 THE DEFENDANT: G.E.D.

7 THE COURT: What type of work do you do?

8 THE DEFENDANT: Framing.

9 THE COURT: Today are you under the influence
10 of any medication, drugs or alcohol?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you aware of any physical,
13 emotional or nervous problem that might keep you from
14 understanding what you are doing today?

15 THE DEFENDANT: No, sir.

16 THE COURT: You have heard your attorney tell
17 me that he has explained to you the charges against you,
18 the possible punishments, and your constitutional rights
19 and that you understand these things; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I have been handed up three
22 indictments. 2010-GS-32-00463 basically reads that you
23 did in Lexington County, on or about May 21, 2009,
24 unlawfully manufacture or possess a quantity of
25 methamphetamine in violation of our drug laws. For that

1 charge you can receive a sentence of zero to 15 years.

2 Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The next indictment,
5 2010-GS-32-00464 reads that you did in Lexington County,
6 on or about May 21, 2009, knowingly, intentionally,
7 willfully, and unlawfully possess with intent to
8 distribute marijuana.

9 It appears you are pleading guilty to
10 possession with intent to distribute marijuana first
11 offense, for which you can receive a sentence of zero to
12 five years. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The next indictment,
15 2010-GS-32-00465 reads that you did in Lexington County,
16 on or about May 21, 2009, not being a manufacturer or
17 practitioner or dispenser or distributor, knowingly and
18 willfully and unlawfully possess a product containing
19 more than 100 grams but less than 200 grams of
20 ephedrine, pseudoephedrine in violation of our drug
21 laws.

22 It appears you are being allowed to plead to
23 possession of ephedrine 28 to 100 grams, for which you
24 can receive a sentence of not less than seven and up to
25 25 years, no probation and no suspension, no suspended

1 sentence. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: When you plead guilty to these
4 charges, Mr. Helms, that being drug charges, if you are
5 ever found guilty or plead guilty to the same or similar
6 charges in the future, the penalty would be higher next
7 time because you have these prior convictions, these
8 prior sentences, these prior guilty pleas for drug
9 offenses. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: When you plead guilty, you give up
12 certain important constitutional rights. First, you
13 give up your right to remain silent. That is your right
14 against self incrimination, your right to say nothing at
15 all. You cannot be compelled to testify or to provide
16 evidence against yourself. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Second, you give up your right to
19 have a jury trial. That is your right to have a jury
20 decide whether or not you are guilty beyond a reasonable
21 doubt. The jury would base their decision upon evidence
22 which the State presents and on any evidence you might
23 wish to introduce.

24 In a trial you would be presumed to be
25 innocent, and the State would have to produce evidence

1 that would convince all 12 members of the jury that you
2 were guilty beyond a reasonable doubt. As you know, we
3 have already selected a jury for the trial of this case.
4 Do you understand your right to a jury trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Third, you give up your right to
7 confront and be confronted by the witnesses against you.
8 That is the right to see, hear, and cross examine any
9 witnesses that may be called against you during the
10 trial and the right to subpoena and call witnesses in
11 your own behalf. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand all of these
14 rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that when you
17 plead guilty, you give up these constitutional rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is that what you want to do?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that you will
22 not get a jury trial if you plead guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Of course, all of these cases have
25 been true billed by the Lexington County Grand Jury.

1 Understanding then the nature of the charges against you
2 of manufacturing methamphetamine first offense,
3 possession with intent to distribute marijuana first
4 office, and possession of ephedrine 28 grams to
5 100 grams first offense, and the potential punishments
6 of zero to 15 years on the manufacturing
7 methamphetamine, zero to five years on possession with
8 intent to distribute marijuana, and seven to 25 years on
9 the possession of 28 to 100 grams of ephedrine, how do
10 you plead to those charges, first, manufacturing meth,
11 guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: Possession with intent to
14 distribute marijuana, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Possession of 28 to 100 grams of
17 ephedrine, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Do you understand that when you
20 plead guilty, you admit the truth of the charges that
21 are made against you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Helms, you may have defenses
24 to these charges. I don't know whether you do or not.
25 Do you understand that if you plead guilty, you will

1 waive or give up any defenses you have to these charges?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Also, you may have given an
4 incriminating statement in this case. I don't know if
5 you did or not. If you plead guilty, do you understand
6 that you waive or give up the right to contest or
7 challenge whether such statement was freely and
8 voluntarily given in accordance with your constitutional
9 rights?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you commit these offenses?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Solicitor, are there any mandatory
14 fines on any of these charges?

15 MR. ROSS: That's a good question, Your Honor.
16 I do not know right off the top of my head. I do have
17 the statute right in front of me.

18 THE COURT: If you would check. I'm not sure
19 on the ephedrine, if there is or not.

20 MR. ROSS: The manufacturing, Your Honor, it's
21 15 years or a fine of not more than \$25,000 or both.
22 With the ephedrine, it's and a fine of \$50,000.

23 THE COURT: And a fine of \$50,000?

24 MR. ROSS: Yes, Your Honor. That's Subsection
25 375(E)(1)(b)(i).

1 THE COURT: That's seven to 25 years and a
2 fine of \$50,000?

3 MR. ROSS: Yes, seven to 25 years, no part of
4 which may be suspended nor probation granted, and a fine
5 of 50,000.

6 THE COURT: Possession with intent to
7 distribute marijuana can be a fine up to?

8 MR. ROSS: Zero to \$5,000, Your Honor.

9 THE COURT: All right. So let's go back just
10 a minute, Mr. Helms. On the manufacturing meth, zero to
11 15 years or I could fine you up to \$25,000. Do you
12 understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: On the possession with intent to
15 distribute marijuana, you could be sentenced up to five
16 years and/or a fine of up to \$5,000. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: On the possession of 28 to
19 100 grams of ephedrine, the minimum sentence is seven to
20 25 years and a fine of \$50,000. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Knowing the potential punishment,
23 do you still wish to enter your plea of guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That's as to all three of those

1 charges?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Solicitor, have there been any
4 plea negotiations in this case?

5 MR. ROSS: Your Honor, we are reducing the
6 pseudoephedrine charge to the lesser included as you
7 just indicated. There are also two other charges that
8 we are not going forward with on this case, a disposal
9 of methamphetamine product and a possession of
10 Oxycodone.

11 THE COURT: The 100 to 200 grams of ephedrine,
12 what would that have carried, Solicitor?

13 MR. ROSS: Twenty-five years automatic, Your
14 Honor.

15 THE COURT: And a mandatory fine?

16 MR. ROSS: And a fine of \$100,000 -- I take
17 that back -- 50,000.

18 THE COURT: Fifty thousand.

19 MR. ROSS: But it's a mandatory 25.

20 THE COURT: All right. Mr. Stockholm, has the
21 solicitor correctly and completely stated the
22 negotiations into the record?

23 MR. STOCKHOLM: Yes, Your Honor.

24 THE COURT: Mr. Helms, has the solicitor fully
25 and completely stated what you understand the

1 negotiations to be?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is there anything more to it in
4 your mind?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you still wish to plead guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has anyone promised you anything
9 or held out any hope of reward to get you to plead
10 guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has anyone threatened you or used
13 force to get you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Has anyone used any pressure or
16 intimidation to cause you to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you had enough time to make
19 up your mind as to whether or not you want to plead
20 guilty?

21 (Pause.)

22 THE DEFENDANT: Excuse me, sir.

23 THE COURT: That's fine, Mr. Helms. If you
24 need to talk with your lawyer any further, you are
25 welcome to do so. My question was have you had enough

1 time to make up your mind as to whether or not you want
2 to plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you pleading guilty of your
5 own free will and accord?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It's your decision.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It's your call. Do you understand
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you satisfied with the manner
13 in which your lawyer has advised you and represented
14 you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you talked with your lawyer
17 as often and for as long as you feel necessary for him
18 to properly represent you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you need anymore time to talk
21 with your lawyer?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you understood your talks
24 with your lawyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has your lawyer done everything
2 for you that you feel he could have done or should have
3 done?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has your lawyer done anything in
6 this case that you feel like he should not have done?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you totally and completely
9 satisfied with your lawyer's services?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any complaint you want
12 to make about your lawyer?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you have any complaint you want
15 to make about the solicitors?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you have any complaint you want
18 to make about any of the police officers involved in
19 your case?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you understood my questions?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is there anything you would like
24 to ask me about what we have just been over?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you understand that you have a
2 right to appeal your guilty pleas and the sentences of
3 the Court and that you or your lawyer must do this
4 within ten days?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Solicitor.

7 MR. ROSS: Thank you, Your Honor. May it
8 please the Court. This case arises from a drug bust on
9 May 21, 2009, at [REDACTED] in Lexington
10 County. This is in a rural area of the county off of --
11 about a mile off of I-26 near the border with Calhoun
12 County, Your Honor.

13 Agent Cal Thomas with the Narcotics
14 Enforcement Team received a tip that the Defendant was
15 actively manufacturing methamphetamine at his residence
16 which is [REDACTED].

17 Also, part of that tip was that he was
18 involved with two other individuals as well, one of
19 which was Victoria Threatt, who is alleged through this
20 tip to be one of the salespeople of methamphetamine.

21 They arrived on the scene on May 21, 2009, and
22 smelled a strong odor that they immediately associated
23 with the production of methamphetamine. Mr. Helms came
24 out of a trailer that was on the residence in the back
25 yard. He was immediately detained and was found to have

1 marijuana in his possession.

2 They ordered a second individual out of that
3 trailer in the backyard. That was Travis Lloyd. He
4 ultimately pled guilty to manufacturing methamphetamine
5 two or three terms of court ago in front of Judge
6 Newman.

7 He received three years for that, Your Honor.
8 He also gave a statement against Mr. Helms during his
9 plea indicating that Mr. Helms and himself were
10 manufacturing meth out in that trailer that day.

11 A third individual was on the property as
12 well. That was Ms. Threatt. She was in the home
13 actually on the toilet, Your Honor. She was also
14 detained and brought out in the back yard.

15 They obtained a search warrant to search both
16 the trailer in the back yard and the residence, which
17 was a mobile home. Pursuant to that search warrant,
18 they seized an active methamphetamine lab that was in
19 the process of making anhydrous ammonia which is
20 necessary to the production of methamphetamine, Your
21 Honor.

22 They also found essentially all the tools one
23 would need to make methamphetamine in their home. They
24 found, I believe, nine packs of 40-count coffee filters.
25 They found a case of starter fluid for an automobile.

1 They found fertilizer, lye, Coleman camping fuel, a
2 coffee grinder. They also had a steel plate in that
3 trailer with white powdery residue on it, Your Honor.

4 Inside the home they found a bag that
5 contained over 200 tablets of pseudoephedrine. This is
6 the initial ingredient that is chemically converted to
7 methamphetamine, Your Honor. Most of these tablets had
8 been taken out of the packaging of pseudoephedrine and
9 were in a Crown Royal bag inside that handbag, Your
10 Honor.

11 The final portion of this case involves an
12 interview I had with Ms. Threatt on Friday, the contents
13 of which I discussed with Mr. Stockholm prior to calling
14 the jury in this trial, Your Honor.

15 Ms. Threatt told me that she had been living
16 with Mr. Helms for probably six months prior to this
17 drug bust. She said she was essentially a mule in the
18 case.

19 She said she was allowed to live there for
20 free, had food on her table, things of that nature. In
21 exchange for that, she would deliver the finished
22 product to other individuals in Lexington County, Your
23 Honor, and that is essentially the State's case.

24 THE COURT: Prior record?

25 MR. ROSS: Very minimal, Your Honor. He has

1 got an arrest for C.D.V. with no disposition. Also
2 seized on the scene, Your Honor, was \$642, all in \$20
3 bills.

4 THE COURT: Mr. Helms, do you further
5 understand that I asked you a question concerning
6 incriminating statements. You also understand that by
7 the entry of your plea that you waive or you give up any
8 right to contest whether or not the officers were
9 validly on your property and validly exercising their
10 authority under the search warrant? Do you understand
11 that?

12 THE DEFENDANT: They did it, right or wrong.
13 I agree they did it right.

14 THE COURT: You are waiving or giving up any
15 right to contest that, correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In other words, you have Fourth
18 Amendment rights to be free from unreasonable search and
19 seizure, just like you have Fifth Amendment rights
20 concerning any incriminating statements. By the entry
21 of your plea, you give up the right to contest whether
22 it was properly done or not. I don't know whether it
23 was or not.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: By the entry of your plea, you

1 give up those rights. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Thank you. Thank you very much.
4 Anything further, Solicitor?

5 MR. ROSS: Your Honor, the total weight of
6 that pseudoephedrine was 165 grams for the record.

7 THE COURT: Thank you. I find that there is a
8 substantial factual basis for the guilty pleas -- let me
9 back up a moment. What about the marijuana possession
10 with intent?

11 MR. ROSS: Your Honor, there was approximately
12 6 grams -- let me check -- 5.25 grams, Your Honor.

13 THE COURT: I find there is a substantial
14 factual basis for these guilty pleas, that the
15 Defendant's decision to enter guilty pleas in these
16 matters is freely, voluntarily, knowingly, and
17 intelligently made.

18 He has had the advice and counsel of a very
19 competent attorney with whom he says he is well and
20 totally satisfied. The Defendant's plea of guilty is
21 therefore accepted. Mr. Stockholm.

22 MR. STOCKHOLM: May it please the Court, Your
23 Honor. Your Honor, I think the best way to put this is
24 to contrast Mr. Helms with Mr. Lloyd in this case, who
25 was also at the trailer when the police came. Mr. Helms

1 has been coming here without incident since he was
2 released on bond last year, Your Honor, May 22, 2009.

3 As you have heard, he has no prior criminal
4 record, and at the same time, Your Honor, he has caused
5 no problems for the past year. I have heard on the
6 other hand that Mr. Lloyd, the codefendant, got in more
7 trouble for drugs again in the year interval between
8 coming to court for his plea and his arrest.

9 I ask you to compare that to Mr. Helms who has
10 been a law-abiding citizen, has come when the solicitor
11 has asked, has not violated his bond and been
12 responsible in every way, Your Honor.

13 Second, Your Honor, I ask you to consider
14 Mr. Helms' family. He has quite a bit of support today.
15 The family is here. He helps support a two-year-old
16 child.

17 We understand that there is a mandatory
18 minimum in this case, Your Honor, that the Court must
19 impose. But, Your Honor, we also believe under the
20 sentencing statute of 17-25-50, all the sentences will
21 be concurrent.

22 We would respectfully ask the Court, because
23 of the lack of a prior criminal record and the fact that
24 he is not a danger, to impose the minimum sentence in
25 this case, Your Honor.

1 I mean, he has come to court. He has not
2 taken up precious court time with a trial. He has
3 freely admitted what he has done. We would ask the
4 Court to consider as much mercy as the Court can give in
5 this case.

6 THE COURT: Thank you. Thank you very much,
7 Mr. Stockholm.

8 Mr. Helms, anything you would like to say?

9 THE DEFENDANT: No, sir.

10 THE COURT: How did you get involved in this?
11 You are, what, 46 years old, you tell me?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You have got no prior criminal
14 record. How did you get involved in this?

15 THE DEFENDANT: I let them --

16 THE COURT: Speak up a little for me, please.

17 THE DEFENDANT: I let them use my home.

18 THE COURT: Put the microphone up there,
19 Mr. Stockholm.

20 THE DEFENDANT: I agreed to let them use my
21 home.

22 THE COURT: Were you using meth?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How long have you been using meth?

25 THE DEFENDANT: Probably about a year, year

1 and a half.

2 THE COURT: About a year, year and a half.
3 Can you pass a drug test today?

4 THE DEFENDANT: No, sir.

5 THE COURT: Why not? Because of meth?
6 Because of marijuana?

7 THE DEFENDANT: Marijuana and meth, too.

8 THE COURT: And what?

9 THE DEFENDANT: Meth, too.

10 THE COURT: That's the thing. You go until
11 your are 44 or 45 years old with no criminal record, and
12 you've probably got a good trade as a framer.

13 THE DEFENDANT: I just got caught up in the
14 wrong people as a matter of fact.

15 THE COURT: How many children do you have,
16 Mr. Helms?

17 THE DEFENDANT: Four.

18 THE COURT: Sir?

19 THE DEFENDANT: Four.

20 THE COURT: What ages?

21 THE DEFENDANT: My youngest one is graduating
22 this year. The oldest one is 23 years old.

23 THE COURT: This Constellation Trail, which
24 exit is that off of, 119?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You go down Pine Plain Road?

2 THE DEFENDANT: By Silver Lakes Trailer Park.

3 THE COURT: By Silver Lakes, I got you. So
4 it's right off of Golf Road?

5 THE DEFENDANT: Golf Course.

6 THE COURT: All right. The fact you may or
7 may not have passed a drug test for marijuana and for
8 meth, do you understand what you are doing today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Tell me what you are doing in
11 front of me today.

12 THE DEFENDANT: Ruling out the chance of a
13 mandatory 25 for the mandatory seven.

14 THE COURT: The hope of a mandatory seven?

15 THE DEFENDANT: The hope of a mandatory seven.

16 THE COURT: Yes, sir.

17 THE DEFENDANT: And that I'm guilty on the
18 pseudoephedrine because they were in my home.

19 THE COURT: Are you from Lexington County or
20 Calhoun County or where?

21 THE DEFENDANT: Lexington County.

22 THE COURT: Lexington County. That mandatory
23 fine was \$50,000?

24 MR. ROSS: I believe that's right, sir. I
25 will double-check. Yes, sir.

1 THE COURT: 2010-GS-32-463, 464, 465,
2 manufacturing meth first, the Defendant is committed to
3 the State Department of Corrections for a determinate
4 term of seven years.

5 Possession with intent to distribute marijuana
6 first, the Defendant is committed to the State
7 Department of Corrections for a determinate term of five
8 years.

9 Possession of ephedrine 28 to 100 grams first,
10 the Defendant is committed to the State Department of
11 Corrections for a determinate term of seven years and
12 pay a fine of \$50,000.

13 All of those are concurrent, credit for time
14 served, substance abuse counseling, random drug and
15 alcohol testing. I recommend A.T.U. Good luck to you,
16 Mr. Helms.

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 21st day of June, 2010.

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

May 17, 2011

L Coconut Pantsari

Court Reporter

45

FORM 5

11
KEM

STATE OF SOUTH CAROLINA

FILED

COUNTY OF LEXINGTON 2011 APR -5 P 4) 16

IN THE COURT OF COMMON PLEAS

James Clayton Helms

SCID 341440

Full name and prison number (if any) of Applicant

BETH A. CARMICHAEL

CLERK OF COURT

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2011CP3201356

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 Walden
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Victoria Threalt and Travis Lloyd
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-32-463
 - (b) 2010-GS-32-464
 - (c) 2010-GS-32-465
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 21, 2010

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Revised 3/2003

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THA. GAFFRIG
JUL 12 2011

- (b) 2010-GS-32-463 - 7 years incarceration
- (c) 2010-GS-32-464 - 5 years incarceration to run concurrent
- (d) 2010-GS-32-465 - 7 years incarceration to run concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty x
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

No

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

(a) I was not informed of my rights by my plea counsel to file an appeal. Neither did he discuss with me if I wished to appeal my conviction

(b) _____

(c) _____

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

- (a) Ineffective assistance of counsel
- (b) Plea was entered into unwillingly and under duress
- (c) _____

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

(a) In my understandings from my conversations with my counsel I was to receive a plea in accordance with those given to my Co-Defendants.

Ms. Threatt received a sentence of 5 years under a non-violent/non-eighty-five percent plea.

Mr. Llvod received a sentence of 3 years under a non-violent/non-eighty-five percent plea.

(b) In my understandings with my counsel I was not pleading to an Eighty-Five percent offense. I was promised by my attorney I would do 3.5 years and be up for parole after a year and a half. Further, I could rely on being out on parole after that year and a half.

(c) Being that I had no significant prior criminal history I relied upon the conversations with my counsel and his advice which has proven to be inadequate. I lacked any prior knowledge of the plea/sentencing elements of my or any other general sessions case.

(d) From the beginning I maintained that my Co-Defendants, not myself, were the individuals who were culpable. Only in detrimental reliance on the information and counsel I received from my attorney did I enter a plea.

(e) The state lacked sufficient evidence to support the charge in Indictment Number 2010-GS-32-465: being that the drug analysis demonstrated less than the amount required by statute.

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

Revised 3/2003

(d) any other petitions, motions or applications in this or any other Court? No **48**

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

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TIA CARRIG
CLERK OF COURT
JANUARY 11 2011

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

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2011 APR -5 3 4:17

ETHA. CARRIGO
FBI - MEMPHIS

(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) This is my initial PCR application. The ineffective assistance provided by my plea counsel can be best addressed through a PCR application

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? N/A

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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

(a) the name and address of each attorney who represented you:

i. Gene Stockholm - 1031 Center Street, West Columbia, SC

ii. Williams Hendrix Steigner & Brink, P.A. - PO Box 849, Lexington, SC 29072

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Gene Stockholm- plea and sentencing

ii. Williams Hendrix Steigner & Brink, P.A. - PCR application

Revised 3/2003

iii. _____

50

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

My convictions on all indictments to be vacated. Additionally, I wish for the opportunity to further resolve my charges through the assistance of effective counsel.

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

No

FILED
2011 APR - 5 PM 4:17
J. H. A. CARRICO
CLERK OF COURT
JANUARY 27

FILED
2011 APR - 5 PM 4:17

Revised 3/2003

51

2011CP3201356

STATE OF SOUTH CAROLINA

VERIFICATION

County of Lexington

I, James Clayton Helms, 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.

James C Helms

SWORN to and subscribed before me this 30th
day of March, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: 10-16-16

FILED

2011 APR - 5 10 41 17

CLIA GARRISON
CLERK OF COURT
LEWIS & CLARK

Revised 3/2003

2011CP3201356

52

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

I, James Clayton Helms, 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.

James C Helms
Applicant

SWORN or affirmed to and subscribed before me this
30th day of March, 2011.

B. J. Smith
Notary Public

My Commission Expires: 10-16-16

FILED
2011 APR -5 12 4:17
JIM A. CARRIG
CLERK OF COURT
NORTH

53

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James C. Helms, #341440,

Applicant.

v.

State of South Carolina.

Respondent.

IN THE COURT OF COMMON PLEAS

Case No: 2011-CP-32-1356

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed April 5, 2011, 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 Lexington County Clerk of Court. The Applicant was indicted at the February 2010, term of the Lexington County Grand Jury for Possession of Pseudoephedrine 100-200grams (2010-GS-32-0465), Possession With Intent to Distribute Marijuana (2010-GS-0464), and Manufacturing Methamphetamine (2010-GS-32-0463). The Applicant was represented by Gene Stockholm, Esquire. On June 21, 2010, the Applicant pled guilty to the lesser included offense of Possession of Pseudoephedrine 28-100grams and to the remaining two (2) charges as indicted. Applicant was sentenced by the Honorable R. Knox McMahon to confinement for a period of seven (7) years for Possession of Pseudoephedrine and Manufacturing Methamphetamine each and five (5) years for Possession With Intent to Distribute Marijuana; all sentences to run concurrent. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, 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:

- I. Ineffective Assistance of Counsel
 - a) Failure to file an appeal
 - b) "In my understanding from my conversations with my counsel I was to receive a plea in accordance with those given to my co-defendants;"
 - c) "In my understandings with my counsel I was not pleading to an eighty-five percent offense. I was promised by my attorney I would do 3.5 years and be up for parole after a year and a half;"
 - d) "Being that I had no significant prior criminal history I relied upon the conversations with my counsel and his advice which has proven to be inadequate;"
 - e) "From the beginning I maintained that my co-defendants, not myself, were the individuals who were culpable. Only in detrimental reliance on the information I received from counsel did I enter my plea;"
 - f) "The state lacked sufficient evidence to support the charge in the indictment number 2010-GS-32-0465; being that the drug analysis demonstrated less than the amount required by statute;"
2. Involuntary Guilty Plea

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. 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).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: Kaeloe E. May
ATTORNEYS FOR RESPONDENT

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

September 8, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2011-CP-32-1356
	)	
JAMES C. HELMS, #341440	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
	)	

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

Benjamin Stitely, Esquire
P.O. Box 849
Lexington, SC 29071

DATED this 8th day of September, 2011

Lena Pelishenko
 Lena Pelishenko, Legal Assistant
 For Respondent

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas
3
4 Docket No: 2011-CP-32-1356
5
6 James C. Helms,)
7 Applicant,)
8 VS.) TRANSCRIPT OF RECORD
9 State of South Carolina,)
10 Respondent.)

11
12 January 31, 2012
13 Lexington, South Carolina
14

15 B E F O R E:

16 The Honorable Eugene C. Griffith, Judge.
17

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

19 Benjamin A. Stitely, Esquire
20 Attorney from the Petitioner

21 Kaelon E. May, Assistant Attorney General
22 Attorney for the Respondent
23

24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

I N D E X

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E X H I B I T S

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1 MS. MAY: The last case of the day we'd like to
2 call is James Helms v State, Case number 2011-CP-32-1356.

3 Mr. Helms filed a PCR application April 5th, 2011.
4 He was charged with possession of pseudoephedrine, 102
5 grams, as well as possession with intent to distribute
6 marijuana and manufacturing methamphetamine. He pled
7 guilty to the lesser-included offense of possession of
8 pseudoephedrine 28 to 100 grams and -- as well as to the
9 remaining two charges as indicted.

10 Judge Knox sentenced Mr. Helms to a period of seven
11 years for possession and manufacturing, and five years for
12 the possession with intent to distribute, all sentences to
13 run concurrent. There was no appeal and I'll let
14 Mr. Stitely take it over from here.

15 MR. STITELY: Your Honor, I don't -- I don't guess
16 I'm going to get any traction by arguing that she's out of
17 the sixty days, that they're in default, but we'll go
18 forward, Your Honor.

19 THE COURT: You've still got the burden of proof.

20 MR. STITELY: Yes, sir, I understand that.

21 Your Honor, if I may make a brief synopsis here.
22 Let me kind of give you a heads up, and that might move us
23 in the direction. As Your Honor can clearly see there are
24 a number of issues considered in our PCR. The most
25 significant one in this case, Your Honor -- and this is a

1 plea -- is of course a plea to a charge that carried seven
2 to twenty-five years under that relatively new, pretty much
3 brand new back then pseudoephedrine statute. We actually
4 tried the first case on it. We lost that case and the
5 judge was shocked to hear that he had to give him that
6 twenty-five years on possession of Sudafed. But that's
7 what this case comes down to, Your Honor.

8 The bulk of this issue comes down to the question
9 of what Mr. Helms was told would be the result of his
10 sentence. It is a seven to twenty-five. I know what that
11 means. Mr. Helms -- and I'll call his family, which was
12 all there on the plea. All five of them will testify, and
13 I've talked with Mr. Stockholm about this, that he was
14 informed that he would reach parole, only do about 18
15 months, that's why he went forward with the plea.

16 That's pretty much the strongest issue of this PCR,
17 Judge. I'm going to pretty much focus on that. If you
18 would like for me to go into the other general concepts
19 about how you felt your -- everything else was defunct, I
20 can go there too, but I think that's the most compelling
21 part of this PCR. So that's where I'm going to target it.

22 THE COURT: Okay.

23 MR. STITELY: Your Honor, I'd call Mr. Helms to the
24 stand.

25 ///

1 THEREUPON,

2 JAMES C. HELMS,

3 after being duly sworn, testified as follows:

4 THE CLERK: Have a seat and state your name for the
5 record, please.

6 THE WITNESS: James Helms.

7 DIRECT EXAMINATION

8 By Mr. Helms:

9 Q Mr. Helms, could you tell me how old you are now?

10 A Twenty-eight -- not twenty-eight -- 48.

11 Q And where do you -- where have you resided your
12 whole life?

13 A Right around Silver Lake Trailer park.

14 Q Okay.

15 A 244 Golf Court.

16 Q All right. You ever been in a witness stand
17 before?

18 A No, sir.

19 Q Okay. If I ask any questions, you get nervous or
20 you get confused, say, Ben, slow down and go back, okay?

21 Prior to this occurrence, tell me a little bit --
22 did you have an extensive criminal record or do you have
23 anything on your record?

24 A This is the first time I've ever been in any real
25 trouble.

1 Q Okay. Had you ever been on probation before this?

2 A No.

3 Q Okay. So this was the first time you had any
4 dealings with big court as they call it?

5 A Yes, sir.

6 Q Now, you were charged under the pseudoephedrine
7 statute, which is possession of, in theory,
8 over-the-counter pseudoephedrine, of a quantity that was
9 unlawful, correct?

10 A Yes, sir.

11 Q Like, you can go in the grocery store and buy these
12 pills, but if you had too many of them, it was against the
13 law?

14 A Yes, sir.

15 Q Okay. Had you ever been charged with anything like
16 that before?

17 A No, sir.

18 Q Okay. Had you ever known anyone to be charged,
19 convicted, tried on the statute like that before?

20 A No, sir.

21 Q Okay. Had -- and like I say, you've never been to
22 prison before?

23 A No, sir.

24 Q Okay. Never been on probation?

25 A (Witness shook head.)

1 Q Your case was originally slated for a trial; is
2 that correct?

3 A Yes, sir.

4 Q Okay. And it was your intention to try the case
5 saying that you didn't do anything wrong criminally?

6 A Yes, sir.

7 Q Okay. And that was your plan going with
8 Mr. Stockholm, correct?

9 A Yes, sir.

10 Q In fact, a jury was called in your case and then
11 y'all got to talking because you found out that you would
12 be facing a mandatory minimum of twenty-five years
13 potentially if convicted?

14 A Yes, sir.

15 Q Okay. As such, you kind of changed gears towards
16 pleading to the trafficking, to the reduced amount which
17 was 20 to 100 grams, correct?

18 A Correct.

19 Q Okay. During the plea, the judge says, You
20 understand that this is a seven to twenty-five, correct?

21 A Yes, sir.

22 Q You understood that it was seven to twenty-five,
23 correct?

24 A Yes, sir.

25 Q And you understood that part of the plea was the

1 solicitor would be on board with you getting the seven,
2 correct?

3 A Yes, sir.

4 Q What was your understanding, specifically from your
5 conversations with Mr. Stockholm about what seven on this
6 possession of pseudoephedrine in a certain amount meant?

7 A It meant that I'd get the seven, but I'd only do
8 like three, three and a half and I'd be out a year and a
9 half on parole.

10 Q Okay. Why did you have that idea?

11 A Because that's what I was told.

12 Q Okay. Did that -- was that ultimately why you pled
13 guilty?

14 A Yes, sir.

15 Q Okay. And you had some codefendants in this case?

16 A Yes, sir.

17 Q Are you aware of what sentences they got?

18 A Well, I think one's already out. I think he got
19 three years.

20 Q Okay.

21 A Sixty-five -- at the time I didn't even know the
22 difference between the sixty-five, eighty-five. I didn't
23 know none of that.

24 Q Okay. And the other codefendant also got a
25 non-eighty-five sentence, correct?

- 1 A Yes, sir.
- 2 Q Okay. And they both got out -- they're done with
- 3 their sentences now, correct?
- 4 A Yes, sir. And they were also -- they were caught
- 5 multiple times.
- 6 Q Okay. And they actually had prior records, if
- 7 that's correct. At least one of them did?
- 8 A Yes, sir.
- 9 Q But you did not.
- 10 A No.
- 11 Q Who else was present at the time that you had the
- 12 conversations with Mr. Stockholm regarding what your
- 13 sentence would actually entail?
- 14 A My friends and family back there were.
- 15 Q Okay. And they're the ones I'm going to put up
- 16 here after you.
- 17 A (Witness nodded head.)
- 18 Q And everyone was present in the courtroom when
- 19 y'all had those discussions?
- 20 A Well, actually, we were sitting outside of the
- 21 courtroom.
- 22 Q In the courthouse building?
- 23 A Yes, sir.
- 24 Q Okay. Is there anything else specifically relevant
- 25 to your PCR application we haven't talked about or is that

1 pretty much the problem you had with the representation,
2 was regarding what you were told your sentence would
3 actually look like?

4 A Well, that and -- if I was taking a plea bargain
5 down, the amount of Sudafed they found was only 24 grams.
6 You know, by what's on the box, it's 24. So if I'm
7 pleading down, why would I plead down from 28 and above
8 instead of going down.

9 Q So it's your position and we don't have it as part
10 of this -- and I don't have any additional information, but
11 the discovery that you had received at that point only
12 indicated you had 24 grams, which is below even the
13 trafficking or --

14 A Well, they said it was -- from the number of pills,
15 they said it was ten boxes and it's like 2.4 grams a box.
16 Two times ten is 24. I'm just going on what's on the side
17 of the box.

18 Q And ultimately you went with the plea because you
19 were told that you would do half the time, then parole with
20 no significant record, most likely after 18 months?

21 A That's right. And as it stands now, I'm not even
22 eligible for parole.

23 Q Okay. Had the eighteen months been what you'd
24 actually done, when would you be released or when would you
25 be?

1 A I think I'm right at eighteen, nineteen months
2 right now.

3 Q Okay. Is there anything else you'd like to cover
4 real quick? I'm going to call your family.

5 A No -- I mean, even on the marijuana charge, I mean,
6 five years per -- 5.8 grams?

7 Q But that one is -- that one was -- there's no
8 problem with that sentence because that one is a
9 parolable --

10 A Yeah.

11 Q Like -- you thought they all were parolable?

12 A Right.

13 Q Okay.

14 MR. STITELY: I have no other questions at this
15 time, Your Honor.

16 MS. MAY: I have no questions, Your Honor.

17 THE COURT: You may step down.

18 MR. STITELY: Judge, my next four witnesses, I
19 literally have two questions each for. It's just -- pretty
20 much just the bulk of that conversation.

21 THE COURT: All right.

22 MR. STITELY: I'd call Ms. Kim Sandy.

23 THEREUPON,

24 KIM SANDY,

25 after being duly sworn, testified as follows:

1 THE CLERK: Have a seat and state your name for the
2 record, please.

3 THE WITNESS: Kim Sandy.

4 DIRECT EXAMINATION

5 By Mr. Stitely:

6 Q Ms. Sandy, what do you do for a living?

7 A I'm a housewife.

8 Q Okay. And how do you know the petitioner in this
9 matter?

10 A Long-time friend and he was employed with my
11 husband.

12 Q Okay. Were you at the courthouse the day that he
13 ultimately did his plea?

14 A Yes.

15 Q Were you present at the time that he was having the
16 conversation with Mr. Stockholm regarding sentences?

17 A Yes.

18 Q And to the best of your independent recollection,
19 what was it that the conversation between Mr. Stockholm and
20 Mr. Helms ultimately was regarding what his sentence would
21 be if he took the plea that was offered that day?

22 A Seven years and he would do about three, three and
23 a half and he would be out in about eighteen months.

24 Q And where did that conversation take place?

25 A Here in the courthouse.

Kim Sandy - Direct Examination by Mr. Stitely

1 Q Was that part of the consideration of you and the
2 rest of his family took when you were speaking to Mr. Helms
3 that day with whether or not he should plea?

4 A Yes.

5 MR. STITELY: I have no other questions.

6 MS. MAY: No questions, Your Honor.

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

8 MS. MAY: Your Honor, Mr. Stitely informed me that
9 the rest of his witnesses are going to testify to the
10 exact same thing. I would stipulate that that's what their
11 testimony is so we don't have to call every single one.

12 MR. STITELY: Can I just put their names on the
13 record?

14 THE COURT: Sure.

15 MR. STITELY: That would be Ronnie Sandy, Rusty
16 Murphy and Tina Finley, and they're in the Court. This is
17 his family who was all there the day of the plea.

18 Judge, that's our evidence. I have argument.

19 THE COURT: Okay.

20 MS. MAY: Your Honor, the State would like to call
21 Mr. Stockholm.

22 THE COURT: Mr. Stockholm, come over here and be
23 sworn and come around and be seated.

24 ///

25 ///

1 THEREUPON,

2 GENE STOCKHOLM,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Ms. May:

6 Q Mr. Stockholm, how did you come to represent Mr.
7 Helms?

8 A Mr. Helms and his girlfriend, whose name escapes
9 me, had come to our office, I believe in October of 2009.
10 He had been charged with several offenses, and was being
11 represented or had been represented by the public
12 defender's office. He had spoken to my partner, and he
13 wanted to hire us. There had been an offer in the case. I
14 do not remember what it was. And he was very unhappy about
15 it and he wanted to get private counsel instead of the
16 public defender's office.

17 Q And from there y'all discussed that you would
18 represent Mr. Helms?

19 A Yes. He retained us.

20 Q And when you first met with him, did y'all discuss
21 the charges that were --

22 A We did. He was -- he had been talking to my
23 partner for some time when I walked into the conference
24 room. We discussed the fact that, you know, he had no
25 prior record, and it seemed unusual that they were being so

1 harsh, shall I say, for someone with no prior criminal
2 record. And, you know, we talked about that and
3 subsequently I think I attended at least one, possibly two
4 roll call appearances.

5 Q Okay. And did you discuss the indictments and the
6 elements of the offenses with Mr. Helms?

7 A Well, yes. We talked about the fact that, you
8 know, the biggest problem was the pseudoephedrine. We did
9 not realize at the time, but in February of 2010, it was
10 about to become a much bigger problem. That's when the
11 solicitors on the case indicted him for a higher offense,
12 which was a mandatory twenty-five years.

13 Q And when y'all first began to meet, was this --
14 were you initially going to take this to trial or did y'all
15 discuss pleading at the outset?

16 A When we had first met, I was surprised they had not
17 offered him pretrial intervention. I just didn't
18 understand it. And he was adamant that, you know, he was
19 not guilty, that the people who were there, Ms. Threat and
20 Mr. Lloyd had been renting the trailer and that, you know,
21 he really had nothing to do with it and, you know, he had
22 just been at the wrong place at the wrong time.

23 Q And you received that information by your
24 discussions with Mr. Helms and his version of the facts?

25 A Yes, I had talked to him.

1 Q Okay. Now, did you -- public defenders may have
2 filed a discovery motion, but did you either file one or
3 receive what the public defender had?

4 A Yes, we received discovery. I mean it was obvious
5 this was a meth lab. It was a pretty large meth lab and my
6 conversation with Mr. Helms, we weren't going to contend
7 that it wasn't being used for drugs, it was just he had
8 nothing to do with it.

9 Q Do you recall what specific items were in the
10 discovery materials?

11 A Investigatory notes, chain of custody for the
12 various drugs that were seized. There was oxycodone,
13 marijuana, a lot of pseudoephedrine. I think that was it.
14 I believe there was inventory for batteries, various things
15 needed to make meth.

16 Q Okay. And did you -- were you able to review that
17 discovery with Mr. Helms?

18 A I talked to him briefly about it. After he was --
19 in February of 2010 when he was indicted on the higher
20 charge, after that I had very sporadic contact. I normally
21 spoke with his girlfriend.

22 Q Okay. And after February 2010, did you make
23 attempts to contact him and were you unsuccessful?

24 A Well, I would relay messages through the
25 girlfriend. We had been told -- well, I can't put it that

1 way. We had been noticed several times for potential trial
2 dates. However, as often happens, you get a phone call and
3 you don't go.

4 Q And did you inform Mr. Helms of those trial notices
5 when you received them?

6 A Yeah, well I would call the girlfriend and it would
7 be along the lines of, You know, we are noticed up for the
8 week of March 15th, however, I really don't think we're
9 going to go. At some point, I believe it was in April, I
10 received a notice from the solicitor's office that the two
11 codefendants Threat and Lloyd had turned State's evidence,
12 and I was provided a short copy of what Mr. Lloyd was going
13 to talk about; and then I called and asked Mr. Helms to
14 come in because I really needed to speak to him.

15 Q And did Mr. Helms come in and speak with you about
16 those statements?

17 A Yes, he came in. Ms. Threat, if I remember
18 correctly, had indicated she was like a runner for the
19 operation and she would go where she was told to deliver
20 the meth and that Mr. Lloyd, I believe, was the one who
21 would try to pick up the different articles that they
22 needed and it was being cooked by Mr. Helms. We had a long
23 talk about the reputation of both Mr. Lloyd and Ms. Threat
24 and he indicated there were a lot of people that could
25 testify that they -- they were bad people. And I said I

1 needed some because I wanted to have witnesses who -- you
2 know, I have a man who has no criminal record; and I've got
3 people who have obviously cut a plea deal for drugs. You
4 know, I needed some witnesses to attack their credibility.

5 Q And did he provide you with the names of any
6 witnesses that he thought might have --

7 A He told me he thought he had a couple of people,
8 but I never received any.

9 Q So he never provided you with names addresses or
10 phone -- contact information?

11 A No, I was not able to get anyone. I was informed
12 again we were up for trial the week of June 21st and then
13 was noticed that we were the trial on June 21st.

14 Q And when you received that notice, were you able to
15 get in contact with Mr. Helms?

16 A No, I spoke multiple times to his girlfriend. I
17 was like I really need him in here. I need the witnesses.
18 I've got to subpoena people. And the week leading up I
19 called on June 16th, June 17, June 19th, and I never talked
20 to him. And I believe the hearing was on the 21st, the
21 Monday.

22 Q Were you able to get in touch with him at all prior
23 to the hearing?

24 A No, I saw him Monday morning when we were getting
25 ready to pick a jury.

1 Q Okay. And what were -- do you recall your initial
2 discussions with him the day that -- the day of the, I
3 guess trial at first and then plea hearing?

4 A Well, you know, it was -- we were going to go to
5 trial. He did not have any witnesses, you know, about the
6 question of the voracity of Mr. Threat -- excuse me,
7 Ms. Threat or Mr. Lloyd. I normally do not recommend my
8 client take the stand in a criminal trial as it opens them
9 up to impeachment by the prosecution. However, since I had
10 someone who had no prior criminal record, you know, I
11 really wanted to prepare him for trial because I had
12 planned to put him up.

13 Q Okay. And what was your trial strategy going into
14 picking the jury and then if y'all had proceeded to trial?

15 A The strategy was going to be that while it was a
16 drug house that Ms. Threat and Mr. Lloyd were already
17 admitted drug dealers and they were just pointing fingers
18 anyway they could to get a lighter sentence.

19 Q And were -- so you were prepared to go to trial
20 that day?

21 A Yeah -- well, I prepared the best I could. I
22 mean -- had we gone to trial without having prepared Mr.
23 Helms, I don't know how it would have gone. I mean as far
24 as impeachment, they couldn't have done anything. He had
25 no prior criminal record. But as far as going over the

1 evidence and questions that might have been asked, I didn't
2 have a chance to prepare him for that.

3 Q And prior to the trial date, did you engage in any
4 plea negotiations in Mr. Helms behalf?

5 A I had tried to talk to the solicitor's office but
6 again, they were very, I guess you'd have to say aggressive
7 on the matter. They -- they took the position that their
8 best offer had been made when the public defender was
9 there. They did not seem to really want to do anything at
10 all on the case. Which I will tell you after twenty-eight
11 years, if Mr. Helms had had an extensive criminal record, I
12 would understand it, but considering the fact he did not,
13 it's still very unusual.

14 Q And did you -- in preparing for the trial, did you
15 review the drug analysis?

16 A I looked at it, yes.

17 Q And when did -- I guess at one point after y'all
18 had struck the jury y'all were picking a jury, that the
19 plea offer for seven years was offered?

20 A Yes, this was a relatively new statute at the time
21 and at that -- at some point, Judge McMahon, who was trying
22 to line up one -- there was some other stuff going on. He
23 was trying to line it up and he literally was surprised
24 that it was a mandatory 25 and suggested that the
25 prosecutor go talk to me and that he felt that could be

1 very strict.

2 Q And what did you and the prosecutor discuss at that
3 point?

4 A Was there anything that could done to avoid the
5 mandatory twenty-five years. It was an 85 percent offense.
6 He would have had to do twenty-two and-a-half years.
7 Eventually, they came back and would allow him to plea to
8 28 -- less than a hundred, which was a mandatory seven, and
9 if the judge ran everything concurrent, they were not going
10 to object to it.

11 Q Okay. And was your client present at that.-- with
12 your discussion with the solicitor or did you relay back?

13 A No, I relayed back.

14 Q Okay. And did you feel like Mr. Helms understood
15 the plea negotiation between yourself and the solicitor?

16 A Yes, I did.

17 Q Okay. Do you recall the meeting with Mr. Helms and
18 I guess his family --

19 A Yes --

20 Q -- being present?

21 A -- we were outside the courtroom and we were simply
22 going over it. I told him it was seven years. I thought
23 under the statute that applied about offenses it had to all
24 be run concurrent, that the prosecutor would not object if
25 it was run concurrent, but that, you know, the alternative

1 was to go to trial and if we lost, it was going to be a
2 mandatory twenty-five.

3 Q Did you ever tell Mr. Helms at that meeting -- or
4 his family, that he would only have to do three and a half
5 and get out in eighteen months?

6 A I told him that it would be an 85 percent offense,
7 which is -- I had estimated five years, ten months, I
8 think. However it was being checked as a nonviolent
9 offense, which could mean if they had an overcrowding
10 situation he could be out earlier on an early release.

11 Q But you never promised that he would be released in
12 three-and-a-half years?

13 A No. I mean -- the only thing I could tell him for
14 sure was if he was convicted on the major offense he would
15 be in jail for twenty-two and-a-half years.

16 Q Okay. Did you ever promise him a specific sentence
17 in terms of years?

18 A Other than the fact that we were trying to get the
19 minimum mandatory seven, no. It was -- the sentence ranged
20 from the judge was seven to twenty-five, however, I was
21 feeling that he was going to do the minimum because he had
22 already indicated he thought something should be worked
23 out.

24 MS. MAY: I have no further questions. Thank you.

25 MR. STITELY: Just very briefly. May I approach,

1 Your Honor?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 By Mr. Stitely:

5 Q Mr. Stockholm, I'm going to hand you something that
6 looks kind of like a copy of the warrant. Is that the
7 original warrant that Mr. Helms received in this case?

8 A It might be, sir.

9 Q It looks to be at least. They charged him with
10 possession and they only later bumped it up to the higher
11 weight?

12 A Yes.

13 Q Okay.

14 A May I comment on that?

15 Q Yeah.

16 A I will say again, I do not understand for someone
17 who has no prior criminal record why the solicitor's office
18 was so hot to be after Mr. Helms. It just amazes me
19 because I have had people who are quite frankly bad people
20 who have been treated better.

21 MR. STITELY: Your Honor, I'd offer that as
22 Defendant's 1.

23 THE COURT: Petitioner's 1?

24 MR. STITELY: Petitioner's 1, sorry.

25 MS. MAY: What's the number on that? Arrest

1 warrant?

2 MR. STITELY: JH16251. It's the warrant for the
3 arrest of Mr. Helms on possession of ephedrine 12 to 28
4 grams first offense.

5 MS. MAY: No objection.

6 (WHEREUPON Petitioner's Exhibit No. 1 was marked
7 and entered into evidence.)

8 THE COURT REPORTER: Petitioner's 1, Your Honor.

9 THE COURT: No objection.

10 By Mr. Stitely:

11 Q And Mr. Stockholm, you just -- you disagree with
12 the recounting that his family has of your conversation?

13 A Yes, sir.

14 Q Okay.

15 MR. STITELY: I have no other questions. Just
16 argument, Judge.

17 MS. MAY: Nothing further.

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

19 All right. Let's hear it.

20 MR. STITELY: Please the Court, Judge. I've only
21 been doing it six years. I know Mr. Stockholm's been doing
22 it a lot longer, yourself as well. Mr. Helms is an
23 individual who had no prior record. He had a magistrate
24 level conviction for something some ten, twelve years
25 earlier. He was charged under a brand new pseudoephedrine

1 statute. And I say brand new, back then it was pretty much
2 brand new. It's only got a couple of years of action. In
3 fact, I just looked at it. It has changed again since his
4 plea in the amounts. At the time of his plea, as you can
5 see on the warrant, it was 12 to 28 grams to be in
6 possession. And that's what he was convicted of, actually
7 just possession, not even trafficking or anything like
8 that. Now, the statute actually reflects 9 to 28, so they
9 even changed it again.

10 Your Honor, in this case and along we've looked at
11 it and it's not in evidence, I don't think it's relevant at
12 this point specifically, but even the SLED analysis just
13 says pills in a box. It was possession of pills in a box.
14 He had no prior record. When they went to do the plea, it
15 was my client's understanding, and I think it's supported
16 by all his family, that maybe there was just a complete
17 loss of communication between him and Mr. Stockholm about
18 what early release might have been, what nonviolent would
19 have been. I know that term is thrown around all the time.
20 I have no idea what it means because whenever I call the
21 department of corrections to ask how long someone's doing
22 as a nonviolent, violent, they tell me something different
23 as well.

24 The long and the short of it is that someone with
25 no record, no understanding of the system, uniquely in this

1 case, in looking at the transcript, Judge McMahon doesn't
2 even go over the normal thing, do you realize that you
3 cannot parole on there. It's not covered. It was clear, I
4 believe that Mr. Helms and his family thought that he
5 was -- just like his co-defendant's pleading to simple
6 possession where he could get parole after doing a portion
7 of the sentence. To their understanding, and I talked to
8 his mother when they first came in, they were expecting him
9 to be out about now. He was over at the pre-release center
10 where he does work and stuff like that, but they will keep
11 him for five and-a-half years.

12 This is an individual that had no contact with the
13 criminal justice system in a way that he would have
14 understood what was going on. It's obvious that him and
15 his family misunderstood this. Your Honor, I understand
16 that if we go back, I guess they could try him for the
17 higher statute. There's nothing even on the drug analysis
18 that would concern me as a defense attorney. There's no
19 weight. It just says number of pills. It's the exact same
20 as is written in the warrant. I'm sure he has defenses.
21 I'm with Mr. Stockholm, I would have felt the solicitor
22 would have offered PTI on this. I've had other people with
23 the exact same situation who could have gotten something
24 like that.

25 This is a naive-to-the-system person, but even if

1 there's a disconnect between what Mr. Stockholm told him
2 and what him and his family understood, obviously there was
3 at least talk of some kind of early release. When he talks
4 to the judge, he says exactly that, I'm asking for the
5 minimum. There's nothing from the Court going above and
6 beyond letting him know, look it is 85 percent. It's
7 non-parolable, it's a strike -- it may even be a double
8 striker if I'm not mistaken. He had twenty-five years on
9 it. It would be twenty-five year -- it may even be a
10 double strike. I think in this situation there was a clear
11 disconnect in his understanding. We'd ask you to vacate
12 the sentence, reinstate it, and send him back to the county
13 and let us work from there.

14 THE COURT: All right.

15 MS. MAY: Your Honor, just briefly, the State, we
16 would just rely on the transcript and the record. Judge
17 McMahon clearly stated each of the minimum and maximum
18 sentences. Mr. Helms indicated that he understood that.
19 The Court is not required to advise of parole eligibility;
20 however, if they do, if they are incorrect when they
21 undertake that, then that's a PCR issue. He wasn't advised
22 of eligibility so I would submit that's not an issue at all
23 here. He indicated that he understood what the terms of
24 the sentences were.

25 Mr. Stockholm indicated what he explained to the

1 defendant's family and we would just -- the State would
2 just rely on the guilty plea transcript.

3 THE COURT: All right. I'm going to read the
4 transcript and I'll let y'all know.

5 MR. STITELY: Thank you, Judge.

6 THE COURT: Anything else?

7 MS. MAY: Nothing from the State, Your Honor.

8 MR. STITELY: Thank you, Judge.

9 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 31st day of January, 2012.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 3 through 28 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 4th day of April, 2012.

20

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25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE **88**
CASE NUMBER 2011CP3201356

James Clayton Helms

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

 Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order: (formal order to follow)☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

89**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	2154	2/10/2012
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **9th day of February 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **9th day of February 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin A Stitely Williams Hendrix Steigner & Brink PA
PO Box 849 Lexington, SC 29071

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kaelon May

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

ORIGINAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2011-CP-32-1356

James Clayton Helms

SCID # 341440,

Applicant.

vs.

ORDER ON POST-CONVICTION RELIEF

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for post-conviction relief (PCR) filed April 5, 2011. After consideration of the testimony and arguments of counsel, the Court grants PCR for Applicant James Clayton Helms.

The undisputed facts in this matter are Applicant seeks PCR arising out of a guilty plea on June 21, 2010 before the Honorable R. Knox McMahon to charges of: Possession of Pseudoephedrine 28-100 grams (2010-GS-32-0465), Possession With Intent to Distribute Marijuana (2010-GS-32-0464), and Manufacturing Methamphetamine (2010-GS-32-0463). He was sentenced to seven years, without the possibility of parole eligibility. No notice of appeal was filed on Applicant's behalf.

The State made Return on Mr. Helms' PCR application September 8, 2011. An evidentiary hearing into the matter was held on February 1, 2012 at the Lexington County Courthouse before the Honorable Eugene C. Griffith, Jr. Applicant was present at the hearing and was represented by Benjamin A. Stitley, Esquire. The Respondent was represented by Assistant Attorney General Kaelon May of the South Carolina Attorney General's Office.

SEP 1/4

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Testimony was offered by Applicant and his friend Kim Sandy, alleging that Applicant's previous attorney, Gene Stockholm, Esquire, was ineffective by failing to properly advise him as to whether the offenses to which he was pleading to were parole-eligible, greatly affecting the estimated time Applicant would serve at the South Carolina Department of Corrections. The State stipulated to testimony that would be offered by Ronnie Sandy, Rusty Murphy, and Tina Finely would be substantially the same as Applicant's testimony. Applicant's previous attorney, Gene Stockholm, Esquire, also testified. Also before the Court were a copy of the transcript of the Applicant's plea, the records of the Lexington County Clerk of Court, and the Exhibits introduced as evidence at the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

In a post-conviction relief proceeding, 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 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 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

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. 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).

For the Applicant to be granted post-conviction relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's deficient performance. Strickland v. Washington, 466 U.S. 668 (1984). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

In his initial application for post-conviction relief, Applicant asserts he detrimentally relied upon information from his trial counsel that the charge which he was accepting a plea to was a non-violent, non-"eighty-five percent," parole-eligible offense. Through testimony of the Applicant and that of his family and friends, the Court is firmly convinced that the Applicant relied on information that if he entered a plea to the charge he would be able to be paroled after a matter of approximately eighteen months of incarceration. Applicant's trial counsel further did admit that he informed the Applicant that he would be eligible for some form of early release.

But for this reliance on counsel, the Applicant would not have accepted the plea. The Applicant was severely prejudiced in that he entered a plea to a non-parole eligible offense without proper information. The applicant's PCR should be granted where he was improperly advised as to the sentence he could and would receive; this amounted to ineffective assistance of counsel and created prejudice sufficient to satisfy the standards established in Cherry and Strickland, Id.

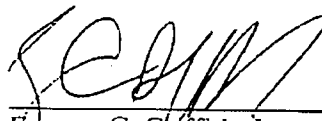
Any Other Claims

The Court has addressed the most relevant claim to which it finds the Applicant is entitled to PCR relief. To the extent that any issue has not been specifically addressed in this order, it is the Court's determination that no specific ruling is required on the additional issues raised in the Applicant's PCR where it has been granted on the grounds of Ineffective Assistance of Counsel as it relates to his Plea.

THEREFORE, IT IS ORDERED:

1. That the Application for Post-Conviction Relief is granted.
2. The Applicant shall be immediately released from South Carolina Department to Lexington County where his bond shall be reinstated.

AND IT IS SO ORDERED this 8th day of February, 2012.



Eugene C. Griffith, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James C. Helms, #341440

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

94

CASE NO.

2011-CP-32-1356

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Benjamin Stitely, Esquire, Bar No.
Address:
P.O. Box 849 Lexington, SC 29071

phone: fax:
e-mail: other:

Defendant's Attorney:
Kaleon E. May, Bar No. 80469
Address:
Post Office Box 11549 Columbia SC 29211-1549
phone: (803) 734-3747 fax: (803) 734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Kaleon May
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

February 22, 2012
Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James C. Helms, #341440,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No: 2011-CP-32-1356

**Motion for Rehearing and/or Motion to Alter
or Amend Judgment Pursuant To Rule 59(a)
and Rule 59(e), SCRPC**

The Respondent, State of South Carolina, pursuant to Rule 59(a) and Rule 59(e) of the South Carolina Rules of Civil Procedure, asks the Court to direct entry of new judgment and/or reconsider, alter, or amend the Court's Order granting Post-Conviction Relief to the Applicant. The Respondent would submit the following:

I.

On February 1, 2012, an evidentiary hearing into the above-referenced matter was convened at the Lexington County Courthouse before the Honorable Eugene C. Griffith, Jr. The Applicant was present at the hearing and represented by Benjamin A. Stitley, Esquire. Respondent was represented by Kaelon E. May, Esquire of the South Carolina Attorney General's Office. At the hearing the Applicant testified on his own behalf. Applicant also offered the testimony of Kim Sandy, Ronnie Sandy, Rusty Murphy, and Tina Finley. The State offered the testimony of Gene Stockholm, Esquire, Applicant's plea counsel. This Court issued an Order granting Applicant post-conviction relief on February 8, 2012, filed with the Lexington County Clerk of Court on February 9, 2012, and served upon the undersigned on February 14, 2012.

II.

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. §17-27-80. Therefore, Respondent would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered on each issue and that the testimony of each witness is properly addressed. Furthermore, Respondent would respectfully request that this Court carefully review the records and the transcript of the original guilty plea hearing and reconsider, alter and/or amend the findings of fact and conclusion of law set forth in the standing Order Granting Post Conviction Relief to the Applicant.

1. The Court's Order fails to properly summarize the testimony of all parties as it is in the Respondent's proposed Order or could be properly done by obtaining the PCR hearing transcript. See Respondent's proposed Order p.3-6.

2. The Court's Order fails to provide any summary of the testimony elicited from plea counsel regarding counsel's representation, specifically but not limited to the issue of preparing Applicant's case; Applicant's cooperation in assisting in his own defense; plea negotiations prior to the guilty plea hearing; and the events taking place on the day of the guilty plea hearing. See Respondent's proposed Order p.4-6.

3. The Court's Order fails to properly and accurately reflect the extent of the testimony elicited from plea counsel regarding counsel's discussion with Applicant and Applicant's friends and family on the day of the guilty plea hearing concerning the terms of the plea offer. The Order devotes a single sentence to plea counsel's testimony. See Respondent's proposed Order p.4-6.

4. The Court's Order fails to accurately reflect the extent of the testimony elicited from Applicant regarding Applicant's understanding of the potential penalties and consequences of the charges he was pleading guilty to, and Applicant's reasoning in deciding to plead guilty. See Respondent's proposed Order p.3.

5. The Court's Order fails to accurately reflect the extent of the testimony elicited from Kim Sandy regarding her recollection of the conversation between plea counsel and Applicant concerning the terms of the plea offer. As a result the Order fails to accurately reflect the extent of the stipulated to testimony that would be offered by Ronnie Sandy, Rusty Murphy, and Tina Finely. See Respondent's proposed Order p.3.

6. The Court's Order fails to accurately reflect the procedural history and/or facts of Applicant's underlying convictions. Respondent respectfully requests that this Court alter and amend the Order to include the correct procedural history and facts of Applicant's underlying convictions. See Respondent's Return and the Lexington County Clerk of Court's records.

7. The Court's Order should be altered and/or amended to properly reflect the law as it pertains to the Applicant's burden of proof in this case. See Respondent's Proposed Order. The Applicant alleged that he detrimentally relied upon plea counsel's advice that the charge to which Applicant was accepting a plea to was a non-violent, non-"eighty-five" percent, parole-eligible offense. The Applicant alleged that he relied on plea counsel's advice that if Applicant entered a guilty plea to the charge Applicant would be eligible for parole after eighteen months of incarceration. The Order reflects that but for this reliance on plea counsel, the Applicant would not have accepted the plea. Respondent submits the following legal principles properly and adequately address the Applicant's burden of proof for 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 v. State, 300 S.C. 115, 386 S.E.2d 624 (1989), citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "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) (emphasis added).

Respondent submits the Order makes the finding that Applicant was prejudiced because Applicant entered a plea to a non-parole eligible offense without proper information and that the Applicant's PCR should be granted where he was improperly advised as to the sentence he could and would receive. However, Order fails to address whether "but for counsel's alleged errors, Applicant would not have pled guilty and would have insisted on going to trial." Id.

8. The Court's Order fails to consider the guilty plea transcript. The Order should be altered and/or amended to include findings of fact and conclusions of law based on the colloquy at the guilty plea hearing between the trial court, Applicant, and plea counsel. See Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2007) ("When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing"). See Respondent's proposed Order. Respondent submits the following findings of fact are relevant and material to the issue of the Applicant's understanding of the potential penalties and consequences of the charges he was pleading guilty to, and

Applicant's reasoning in deciding to plead guilty, and should be considered by the Court in its analysis:

- a. The Applicant understood the potential penalties and consequences of the charges he faced. The Applicant stated that he understood he was being allowed to plead to possession of ephedrine 28 to 100 grams. The Applicant stated that he understood he could receive a sentence to this charge of not less than 7 and up to 25 years, no probation, no suspended sentence. (Tr. p.24, line22 – p.25, line2). The Applicant stated that he understood on the possession of 28 to 100 grams of ephedrine, the minimum sentence was 7 to 25 years and a fine of \$50,000. (Tr. p.29, lines18-21). The Applicant stated that he was pleading guilty in front of the judge to rule out the chance of a mandatory 25 for the mandatory seven, the hope of a mandatory seven. (Tr. p.42, lines10-16).
- b. The Applicant knowingly, intelligently, and voluntarily pled guilty. Counsel stated that he explained to Applicant the charges in the indictments, the possible punishment, and Applicant's rights including Applicant's right to a jury trial. (Tr. p.21, lines20-23). The Applicant stated that he was not under the influence of any medication, drugs, or alcohol. (Tr. p.23, lines12-15). The Applicant affirmed that, other than the state reducing the pseudoephedrine charge to the lesser included and dismissal of two other charges, Applicant was not promised anything to entice him to plead. (Tr. p.30-31, line2). The Applicant stated that he wanted to plead guilty, and he was not threatened or forced to do so. (Tr. p.31, lines6-17). The Applicant stated that he was pleading guilty of his own free will and accord. (Tr. p.32, lines4-11).
- c. The Applicant admitted his guilt and stated that he was actually guilty of manufacturing methamphetamine, possession with intent to distribute marijuana, and possession of ephedrine 28-100grams. (Tr. p.26-27, line22).
- d. The Applicant understood the consequences of his plea and the constitutional rights he must waive in order to plead guilty. The Applicant stated he understood he must give up certain constitutional rights to plead guilty, including: the right to remain silent, the right to a jury trial, the presumption of innocence, and the right to confront witnesses. (Tr. p.25-28). The Applicant stated that he understood he must give up his right to contest or challenge any incriminating statement that he may have given in the case. (Tr. p.28, lines3-10).

9. The Court's Order fails to address the Applicant's claim that plea counsel was ineffective because it was Applicant's understanding from conversations with plea counsel that Applicant was to receive a plea in accordance with those given to his co-defendants.

10. The Court's Order fails to address the Applicant's claim that his guilty plea was involuntary, unintelligent, and unknowing. See Respondent's proposed Order.

11. Respondent submits that the Court's Order should be altered or amended to deny relief and include findings of fact and conclusions of law based on the sentencing sheets signed by Applicant. The sentencing sheets reflect that Applicant plead guilty to 'non-violent' offenses. Respondent requests that the finding as to Applicant's claim that plea counsel was ineffective because Applicant believed he was accepting a plea to a non-violent offense be reconsidered. See Respondent's proposed Order.

12. Respondent submits the Court's Order should be altered or amended, if this Court decides not to deny post-conviction relief, to reflect the relief Applicant is entitled to and that Applicant has the right to make an application for bond while in the custody of the Respondent. Respondent submits the Court's Order directs that "Applicant's bond shall be reinstated," and that this improper because the post-conviction relief court does not have jurisdiction over any bond issue as that is an issue for general sessions court. Respondent submits that it is improper for this Court to issue any order directing action be taken on Applicant's bond.

13. Respondent requests that the Court reconsider, alter and/or amend its findings that Applicant was severely prejudiced in that he entered a plea to a non-parole eligible offense without proper information. See Respondent's proposed Order.

14. The Court's Order should be altered and/or amended to properly reflect the law as it pertains to the Court's finding that PCR should be granted when Applicant was improperly

advised as to the sentence he could and would receive, that this amounted to ineffective assistance of counsel and created prejudice sufficient to that standard. Respondent submits the following legal principles properly and adequately address the Applicant's burden of proof for Ineffective Assistance of Plea Counsel with respect to advise of sentence:

"Even where counsel fails to advise, or even misadvises, a defendant regarding a critical aspect of his charges, such as sentencing range, the error is cured where the trial court during a guilty plea properly advises the defendant about the matter in question." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). See also Knox v. State, 340 S.C. 81, 86, 530 S.E.2d 887, 889 (2000), *overruled on other grounds by State v. Gentry*, 2005 WL 524813 (S.C.).

"The violent/non-violent status of a crime affects an inmate's parole eligibility and other collateral consequences of his conviction and sentence. Normally, a defendant need not be specifically advised of the collateral consequences of sentencing prior to his guilty plea." Brown v. State, 308 S.C. 391, 412 S.E.2d 399 (1991); Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). "Further, misadvise as to a collateral consequence does not necessarily require that a conviction be reversed." Hunter v. State, Op. No. 24118 (S.C. Sup. Ct. filed July 5, 1994) (Davis Adv. Sh. No. 16 at 43). "In order to show ineffective assistance of counsel based on allegations of erroneous advice as to collateral consequences, a defendant must prove that he relied on such erroneous advice and that it induced his guilty plea." Griffin v. Martin, *Supra*.

"When considering allegation on post-conviction relief that guilty plea was based on inaccurate advice of counsel, transcript of guilty plea hearing will be considered to determine whether any possible error by counsel was cure by information conveyed at the plea hearing." Terry v. State, 383 S.C. 361, 680 S.E.2d 277 (2009). "Wishful thinking regarding sentence does equal a misapprehension concerning the possible ranges of sentences, especially where one

acknowledges on the record that one knows the range of sentencing and that promises have been made." Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). See Respondent's proposed Order.

III.

The Respondent therefore requests that the Order Granting Relief to the Applicant be altered and amended pursuant to Rule 52(a) and Rule 59(e), as mentioned above, and asks that the Court deny the Applicant relief.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: Kaelon May
ATTORNEYS FOR RESPONDENT

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

February 22, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2011-CP-32-1356
	)	
JAMES C. HELMS, #341440	)	
	)	
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 copies of the **Motion for Rehearing and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(a) and Rule 59(e), SCRCP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Benjamin Stitely, Esquire
P.O. Box 849
Lexington, SC 29071

DATED this 22nd day of February, 2012

Lena Pelishenko
Lena Pelishenko, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James C. Helms, #341440

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMONS **104S**

CASE NO.

2011-CP-32-1356

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Benjamin Stitely, Esquire, Bar No.
Address:
P.O. Box 849 Lexington, SC 29071

phone: fax:
e-mail: other:

Defendant's Attorney:
Kaleon E. May, Bar No. 80469
Address:
Post Office Box 11549 Columbia SC 29211-1549
phone: (803) 734-3747 fax: (803) 734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

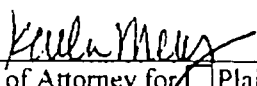
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

February 22, 2012

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James C. Helms, #341440.

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No: 2011-CP-32-1356

Proposed Order of Dismissal

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 5, 2011. Respondent made its Return on September 8, 2011. An evidentiary hearing into the matter was convened on February 1, 2012, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Benjamin A. Stitley, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, the Applicant offered the testimony of Kim Sandy, Ronnie Sandy, Rusty Murphy, and Tina Finley. The State offered the testimony of Gene Stockholm, Esquire (Mr. Stockholm) Applicant's plea counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was

indicted at the February 2010. term of the Lexington County Grand Jury for Possession of Pseudoephedrine 100-200grams (2010-GS-32-0465). Possession With Intent to Distribute Marijuana (2010-GS-0464), and Manufacturing Methamphetamine (2010-GS-32-0463). The Applicant was represented by Gene Stockholm, Esquire. On June 21, 2010, the Applicant pled guilty to the lesser included offense of Possession of Pseudoephedrine 28-100grams and to the remaining two (2) charges as indicted. Applicant was sentenced by the Honorable R. Knox McMahon to confinement for a period of seven (7) years for Possession of Pseudoephedrine and Manufacturing Methamphetamine each and five (5) years for Possession With Intent to Distribute Marijuana; all sentences to run concurrent. Applicant did not appeal his conviction or 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) Failure to file an appeal
 - b) "In my understanding from my conversations with my counsel I was to receive a plea in accordance with those given to my co-defendants;"
 - c) "In my understandings with my counsel I was not pleading to an eighty-five percent offense. I was promised by my attorney I would do 3.5 years and be up for parole after a year and a half;"
 - d) "Being that I had no significant prior criminal history I relied upon the conversations with my counsel and his advice which has proven to be inadequate;"
 - e) "From the beginning I maintained that my co-defendants, not myself, were the individuals who were culpable. Only in detrimental reliance on the information I received from counsel did I enter my plea;"
 - f) "The state lacked sufficient evidence to support the charge in the indictment number 2010-GS-32-0465; being that the drug analysis demonstrated less than the amount required by statute;"
2. Involuntary Guilty Plea

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that during his guilty plea he understood the possible sentence range he faced was seven (7) to twenty-five (25) years. Applicant testified that it was his understanding based on plea counsel's advisement that Applicant would receive a seven year sentence, but that Applicant would only have to serve three (3) to three and one-half (3 ½) years and then be released on parole. Applicant testified that his co-defendants received lesser sentences. Applicant testified that the witnesses that he would presenting at the PCR hearing were present in the courtroom when plea counsel and Applicant discussed the plea offer. Applicant testified that he choose to plead guilty based on plea counsel's advice that Applicant would only have to serve half the time he was sentenced to.

Kim Sandy's, Ronnie Sandy's, Rusty Murphy's, and Tina Finley's Testimony

At the PCR hearing Kim Sandy testified that she was a long-time friend of Applicant. Ms. Sandy testified that she was present during the conversation between plea counsel and Applicant regarding the plea offer. Ms. Sandy testified that plea counsel informed Applicant that if Applicant plead guilty he would receive a seven (7) year sentence, that Applicant would only have to serve a total of three (3) to three and one-half (3 ½) years, and that Applicant would be released within eighteen (18) months.

The Respondent stipulated to testimony that would be offered by Ronnie Sandy, Rusty Murphy, and Tina Finley would be substantially the same as Kim Sandy's testimony regarding the conversation between plea counsel and Applicant concerning the plea offer.

Mr. Stockholm's Testimony

At the PCR hearing counsel testified that Applicant and Applicant's girlfriend came to counsel's office seeking to retain counsel to represent Applicant and that at that time Applicant was represented by a public defender. Counsel testified that Applicant subsequently retained him to represent Applicant. Counsel testified that he and Applicant discussed the charges against Applicant, that Applicant did not have any prior criminal convictions, and that counsel felt the state was being harsh on Applicant with the charges. Counsel testified that he reviewed the indictments and the elements of the offenses charged with Applicant. Counsel testified that in February 2010 Applicant was indicted for a higher offense and that counsel was surprised the solicitor did not offer Pre-Trial Intervention (PTI).

Counsel testified that Applicant was adamant that he was not guilty. Counsel testified that he obtained the discovery materials, which included but was not limited to investigatory notes, incident reports, chain of custody forms concerning the drugs confiscated, drug analysis reports, and inventory sheets. Counsel testified that he and Applicant discussed Applicant's version of the facts. Counsel testified that he briefly discussed the discovery materials with Applicant because when Applicant was indicted in February 2010, counsel began to have difficulties contacting Applicant. Counsel testified that he tried to contact Applicant through Applicant's girlfriend. Counsel testified that the state noticed Applicant's case for trial a few times prior to April 2010 but that Applicant's case was never called.

Counsel testified that in April 2010 he received notice from the state that Applicant's co-defendant's had turned and that counsel was provided copies of the co-defendant's statements. Counsel testified that Applicant came to counsel's office and that they reviewed the statements together. Counsel testified that he and Applicant had a long conversation about the reputation of

Applicant's co-defendants. Counsel testified that Applicant informed him that Applicant could provide counsel with people who would testify to the co-defendant's bad reputation and credibility. Counsel testified that Applicant never provided counsel with any contact information for the witnesses who Applicant alleged would testify to the bad reputations and/or credibility of the co-defendants. Counsel testified that he received notice from the state that Applicant's case would be called for trial on June 21, 2010. Counsel testified that he tried to contact Applicant by telephone on June 16, June 17, and June 19, 2010 to inform Applicant that Applicant's case was being called for trial on June 21, 2010 and that counsel needed to meet with Applicant.

Counsel testified that Applicant never returned his calls, that Applicant did not come to counsel's office, and that counsel did not see or speak to Applicant until the day of trial, June 21, 2010. Counsel testified that Applicant did not have any witnesses and that Applicant did not provide any contact information for the alleged witnesses Applicant previously informed counsel of. Counsel testified that he was prepared to proceed with trial but that counsel did not have time to prepare Applicant for trial, which would be particularly important if Applicant chose to testify. Counsel testified that normally he does not recommend his clients taking the stand to testify, but that this was not as big a concern with Applicant because Applicant did not have a prior record. Counsel testified that part of his trial strategy focused on the fact that Applicant's co-defendants already admitted to the drug charges.

Counsel testified that Judge McMahon was surprised the mandatory minimum sentence for the Possession of Pseudoephedrine (100-200 grams) charge was twenty-five (25) years and asked the solicitor to speak with counsel about a plea. Counsel testified that he spoke with the solicitor and the solicitor offered to drop the Possession of Pseudoephedrine 100-200grams to the lesser included offense Possession of Pseudoephedrine 28-100grams, which carried a mandatory

minimum of seven (7) years. Counsel testified that he informed Applicant and Applicant's family that the solicitor was offering to reduce the charge such that Applicant faced a mandatory minimum of seven (7) years with all charges to run concurrent. Counsel testified that he informed Applicant and Applicant's family that if Applicant lost at trial Applicant faced a mandatory minimum sentence of twenty-five (25) years. Counsel testified that he informed Applicant, that Applicant would be pleading to an 85% offense, and that Applicant would have to serve at least 85% of any sentence Applicant received. Counsel testified that he was trying to get the Applicant the mandatory minimum sentence of seven (7) years and that counsel requested the court to impose the mandatory minimum sentence. Counsel testified that he never promised Applicant or Applicant's family a specific sentence length in terms of years and months that Applicant would serve. Counsel testified that he disagreed with Applicant's recollection of the discussion counsel had with Applicant regarding the plea offer. Counsel also testified that he disagreed with the Applicant's family and friends recollections of the discussion counsel had with Applicant regarding the plea offer.

III. APPLICABLE LAW

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

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

I. Ineffective Assistance of Counsel

a. Failure to File Appeal

Applicant asserts that counsel was ineffective for failing to inform Applicant of his right to file an appeal and for failing to discuss with Applicant whether Applicant wanted to appeal his conviction. This Court finds Applicant's allegation that counsel failed to inform Applicant that he could appeal is without merit. There is no constitutional requirement that necessitates that trial counsel inform a criminal defendant of his right to appeal, following a guilty plea. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); Carey v. Leverette, 605 F.2d 745 (4th Cir. 1979). Therefore, absent extraordinary circumstances, the failure to be advised of his right to an appeal from the guilty plea does not result in a denial of the Applicant's due process rights. Younger v. Cox, 323 F.Supp. 412 (D.C. Va. 1971). This Court finds that the Applicant did not present any evidence or testimony that would entitle Applicant to a belated appeal. Therefore, this Court finds that this allegation is denied and dismissed.

b. Failure to Properly Advise of Sentence Associated with the Charges

Applicant asserts that counsel was ineffective for advising Applicant that Applicant was to receive a plea in accordance with those given to Applicant's co-defendants; for advising Applicant that he was pleading to a non-violent offense, non eighty-five percent offense; and for promising Applicant that by pleading guilty Applicant would receive a seven (7) year sentence, that Applicant would only serve three (3) to three and one-half (3 ½) years, and that within eighteen (18) months Applicant would be eligible for release on parole. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Applicant alleges that counsel was ineffective for advising Applicant that he was pleading to a non-violent offense. This Court finds that Applicant failed to meet his burden of proof in showing that counsel was ineffective. This Court finds and the record reflects that Applicant's sentencing sheet for the charge of Possession With Intent to Distribute Marijuana -- 1st Offense (2010-GS-32-0464) indicates a non-violent offense designation; that Applicant's sentencing sheet for the charge of Manufacture of Methamphetamine 1st Offense (2010-GS-32-0463) indicates a non-violent offense designation; and that Applicant's sentencing sheet for the charge of Possession of Pseudoephedrine 28-100 grams -- 1st Offense (2010-GS-32-0465) indicates a non-violent offense designation. The Applicant's signature appears on each of the sentencing sheets indicating the offenses as being non-violent. This Court finds and the record clearly reflects that Applicant entered his guilty plea to non-violent offenses. Applicant cannot prove resulting prejudice and therefore this Court finds that this allegation is denied and dismissed.

Applicant alleges that counsel was ineffective for advising Applicant that Applicant was pleading to a non-"eighty-five" percent offense. Plea counsel testified that he advised Applicant that Applicant was pleading to an "eighty-five" percent offense. The record reflects that the plea court advised Applicant that for the possession of ephedrine charge Applicant could receive a sentence of not less than seven and up to twenty-five years, "no probation and no suspension, no suspended sentence;" and that Applicant understood this. (Tr. p.24-25). This Court finds that even if plea counsel misadvised Applicant that Applicant was pleading to a non eighty-five percent offense. Applicant has failed to prove prejudice. Misadvise as to a collateral consequence does not necessarily require that a conviction be reversed. Hunter v. State, Op. No. 24118 (S.C. Sup. Ct. filed July 5, 1994) (Davis Adv. Sh. No. 16 at 43). In order to show ineffective assistance

of counsel based on allegations of erroneous advice as to collateral consequences, a defendant must prove that he relied on such erroneous advice and that it induced his guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). This Court finds that Applicant has failed to show that he relied on plea counsel's alleged advice that Applicant was pleading to a non eighty-five percent offense that this induced Applicant's guilty plea. The record clearly reflects that Applicant pled guilty to rule "out the chance of a mandatory twenty-five for the mandatory seven." (Tr. p.42, lines10-16). This Court finds that even if plea counsel misadvised Applicant that Applicant was pleading to a non eighty-five percent offense, Applicant failed to prove prejudice. Therefore, this allegation is denied and dismissed.

Applicant's main allegation is that plea counsel was ineffective for promising Applicant that by pleading guilty Applicant would receive a seven (7) year sentence, that Applicant would only serve three (3) to three and one-half (3 ½) years, and that within eighteen (18) months Applicant would be eligible for release on parole. Counsel testified that he informed Applicant and Applicant's family that the solicitor was offering to reduce the charge such that Applicant faced a mandatory minimum of seven (7) years with all charges to run concurrent. Counsel testified that he never promised Applicant or Applicant's family a specific sentence length in terms of years and months that Applicant would serve.

Counsel must properly advise a defendant regarding possible sentence exposure for a criminal offense. Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991). Even where counsel fails to advise, or even misadvises, a defendant regarding a critical aspect of his charges, such as sentencing range, the error is cured where the trial court during a guilty plea properly advises the defendant about the matter in question. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). See also Knox v. State, 340 S.C. 81, 86, 530 S.E.2d 887, 889 (2000), *overruled on other*

grounds by State v. Gentry, 2005 WL 524813 (S.C.). This Court finds that even if plea counsel advised Applicant that Applicant would receive a seven (7) year sentence, that Applicant would only serve three (3) to three and one-half (3 ½) years, and that within eighteen (18) months Applicant would be eligible for release on parole, the plea court cured any alleged error by plea counsel by properly advising the Applicant about the potential sentencing ranges for the charges. The record reflects that this Court finds that Applicant understood he was facing at a minimum a seven-year sentence and nothing less. The Applicant stated that he understood he was being allowed to plead to possession of ephedrine 28 to 100 grams. The Applicant stated that he understood he could receive a sentence to this charge of not less than 7 and up to 25 years, no probation, no suspended sentence. (Tr. p.24, line22 – p.25, line2). The Applicant stated that he understood on the possession of 28 to 100 grams of ephedrine, the minimum sentence was 7 to 25 years and a fine of \$50,000. (Tr. p.29, lines18-21). The Applicant stated that he was pleading guilty in front of the judge to rule out the chance of a mandatory 25 for the mandatory seven, the hope of a mandatory seven. (Tr. p.42, lines10-16).

Furthermore, the Applicant affirmed that, other than the solicitor reducing the pseudoephedrine charge to the lesser included and dismissal of two other charges, Applicant was not promised anything to entice him to plead. (Tr. p.30-31, line2). Wishful thinking regarding sentence does equal a misapprehension concerning the possible ranges of sentences, especially where one acknowledges on the record that one knows the range of sentencing and that promises have been made. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). This Court finds that any misapprehension or misadvise that Applicant had or was given was cured by the plea court during the colloquy. Therefore, this Court finds that plea counsel was not ineffective. This claim is denied and dismissed.

2. Involuntary Guilty Plea

The Applicant asserts that his guilty plea was involuntary. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Bovkin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). When considering allegation on post-conviction relief that guilty plea was based on inaccurate advice of counsel, transcript of guilty plea hearing will be considered to determine whether any possible error by counsel was cured by information conveyed at the plea hearing. Terry v. State, 383 S.C. 361, 680 S.E.2d 277 (2009).

This Court finds that the Applicant understood the potential penalties and consequences of the charges he faced. The Applicant stated that he understood he was being allowed to plead to possession of ephedrine 28 to 100 grams. The Applicant stated that he understood he could receive a sentence to this charge of not less than 7 and up to 25 years, no probation, no suspended sentence. (Tr. p.24, line22 – p.25, line2). The Applicant stated that he understood on the possession of 28 to 100 grams of ephedrine, the minimum sentence was 7 to 25 years and a

fine of \$50,000. (Tr. p.29, lines18-21). The Applicant stated that he was pleading guilty in front of the judge to rule out the chance of a mandatory 25 for the mandatory seven, the hope of a mandatory seven. (Tr. p.42, lines10-16). Plea counsel informed the plea court that he explained to Applicant the charges in the indictments, the possible punishment, and Applicant's rights including Applicant's right to a jury trial. (Tr. p.21, lines20-23). The record further reflects that the Applicant affirmed that, other than the solicitor reducing the pseudoephedrine charge to the lesser included and dismissal of two other charges, Applicant was not promised anything to entice him to plead. (Tr. p.30-31, line2). Applicant informed the plea court that he understood he must give up certain constitutional rights to plead guilty, including: the right to remain silent, the right to a jury trial, the presumption of innocence, and the right to confront witnesses. (Tr. p.25-28). The Applicant admitted he was guilty of the charges and that he wanted to plead guilty, and Applicant was threatened or forced to do so.

This Court finds that the plea record supports the finding that Applicant entered his guilty plea with no misapprehension concerning the possible sentence, specifically the mandatory minimum sentence of seven years. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea are conclusive unless the defendant presents reasons why they 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). The Applicant has failed to reasons why he should be allowed to depart from the truth of his statements made at the guilty plea. This Court finds that the Applicant has failed to prove that but for plea counsel's alleged errors Applicant would not have pled guilty and would insisted on going to trial. At the PCR hearing the Applicant did not present any testimony indicating that had he known he was pleading to an eighty-five percent offense, that he was not

eligible for parole, and that he would not be released in eighteen months, that Applicant would have insisted on going to trial. Plea counsel testified that he was prepared for trial and the record reflects a jury was struck for Applicant's trial. However, plea counsel testified that Applicant failed to bring or assist plea counsel with finding any witnesses and that Applicant failed to assist plea counsel in preparing for trial. The record reflects that Applicant would have proceeded to trial facing a mandatory minimum of twenty-five years if convicted. At the guilty plea, Applicant specifically stated that he was pleading guilty in order to avoid the chance of the mandatory minimum twenty-five year sentence. (Tr. p.42). A guilty plea is not induced by any alleged erroneous advice where Petitioner was guilty and would have pled guilty in any event. See Stalk v. State, 375 S.C. 289, 652 S.E.2d 402 (Ct. App. 2007). Therefore, this Court finds that Applicant has failed to prove prejudice. This Court finds that this allegation is denied and dismissed.

3. All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. 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. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues 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.

V. CONCLUSION

Based on all the forgoing, 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 for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this _____ day of _____, 2012.

Eugene C. Griffith, Jr.
Presiding Judge

_____, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3204356 **120**

James Clayton Helms

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP: ☐ Rule 41(a), SCRCP (Vol. Nonsuit):
☐ Rule 43(k), SCRCP (Settled): ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP: ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award: ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed: ☐ Reversed: ☐ Remanded: ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order: (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

121**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2154

Judge Code

3/5/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on **5th day of March 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **5th day of March 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin A Stitely Williams Hendrix Steigner & Brink PA
PO Box 849 Lexington, SC 29071

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kaelon E May Office of the SC Attorney General PO Box
11549 Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Case No: 2011-CP-32-1356

James C. Helms, #341440,

ORIGINAL

Proposed Order of Dismissal

Applicant,

v.

State of South Carolina.

Respondent.

FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 5, 2011. Respondent made its Return on September 8, 2011. An evidentiary hearing into the matter was convened on February 1, 2012, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Benjamin A. Stitley, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, the Applicant offered the testimony of Kim Sandy, Ronnie Sandy, Rusty Murphy, and Tina Finley. The State offered the testimony of Gene Stockholm, Esquire (Mr. Stockholm) Applicant's plea counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was

indicted at the February 2010, term of the Lexington County Grand Jury for Possession of Pseudoephedrine 100-200grams (2010-GS-32-0465), Possession With Intent to Distribute Marijuana (2010-GS-0464), and Manufacturing Methamphetamine (2010-GS-32-0463). The Applicant was represented by Gene Stockholm, Esquire. On June 21, 2010, the Applicant pled guilty to the lesser included offense of Possession of Pseudoephedrine 28-100grams and to the remaining two (2) charges as indicted. Applicant was sentenced by the Honorable R. Knox McMahon to confinement for a period of seven (7) years for Possession of Pseudoephedrine and Manufacturing Methamphetamine each and five (5) years for Possession With Intent to Distribute Marijuana; all sentences to run concurrent. Applicant did not appeal his conviction or 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) Failure to file an appeal
 - b) "In my understanding from my conversations with my counsel I was to receive a plea in accordance with those given to my co-defendants;"
 - c) "In my understandings with my counsel I was not pleading to an eighty-five percent offense. I was promised by my attorney I would do 3.5 years and be up for parole after a year and a half;"
 - d) "Being that I had no significant prior criminal history I relied upon the conversations with my counsel and his advice which has proven to be inadequate;"
 - e) "From the beginning I maintained that my co-defendants, not myself, were the individuals who were culpable. Only in detrimental reliance on the information I received from counsel did I enter my plea;"
 - f) "The state lacked sufficient evidence to support the charge in the indictment number 2010-GS-32-0465; being that the drug analysis demonstrated less than the amount required by statute;"
2. Involuntary Guilty Plea

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

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EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that during his guilty plea he understood the possible sentence range he faced was seven (7) to twenty-five (25) years. Applicant testified that it was his understanding based on plea counsel's advisement that Applicant would receive a seven year sentence, but that Applicant would only have to serve three (3) to three and one-half (3 ½) years and then be released on parole. Applicant testified that his co-defendants received lesser sentences. Applicant testified that the witnesses that he would presenting at the PCR hearing were present in the courtroom when plea counsel and Applicant discussed the plea offer. Applicant testified that he choose to plead guilty based on plea counsel's advice that Applicant would only have to serve half the time he was sentenced to.

Kim Sandy's, Ronnie Sandy's, Rusty Murphy's, and Tina Finley's Testimony

At the PCR hearing Kim Sandy testified that she was a long-time friend of Applicant. Ms. Sandy testified that she was present during the conversation between plea counsel and Applicant regarding the plea offer. Ms. Sandy testified that plea counsel informed Applicant that if Applicant plead guilty he would receive a seven (7) year sentence, that Applicant would only have to serve a total of three (3) to three and one-half (3 ½) years, and that Applicant would be released within eighteen (18) months.

The Respondent stipulated to testimony that would be offered by Ronnie Sandy, Rusty Murphy, and Tina Finley would be substantially the same as Kim Sandy's testimony regarding the conversation between plea counsel and Applicant concerning the plea offer.

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Mr. Stockholm's Testimony

At the PCR hearing counsel testified that Applicant and Applicant's girlfriend came to counsel's office seeking to retain counsel to represent Applicant and that at that time Applicant was represented by a public defender. Counsel testified that Applicant subsequently retained him to represent Applicant. Counsel testified that he and Applicant discussed the charges against Applicant, that Applicant did not have any prior criminal convictions, and that counsel felt the state was being harsh on Applicant with the charges. Counsel testified that he reviewed the indictments and the elements of the offenses charged with Applicant. Counsel testified that in February 2010 Applicant was indicted for a higher offense and that counsel was surprised the solicitor did not offer Pre-Trial Intervention (PTI).

Counsel testified that Applicant was adamant that he was not guilty. Counsel testified that he obtained the discovery materials, which included but was not limited to investigatory notes, incident reports, chain of custody forms concerning the drugs confiscated, drug analysis reports, and inventory sheets. Counsel testified that he and Applicant discussed Applicant's version of the facts. Counsel testified that he briefly discussed the discovery materials with Applicant because when Applicant was indicted in February 2010, counsel began to have difficulties contacting Applicant. Counsel testified that he tried to contact Applicant through Applicant's girlfriend. Counsel testified that the state noticed Applicant's case for trial a few times prior to April 2010 but that Applicant's case was never called.

Counsel testified that in April 2010 he received notice from the state that Applicant's co-defendant's had turned and that counsel was provided copies of the co-defendant's statements. Counsel testified that Applicant came to counsel's office and that they reviewed the statements together. Counsel testified that he and Applicant had a long conversation about the reputation of

Applicant's co-defendants. Counsel testified that Applicant informed him that Applicant could provide counsel with people who would testify to the co-defendant's bad reputation and credibility. Counsel testified that Applicant never provided counsel with any contact information for the witnesses who Applicant alleged would testify to the bad reputations and/or credibility of the co-defendants. Counsel testified that he received notice from the state that Applicant's case would be called for trial on June 21, 2010. Counsel testified that he tried to contact Applicant by telephone on June 16, June 17, and June 19, 2010 to inform Applicant that Applicant's case was being called for trial on June 21, 2010 and that counsel needed to meet with Applicant.

Counsel testified that Applicant never returned his calls, that Applicant did not come to counsel's office, and that counsel did not see or speak to Applicant until the day of trial, June 21, 2010. Counsel testified that Applicant did not have any witnesses and that Applicant did not provide any contact information for the alleged witnesses Applicant previously informed counsel of. Counsel testified that he was prepared to proceed with trial but that counsel did not have time to prepare Applicant for trial, which would be particularly important if Applicant chose to testify. Counsel testified that normally he does not recommend his clients taking the stand to testify, but that this was not as big a concern with Applicant because Applicant did not have a prior record. Counsel testified that part of his trial strategy focused on the fact that Applicant's co-defendants already admitted to the drug charges.

Counsel testified that Judge McMahon was surprised the mandatory minimum sentence for the Possession of Pseudoephedrine (100-200 grams) charge was twenty-five (25) years and asked the solicitor to speak with counsel about a plea. Counsel testified that he spoke with the solicitor and the solicitor offered to drop the Possession of Pseudoephedrine 100-200grams to the lesser included offense Possession of Pseudoephedrine 28-100grams, which carried a mandatory

minimum of seven (7) years. Counsel testified that he informed Applicant and Applicant's family that the solicitor was offering to reduce the charge such that Applicant faced a mandatory minimum of seven (7) years with all charges to run concurrent. Counsel testified that he informed Applicant and Applicant's family that if Applicant lost at trial Applicant faced a mandatory minimum sentence of twenty-five (25) years. Counsel testified that he informed Applicant that Applicant would be pleading to an 85% offense, and that Applicant would have to serve at least 85% of any sentence Applicant received. Counsel testified that he was trying to get the Applicant the mandatory minimum sentence of seven (7) years and that counsel requested the court to impose the mandatory minimum sentence. Counsel testified that he never promised Applicant or Applicant's family a specific sentence length in terms of years and months that Applicant would serve. Counsel testified that he disagreed with Applicant's recollection of the discussion counsel had with Applicant regarding the plea offer. Counsel also testified that he disagreed with the Applicant's family and friends recollections of the discussion counsel had with Applicant regarding the plea offer.

III. APPLICABLE LAW

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

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

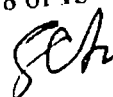
1. Ineffective Assistance of Counsel

a. Failure to File Appeal

Applicant asserts that counsel was ineffective for failing to inform Applicant of his right to file an appeal and for failing to discuss with Applicant whether Applicant wanted to appeal his conviction. This Court finds Applicant's allegation that counsel failed to inform Applicant that he could appeal is without merit. There is no constitutional requirement that necessitates that trial counsel inform a criminal defendant of his right to appeal, following a guilty plea. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); Carey v. Leverette, 605 F.2d 745 (4th Cir. 1979). Therefore, absent extraordinary circumstances, the failure to be advised of his right to an appeal from the guilty plea does not result in a denial of the Applicant's due process rights. Younger v. Cox, 323 F.Supp. 412 (D.C. Va. 1971). This Court finds that the Applicant did not present any evidence or testimony that would entitle Applicant to a belated appeal. Therefore, this Court finds that this allegation is denied and dismissed.

h. Failure to Properly Advise of Sentence Associated with the Charges

Applicant asserts that counsel was ineffective for advising Applicant that Applicant was to receive a plea in accordance with those given to Applicant's co-defendants; for advising Applicant that he was pleading to a non-violent offense, non eighty-five percent offense; and for promising Applicant that by pleading guilty Applicant would receive a seven (7) year sentence, that Applicant would only serve three (3) to three and one-half (3 ½) years, and that within eighteen (18) months Applicant would be eligible for release on parole. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).



Applicant alleges that counsel was ineffective for advising Applicant that he was pleading to a non-violent offense. This Court finds that Applicant failed to meet his burden of proof in showing that counsel was ineffective. This Court finds and the record reflects that Applicant's sentencing sheet for the charge of Possession With Intent to Distribute Marijuana - 1st Offense (2010-GS-32-0464) indicates a non-violent offense designation; that Applicant's sentencing sheet for the charge of Manufacture of Methamphetamine 1st Offense (2010-GS-32-0463) indicates a non-violent offense designation; and that Applicant's sentencing sheet for the charge of Possession of Pseudoephedrine 28-100 grams - 1st Offense (2010-GS-32-0465) indicates a non-violent offense designation. The Applicant's signature appears on each of the sentencing sheets indicating the offenses as being non-violent. This Court finds and the record clearly reflects that Applicant entered his guilty plea to non-violent offenses. Applicant cannot prove resulting prejudice and therefore this Court finds that this allegation is denied and dismissed.

Applicant alleges that counsel was ineffective for advising Applicant that Applicant was pleading to a non-"eighty-five" percent offense. Plea counsel testified that he advised Applicant that Applicant was pleading to an "eighty-five" percent offense. The record reflects that the plea court advised Applicant that for the possession of ephedrine charge Applicant could receive a sentence of not less than seven and up to twenty-five years, "no probation and no suspension, no suspended sentence;" and that Applicant understood this. (Tr. p.24-25). This Court finds that even if plea counsel misadvised Applicant that Applicant was pleading to a non eighty-five percent offense, Applicant has failed to prove prejudice. Misadvice as to a collateral consequence does not necessarily require that a conviction be reversed. Hunter v. State, Op. No. 24118 (S.C. Sup. Ct. filed July 5, 1994) (Davis Adv. Sh. No. 16 at 43). In order to show ineffective assistance

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of counsel based on allegations of erroneous advice as to collateral consequences, a defendant must prove that he relied on such erroneous advice and that it induced his guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). This Court finds that Applicant has failed to show that he relied on plea counsel's alleged advice that Applicant was pleading to a non eighty-five percent offense that this induced Applicant's guilty plea. The record clearly reflects that Applicant pled guilty to rule "out the chance of a mandatory twenty-five for the mandatory seven." (Tr. p.42, lines 10-16). This Court finds that even if plea counsel misadvised Applicant that Applicant was pleading to a non eighty-five percent offense, Applicant failed to prove prejudice. Therefore, this allegation is denied and dismissed.

Applicant's main allegation is that plea counsel was ineffective for promising Applicant that by pleading guilty Applicant would receive a seven (7) year sentence, that Applicant would only serve three (3) to three and one-half (3 ½) years, and that within eighteen (18) months Applicant would be eligible for release on parole. Counsel testified that he informed Applicant and Applicant's family that the solicitor was offering to reduce the charge such that Applicant faced a mandatory minimum of seven (7) years with all charges to run concurrent. Counsel testified that he never promised Applicant or Applicant's family a specific sentence length in terms of years and months that Applicant would serve.

Counsel must properly advise a defendant regarding possible sentence exposure for a criminal offense. Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991). Even where counsel fails to advise, or even misadvises, a defendant regarding a critical aspect of his charges, such as sentencing range, the error is cured where the trial court during a guilty plea properly advises the defendant about the matter in question. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). See also Knox v. State, 340 S.C. 81, 86, 530 S.E.2d 887, 889 (2000), overruled on other

grounds by State v. Gentry, 2005 WL 524813 (S.C.). This Court finds that even if plea counsel advised Applicant that Applicant would receive a seven (7) year sentence, that Applicant would only serve three (3) to three and one-half (3 ½) years, and that within eighteen (18) months Applicant would be eligible for release on parole, the plea court cured any alleged error by plea counsel by properly advising the Applicant about the potential sentencing ranges for the charges. The record reflects that this Court finds that Applicant understood he was facing at a minimum a seven-year sentence and nothing less. The Applicant stated that he understood he was being allowed to plead to possession of ephedrine 28 to 100 grams. The Applicant stated that he understood he could receive a sentence to this charge of not less than 7 and up to 25 years, no probation, no suspended sentence. (Tr. p.24, line22 – p.25, line2). The Applicant stated that he understood on the possession of 28 to 100 grams of ephedrine, the minimum sentence was 7 to 25 years and a fine of \$50,000. (Tr. p.29, lines18-21). The Applicant stated that he was pleading guilty in front of the judge to rule out the chance of a mandatory 25 for the mandatory seven, the hope of a mandatory seven. (Tr. p.42, lines10-16).

Furthermore, the Applicant affirmed that, other than the solicitor reducing the pseudoephedrine charge to the lesser included and dismissal of two other charges, Applicant was not promised anything to entice him to plead. (Tr. p.30-31, line2). Wishful thinking regarding sentence does equal a misapprehension concerning the possible ranges of sentences, especially where one acknowledges on the record that one knows the range of sentencing and that promises have been made. Wolfe v. State, 326 S.C. 158. 485 S.E.2d 367 (1997). This Court finds that any misapprehension or misadvise that Applicant had or was given was cured by the plea court during the colloquy. Therefore, this Court finds that plea counsel was not ineffective. This claim is denied and dismissed.

2. Involuntary Guilty Plea

The Applicant asserts that his guilty plea was involuntary. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). When considering allegation on post-conviction relief that guilty plea was based on inaccurate advice of counsel, transcript of guilty plea hearing will be considered to determine whether any possible error by counsel was cured by information conveyed at the plea hearing. Terry v. State, 383 S.C. 361, 680 S.E.2d 277 (2009).

This Court finds that the Applicant understood the potential penalties and consequences of the charges he faced. The Applicant stated that he understood he was being allowed to plead to possession of ephedrine 28 to 100 grams. The Applicant stated that he understood he could receive a sentence to this charge of not less than 7 and up to 25 years, no probation, no suspended sentence. (Tr. p.24, line22 – p.25, line2). The Applicant stated that he understood on the possession of 28 to 100 grams of ephedrine, the minimum sentence was 7 to 25 years and a

fine of \$50,000. (Tr. p.29, lines18-21). The Applicant stated that he was pleading guilty in front of the judge to rule out the chance of a mandatory 25 for the mandatory seven, the hope of a mandatory seven. (Tr. p.42, lines10-16). Plea counsel informed the plea court that he explained to Applicant the charges in the indictments, the possible punishment, and Applicant's rights including Applicant's right to a jury trial. (Tr. p.21, lines20-23). The record further reflects that the Applicant affirmed that, other than the solicitor reducing the pseudoephedrine charge to the lesser included and dismissal of two other charges, Applicant was not promised anything to entice him to plead. (Tr. p.30-31, line2). Applicant informed the plea court that he understood he must give up certain constitutional rights to plead guilty, including: the right to remain silent, the right to a jury trial, the presumption of innocence, and the right to confront witnesses. (Tr. p.25-28). The Applicant admitted he was guilty of the charges and that he wanted to plead guilty, and Applicant was threatened or forced to do so.

This Court finds that the plea record supports the finding that Applicant entered his guilty plea with no misapprehension concerning the possible sentence, specifically the mandatory minimum sentence of seven years. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea are conclusive unless the defendant presents reasons why they 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). The Applicant has failed to reasons why he should be allowed to depart from the truth of his statements made at the guilty plea. This Court finds that the Applicant has failed to prove that but for plea counsel's alleged errors Applicant would not have pled guilty and would insisted on going to trial. At the PCR hearing the Applicant did not present any testimony indicating that had he known he was pleading to an eighty-five percent offense, that he was not

eligible for parole, and that he would not be released in eighteen months, that Applicant would have insisted on going to trial. Plea counsel testified that he was prepared for trial and the record reflects a jury was struck for Applicant's trial. However, plea counsel testified that Applicant failed to bring or assist plea counsel with finding any witnesses and that Applicant failed to assist plea counsel in preparing for trial. The record reflects that Applicant would have proceeded to trial facing a mandatory minimum of twenty-five years if convicted. At the guilty plea, Applicant specifically stated that he was pleading guilty in order to avoid the chance of the mandatory minimum twenty-five year sentence. (Tr. p.42). A guilty plea is not induced by any alleged erroneous advice where Petitioner was guilty and would have pled guilty in any event. See Stalk v. State, 375 S.C. 289, 652 S.E.2d 402 (Cl. App. 2007). Therefore, this Court finds that Applicant has failed to prove prejudice. This Court finds that this allegation is denied and dismissed.

3. All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. 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 (Cl. App. 1987). The Applicant's failure to address these issues 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.

502

V. CONCLUSION

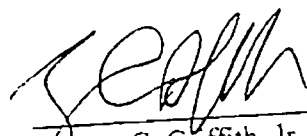
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2nd day of March, 2012.


 Eugene C. Griffith, Jr.
 Presiding Judge

Narber, South Carolina

137
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3201356

James Clayton Helms

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC: ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC: ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award: ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed: ☐ Reversed: ☐ Remanded: ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order: (formal order to follow)☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

138

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

2154

3/15/2012

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **14th day of March 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **14th day of March 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin A Stitely Williams Hendrix Steigner & Brink PA
PO Box 849 Lexington, SC 29071

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kaelon E May Office of the SC Attorney General PO Box
11549 Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

139 SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-32-1356

JAMES CLAYTON HELMS
SCID # 341440;

Applicant,

vs.

STATE OF SOUTH CAROLINA,
Respondent.

ORDER VACATING DISMISSAL

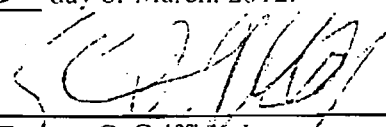
FILED

An Order granting Applicant's Post-Conviction Relief was signed by this Court on February 8, 2012. Following receipt of the signed and filed Order, the State submitted a Motion to Reconsider and a Proposed Order of Dismissal of Mr. Helms' Post-Conviction Relief Application to the Court, received February 27, 2012. This Proposed Order of Dismissal was improvidently signed by the Court on March 2, 2012 and filed in the Lexington County Clerk of Court's office. This Court directs that the Proposed Order dismissing the Applicant's Post-Conviction Relief action is vacated.

THEREFORE, IT IS ORDERED:

1. That the Order Dismissing Applicant's Post-Conviction Relief dated March 2, 2012 is vacated.
2. That the February 8, 2012 Order Granting Applicant's Post-Conviction Relief is and remains the final order of the Court.
3. That the Applicant shall be immediately released from South Carolina Department to Lexington County Detention Center, where his pre-trial bond shall be reinstated.

AND IT IS SO ORDERED this _____ day of March, 2012.


Eugene C. Griffith, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

140

CASE NO. 2011 CP-32-1356

JAMES CLAYTON HELMS

THE STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Honorable Eugene C. Griffith, Jr.

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The State's Motion for Rehearing and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(a) and Rule 59(c) SCRPC is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above ☐ has been provided by the submitting party. Disputes ☐ concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

141

[Signature]
Circuit Court Judge

2154

Judge Code

March 13, 2012

Date

For Clerk of Court Office Use Only

This judgment was entered on the 11th day of May, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 13th day of Mar, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin A. Stitely, Esq.
Williams Hendrix Steigner & Brink, P.A.
200 East Main Street
Lexington, SC 29072
803-359-1550
ATTORNEY(S) FOR THE PLAINTIFF(S)

Assistant Attorney General Kaelon May
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3737
ATTORNEY(S) FOR THE DEFENDANT(S)
Beth A. Carriagge
CLERK OF COURT

Court Reporter:

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 04/29/11
OMCOMITA RELEASE DATE SCREEN C048593
SCDC# > 341440 LOC: WALDEN
HELMS, JAMES - SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: 007-00-000 CONSECUTIVE SENTENCE ...: N
007-00-000 CURRENT SENT START DATE: 06/21/2010
PROJECTED COMPLETION DATES
MAXOUT DATE: 05/31/2016 CURRENT EWC ..: 2 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000110 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 000308

PFKEYS: 5: HISTORY OF DATE CHANGES
4- 1 Sess-1 167.7.50.33 SCDC1051 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 04/29/11

C

HELMS, JAMES - FBI # 714920LC6 SID# SC01484716 SCDC # 341440

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... WALDEN CORR INST

SECURITY/CUST.: 1B MINIMUM OUT

CURR INCARC SENT...: 7 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...:

DORM.....: 3W10021T

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

PROJ MAXOUT DATE: 05/31/2016

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: CONSTRUCTION WORKER

EDUC PGM.: NO CURR EDUC PROG

EWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: KITCHEN SHOP

CURRENT PROGRAM...: COURT-ORD ATU

AGE...: 47 DATE OF BIRTH...:

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	U/NU	CATE
MARIJUANA POSS INT/DIST	5	0	0	LEXINGTON	6/21/2010	N	
MANUF. DIST. METH. 1ST	7	0	0	LEXINGTON	6/21/2010	V	
POSS. EPHEDRINE(100G 1ST	7	0	0	LEXINGTON	6/21/2010	N	

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

2/14/11 POSSESSION OF CONTRABAND CONVICTED ADMIN

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
9/14/10	WALDEN	INCARCERATED	ADMINISTRATIVE
9/14/10	CENTRAL OFFICE	INCARCERATED	MEDICAL
9/14/10	WALDEN	INCARCERATED	ADMINISTRATIVE
9/14/10	CENTRAL OFFICE	INCARCERATED	MEDICAL
7/20/10	WALDEN	INCARCERATED	ADMINISTRATIVE
6/23/10	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON
CONSTRUCTION WORKER	02/28/11	0/ 0/ 0	
PLUMBER	07/22/10	2/27/11	INMATE REQUEST

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

Shack
TNESSES

Lexington County Sheriffs Department
Narcotics Enforcement Team
Michael Ford

Narcotics Enforcement Case #: 09043607

MDR

ARREST WARRANT NUMBER

16245

RETURN OF GRAND JURY

FOR THE BILL
OF THE GRAND JURY

Wm. Shew
Representative of Grand Jury

Date: 2/3/10

INDICT

DOCKET NO. 2010GS3200463

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE

vs.

James Helms

CDR #: 3014

Indictment for

Manufacturing Methamphetamine

§ 44-53-0375(B)(1)

DONALD V. MYERS, SOLICITOR

Representative of Petit Jury
Name:

144

144

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Manufacturing Methamphetamine
§ 44-53-0375(B)(1)

At a Court of General Sessions, convened on February 2010, the Grand Jurors of Lexington County present upon their oath:

That James Helms did in Lexington County, South Carolina, on or about May 21, 2009 unlawfully manufacture or otherwise aid, abet, attempt, or conspire to manufacture a quantity of methamphetamine, a controlled substance under the provisions of § 44-53-110, et. Seq. and in violation of §44-53-375 (B)(1) Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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

Michael Ross

ASSISTANT SOLICITOR

Judge

Number

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

Number

Defendant Attorney:

Decision:

DISPOSITION before

Judge

Number

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

72:2 H. 12 MAY 1992

CLERK OF COURT
LEXINGTON, KY

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

ARREST WARRANT

J-816245

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE
against

es Helms

SS:

WEST COLA, SC 29172-

e: M Race: W Height: 5 11 Weight: 150
ate: DL #

Agency ORI #: SC0320000

cuting Agency: Lexington County Sheriff

cuting Officer: Michael Eric Ford - 361

se: Drugs / Manufacture, distribution, etc. of
methamphetamine or cocaine base, 1st

se Code: 3014

Ordinance Sec: 44-53-0375 (B) (1)

warrant is CERTIFIED FOR SERVICE in the
County/ ☐ Municipality ofThe accused
o be arrested and brought before me to be
with according to the law.

(L.S.)

Signature of Judge

RETURN

copy of this arrest warrant was delivered to
dant JAMES HELMS

MAY 22, 2009 1:30 PM

P. Lunnestel 1288
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

Lexington County Judicial Center

205 East Main Street

Lexington, SC 29072

RECEIVED

MAY 22 2009

Lexington Co. Sheriff's Dept

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant Michael Eric Ford

being duly sworn deposes and says that defendant James Helms

did within this county and state on or about 05/21/2009

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

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 1st

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on May 21, 2009 LCMANET agents were investigating an active narcotics complaint at
located in the West Columbia/ Dixiana area of Lexington County, SC. When agents arrived at
chemical odor could be smelled that is commonly associated with Methamphetamine manufacturing. A search warrant was obtained
and an active Methamphetamine Lab was located in a mobile home used for storage in the backyard of the listed residence.
Defendant Helms was arrested along with both co-defendants, Lloyd and Threatt, and charged with manufacturing
Methamphetamine.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 521 Gibson Road
Lexington 29072-

Affiant's Telephone

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & P.O.

ARREST WARRANT

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

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

on or about 5/21/2009 defendant James Helms

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

☒ County/ ☐ Municipality of Lexington

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 1st

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

on 05/22/2009

Signature of Issuing Judge (L.S.)

Rick C. Collins

Judge Code: 7164

Judge's Address 428 Oak Drive

Lexington, SC 29073-

Judge's Telephone

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Lexington

VS.

James Helms

AKA:
Race: 1 Sex: M Age: 46
DOB: SS#:
Address:

City, State, Zip: WEST COLA, SC 29172

DL# SID# SC01684716

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Manufacture of Methamphetamine - 1st Offense

In violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Michael Ross 73986 Solicitor SC Bar # Defendant Attorney for Defendant 5361 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years to pay a fine of \$1000 provided that upon the service of days/months/years and or payment of \$ plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-65-32-00464 10-65-32-00465☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100
§14-1-211 (A)(2)(DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
§47.12 (Public Def/Prob)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$100
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
§90.7 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 230.00

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS30145

AW#: J816245

Date of Offense: 5/21/2009

S.C. Code §: 44-53-0375(B)(1)

CDR Code #: 3014

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

A TRUE COPY

Jury Court Public Defender, U.S. & P.C.

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☒Random Drug/Alcohol Testing ☒

Fine may be pd. in equal, consecutive weekly/monthly

mts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

Recommendation HTH

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code:

Sentence Date

Seeklin
TNESSES

Lexington County Sheriffs Department
Narcotics Enforcement Team
Michael Ford

Narcotics Enforcement Case #: 09043607

MDR

ARREST WARRANT NUMBER

16250

RETURN OF GRAND JURY

TRUE BILL

Am. Heaw
Representative of Grand Jury

2/8/10

INDICT

DOCKET NO. 2010GS3200464

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE
vs.

James Helms

CDR #: 0186

Indictment for

Possession With Intent To Distribute
Marijuana

§ 44-53-0370(b)(2)

DONALD V. MYERS, SOLICITOR

Representative of Petit Jury
Name:

149

149

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF LEXINGTON) Possession With Intent To Distribute Marijuana
) § 44-53-0370(b)(2)

At a Court of General Sessions, convened on February 2010, the Grand Jurors of Lexington County present upon their oath:

That James Helms did in Lexington County, South Carolina on or about May 21, 2009, knowingly, intentionally, willfully, and unlawfully possess with intent to distribute Marijuana, a Schedule I(d) controlled substance under provisions of § 44-53-190 Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-370(b)(2), Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & P.O.

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

[Signature: Michael Ross]
ASSISTANT SOLICITOR

Judge (8m9)Y
in 5-23-2009
Type and Amount: 10,000.00
Name of Surety: S/B

PRELIMINARY HEARING held by

Judge _____
in _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge: NNED MAY 28 2009
in _____
by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

2009 MAY 27 PM 2:33

DEPT. OF PROBATION
CLERK OF COURT
LEXINGTON, SC

WITNESSES

Name: _____
Address: _____
Telephone: _____

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Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

151

151

ARREST WARRANT

J-816250

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE OF SOUTH CAROLINA 09043607
against

James Helms

Address:

WEST COLA, SC 29172-

Sex: M Race: W Height: 5 11 Weight: 150

State: DL #:

B: Agency ORI #: SC0320000

Securing Agency: Lexington County Sheriff

Securing Officer: Michael Eric Ford - 361

Offense: Drugs / Manuf., poss. of other sub. in Sch. I, II, III
or Flunitrazepam or analogue, w.i.t.d. - 1st offense

Offense Code: 0186

Offense/Ordinance Sec: 44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

E:

RETURN

A copy of this arrest warrant was delivered to

Defendant: James Helms

May 22, 2009 1:30 PM

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

Lexington County Judicial Center

205 East Main Street

Lexington, SC 29072

MAY 22 2009

Lexington Co. Sheriff's Dept.

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant Michael Eric Ford

being duly sworn deposes and says that defendant James Helms

did within this county and state on or about 05/21/2009

violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or Flunitrazepam or analogue, w.i.t.d. - 1st offense

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

That on May 21, 2009 LCMANET agents were investigating an active narcotics complaint at which is located in the West Columbia/ Dixiana area of Lexington County, SC. Defendant Helms was found to be in possession of approximately 3-ounces of a green leafy plant like substance consistent with Marijuana.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 521 Gibson Road

Lexington 29072-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 5/21/2009 defendant James Helms

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

☒ County/ ☐ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or Flunitrazepam or analogue, w.i.t.d. - 1st offense

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

Sworn to and subscribed before me

on 05/22/2009

Signature of Issuing Judge

Rick C. Collins

Judge Code: 7154

(L.S.)

Judge's Address 428 Oak Drive

Lexington, SC 29073-

Judge's Telephone

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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

AFFIDAVIT

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & E.C.

152

STATE OF SOUTH CAROLINA

COUNTY **153** Lexington

STATE

VS.

James Helms

AKA:

Race: 1 Sex: M Age: 46DOB: SS#:

Address:

City, State, Zip: WEST COLA, SC 29172DL# SID# SC01684716*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession With Intent To Distribute Marijuana - 1st OffenseIn violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or 1st or 1st Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Musham Ross 73986 Solicitor SC Bar # SC Bar # Defendant SC Bar # Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years
and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and or payment
of \$ —; plus costs and assessments as applicable; the balance is suspended with probation for —months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-65-32-00463, 10-65-32-00465☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

*Fine:	\$	<u>—</u>
§14-1-206 (Assessments 107.5%)	\$	<u>—</u>
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	<u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	<u>—</u>
§56-5-2995 (DUI Assessment)	\$12	<u>—</u>
§56-1-286 (DUI Breath Test)	\$25	<u>—</u>
§47.12 (Public Def/Prob)	\$500	<u>—</u>
§14-1-212 (Law Enforce. Funding)	\$25	<u>25</u>
§14-1-213 (Drug Court Surcharge)	\$100	<u>100</u>
§50-21-114 (BUI Breath Test Fee)	\$50	<u>—</u>
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	<u>—</u>
§90.7 (SCCA Surcharge)	\$5	<u>—</u>
3% to County (if paid in installments)	\$	<u>—</u>
TOTAL	\$	<u>230.00</u>

Clerk of Court/Deputy Clerk

Court Reporter: —

SCCA/217 (11/2009)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3200464AMW#: J816250Date of Offense: 5/21/2009S.C. Code §: 44-53-0370(b)(2)CDR Code #: 0186

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

A TRUE COPY

PTUP

Obtain GED ☐Attend Voc. Rehab. Or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☒Random Drug/Alcohol Testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ — Beginning —\$ — Paid to Public Defender FundOther: —☐ Appointed PD or appointed other counsel.
§47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge —Judge Code: —Sentence Date 21 JUNE 10

TNESSES

Lexington County Sheriffs Department
Narcotics Enforcement Team
Michael Ford

Enforcement Case #: 09043607

MDR

ARREST WARRANT NUMBER

16251

RETURN OF GRAND JURY

TRUE BILL
TRUE BILL

James Helms

Representative of Grand Jury

Date: 2/8/10

INDICT

DOCKET NO. 2010GS3200465

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE

vs.

James Helms

CDR #: 3029

Indictment for

Possession of Pseudoephedrine
Between One Hundred and Two Hundred
Grams

§ 44-53-0375(E)(1)(c)

DONALD V. MYERS, SOLICITOR

154

Representative of Petit Jury

Date:

154

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Possession of Pseudoephedrine
Between One Hundred and Two Hundred
Grams

§ 44-53-0375(E)(1)(c)

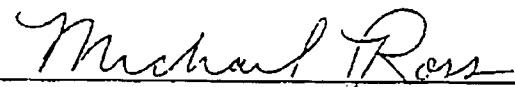
At a Court of General Sessions, convened on February 2010, the Grand Jurors of Lexington County present upon their oath:

That James Helms in Lexington County, South Carolina, on or about May 21, 2009, not being a manufacturer, practitioner, dispenser, distributor, or retailer, did knowingly, willfully, and unlawfully possess a product containing more than One Hundred (100) Grams but less than Two Hundred (200) Grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances. All in violation of § 44-53-0375(E)(1)(c) Code of Laws of South Carolina.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & P.O.

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


ASSISTANT SOLICITOR

BAIT set by
Judge 18m9
on 5-23-2009
Type and Amount: 5000.00
Name of Surety: SB

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge MINER MAY 20 2009
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

AUG MAY 27 PM 2:30
CLERK OF COURT
LEXINGTON, SC

WITNESSES

Name: _____
Address: _____
Telephone: _____

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Telephone: _____

CODEFENDANTS

ARREST WARRANT

J-816251

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE

09043607

against

James Helms

SSN:

WEST COLA, SC 29172-

M Race: W Height: 5 11 Weight: 150

DL #:

Agency ORI #: SC0320000

Issuing Agency: Lexington County Sheriff

Issuing Officer: Michael Eric Ford - 361

se: Drugs / Possession of ephedrine 12 grams < 28 grams, 1st offense

se Code: 3023

Ordinance Sec: 44-53-0375 (E)(1)

warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

RETURN

Copy of this arrest warrant was delivered to

Ident: James Helms

MAY 22, 2009 1:30

Signature of Constable/Law Enforcement Officer

RECEIVED

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

MAY 22 2009

Lexington Co. Sheriff's Dept

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant Michael Eric Ford

being duly sworn deposes and says that defendant James Helms

did within this county and state on or about 05/21/2009

violate the criminal laws of the

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

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Possession of ephedrine 12 grams < 28 grams, 1st offense

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

That on May 21, 2009 LCMANET agents were investigating an active narcotics complaint at which is located in the West Columbia/ Dixiana area of Lexington County, SC. When agents arrived at a strong chemical odor could be smelled that is commonly associated with Methamphetamine manufacturing. A search warrant was obtained and an active Methamphetamine Lab was located in a mobile home used for storage in the backyard of the listed residence. Defendant Helms along with co-defendants, Threatt & Lloyd, were found to be in possession of 6 grams of powdered Pseudoephedrine pills and 233 Pseudoephedrine pills.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 521 Gibson Road

Lexington 29072-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 5/21/2009

defendant James Helms

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

☒ County/ ☐ Municipality of Lexington

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Possession of ephedrine 12 grams < 28 grams, 1st offense

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

Sworn to and subscribed before me

on 05/22/2009

(L.S.)

Signature of Issuing Judge

Rick C. Collins

Judge Code: 7164

Judge's Address 428 Oak Drive

Lexington, SC 29073-

Judge's Telephone

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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

157

A TRUE COPY:

Lex. Co. C.C.C.P. O.B. & P.C.

SC

158

The South Carolina Court of Appeals

James C. Helms, Respondent,

v.

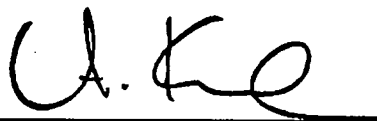
State of South Carolina, Petitioner.

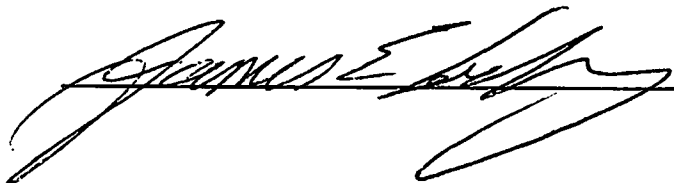
Appellate Case No. 2012-210227

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc: Robert Michael Dudek, Esquire
John Walter Whitmore, Esquire

FILED

June 11, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas

Honorable Eugene C. Griffith, Circuit Court Judge

Case No. 2011-CP-32-1356
Appellate Case No. 2012-211546

THE STATE,

Petitioner,

vs.

JAMES C. HELMS,

Respondent.

BRIEF OF PETITIONER

ALAN WILSON
Attorney General

WALT WHITMIRE
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

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I. The PCR Judge erred as a matter of law in finding Respondent met his burden to prove that counsel was ineffective for misadvising him on the exact sentence he would receive if he pled guilty absent a compulsory review of the plea colloquy. Further, reversal is necessitated where there is no evidence of probative value to support the grant of relief where the Plea Judge cured any founded or unfounded allegation as to counsel's advice on the particular sentence Respondent would receive if pled guilty. 	9
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STATEMENT OF ISSUES ON APPEAL**I.**

Is there probative evidence to support the PCR Judge's grant of relief in finding counsel was ineffective for misadvising Respondent about the exact sentence and actual confinement in Corrections he would receive and serve if he pled guilty?

STATEMENT OF THE CASE

Respondent was indicted at the February 2010, term of the Lexington County Grand Jury for possession of pseudoephedrine, 100-200 grams (2010-GS-32-0465), possession with intent to distribute marijuana (2010-GS-32-0464), and manufacturing methamphetamine (2010-GS-32-0463). (App.pp.144-58). Respondent was represented by Gene Stockholm, Esq. (App.p.1). On June 21, 2010, the Respondent pled guilty to the lesser-included offense of possession of pseudoephedrine, 28-100 grams, and to the remaining two (2) charges as indicted. (App.pp.1-43). The Honorable R. Knox McMahon sentenced Respondent to a term of imprisonment for seven (7) years imprisonment for possession of pseudoephedrine, a term of seven (7) years imprisonment for manufacturing methamphetamine, and to a term of five (5) years imprisonment for possession with intent to distribute (PWID) marijuana. The sentences were to be served concurrently. (App.p.43). Respondent did not appeal his conviction or sentence.

Respondent filed an application for post-conviction relief on April 5, 2011 (2011-CP-32-1356). (App.pp.45-52). The State made its Return to the application on September 8, 2011. (App.pp.53-8). An evidentiary hearing into the matter was convened on January 31, 2012, at the Lexington County Courthouse. (App.pp.59-86). Respondent was present at the hearing and was represented by Benjamin A. Stitley, Esq. The State was represented by Kaelon E. May, Esq., of the Office of the Attorney General. At the hearing, the Respondent testified on his own behalf. (App.pp.63-70). Additionally, the Respondent offered the testimonies of Kim Sandy, Ronnie Sandy, Rusty Murphy, and Tina Finley. (App.pp.70-1). The State offered the testimony of Gene Stockholm, Esq. (counsel). (App.pp.72-82).

The Honorable Eugene C. Griffith, Jr. granted post-conviction relief to

Respondent by Order dated February 8, 2012 and filed February 9, 2012. (App.pp.88-93). Petitioner filed a timely Motion for Rehearing and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(a)(e), SCRCF. (App.pp.94-102). In conjunction with its Motion, Petitioner submitted a Proposed Order of Dismissal. (App.pp.104-19). The Proposed Order of Dismissal was signed by Judge Griffith on March 2, 2012. (App.p.136). Subsequently, Judge Griffith issued an Order Vacating Dismissal because the Proposed Order of Dismissal was improvidently signed by the Court on March 2, 2012. (App.p.139). The Order Vacating Dismissal directed the February 8, 2012 Order Granting Respondent's post-conviction relief remain the final order of the Court. (App.p.139). On March 13, 2012, Judge Griffith issued a Form 4 Order denying Respondent's motion for rehearing and/or motion to alter or amend judgment pursuant to Rule 59(a)(e), SCRCF. (App.p.140). This appeal follows.

STATEMENT OF FACTS**Relevant Facts and Testimony from the Guilty Plea Hearing**

The State called its case for trial on June 21, 2010 before Judge McMahon. Subsequent to jury's empanelment, the State requested a brief recess to negotiate a plea agreement with Respondent. (App.p.21). A guilty plea hearing followed. (App.pp.21-43). The solicitor summarized the facts of Respondent's guilt as follows. As a result of a tip that Respondent was distributing methamphetamine, the police investigated his residence. Upon arrival, the police detected a pungent odor distinct to the production of methamphetamine. Respondent was detained and subsequently arrested upon the discovery of marijuana in his possession. The police obtained a search warrant for Respondent's residence and discovered an active methamphetamine lab in the process of making anhydrous ammonia, a critical ingredient in methamphetamine. Other necessary products used in the manufacture process were discovered in bulk. Over two-hundred tablets of pseudoephedrine were recovered from the residence. The weight of the pseudoephedrine recovered was one hundred and sixty-five grams. Respondent's two co-defendants, Threatt and Lloyd, were also arrested. The co-defendants previously pled guilty and had made inculpatory statements against Respondent. (App.pp.34-8).

Respondent entered guilty pleas as indicted on the PWID marijuana and manufacturing charges and to the lesser-included offense of possession of pseudoephedrine, 28 - 100 grams, which carried a penalty of a minimum seven year prison term to a maximum penalty twenty-five year prison term. He additionally faced a term of up to five years imprisonment for PWID marijuana and a term of up to fifteen years imprisonment for manufacturing methamphetamine. (App.p.27).

The pleas were entered absent a recommended or negotiated term of imprisonment from the State. (App.p.29). The agreement was memorialized at the hearing as follows.

[Solicitor]: Your Honor, we are **reducing the pseudoephedrine charge** to the lesser included as you just indicated. There are also **two other charges that we are not going forward** with on this case, a disposal of methamphetamine product and a possession of Oxycodone.

[The Court]: All right, [counsel], has the solicitor correctly and completely stated the negotiations into the record.

[Counsel]: Yes, Your Honor.

[The Court]: [Respondent], **has the solicitor fully and completely stated what you understand the negotiations to be?**

[Respondent]: Yes Sir.

[The Court]: **Is there anything more in your mind?**

[Respondent]: No Sir.

(App.p.30, ln.5-10; p.30, ln.20—p.31, ln.5) (emphasis added). Counsel pleaded for Judge McMahon to consider the mandatory minimum sentence for possession of pseudoephedrine, 28 -100 grams, during his mitigation case. (App.pp.39-40). Judge McMahon accepted Respondent's pleas and commented "I find there is a substantial factual basis for these guilty pleas, that [Respondent's] decision to enter guilty pleas in these matters is freely, voluntarily, knowingly, and intelligently made. He has had the advice and counsel of a very competent attorney with whom he says he is well and totally satisfied." (App.p.38, ln.13-20). (App.p.41, ln. 14-16).

Relevant Testimony from the PCR Hearing

Respondent proceeded on an allegation of ineffective assistance of counsel that his guilty plea was rendered involuntary as a result of counsel's misadvice that he would only serve eighteen months of active incarceration before becoming parole eligible.

(App.p.62). He testified that the realization of a mandatory twenty-five year prison sentence upon conviction resulted in his desire to enter a favorable plea agreement. (App.p.65). Respondent's epiphany occurred after he exercised his right to a trial, the State called its case, and a jury had been empaneled. He stated he accepted the plea agreement because he presumed he would receive the mandatory minimum seven year prison sentence for the lesser-included offense of possession of pseudoephedrine, 28 – 100, because "solicitor would be on board" with imposition of the sentence. Based on this underlying presumption, he further stated that counsel advised him that "I'd get the seven, but I'd only do like three, three and a half and I'd be out a year and half on parole." (App.p.66, ln. 8-9). He noted that certain family and friends were present during his discussion with counsel on the matter. (App.p.67). He attributed counsel's alleged misadvice on parole eligibility as the 'but for' reason he pled guilty. According to Respondent, the State had drastically misrepresented the amount of pseudoephedrine in its case. He claimed that in actuality he only possessed twenty-four grams of Sudafed. (App.p.68).

Kim Sandy testified at the PCR hearing that she was present for counsel's discussion with Respondent regarding the plea agreement. She stated that she had a prolonged friendship with Respondent. (App.pp.70-1). Consistent to Respondent's testimony, she stated she witnessed counsel advise Respondent that he would get a "seven years and would do about three, three and a half and he would be out in about eighteen months" if he pled guilty (App.p.70, ln.22-23). By stipulation, Respondent offered the same testimony from three other confidants, Ronnie Sandy, Rusty Murphy and Tina Finley, that apparently witnessed counsel's same advice to Respondent on the sentence he would receive and ultimately serve if he pled guilty. (App.p.71).

Counsel testified to his course of conduct during the representation. He testified to his evaluation of the State's evidence and opined "[Respondent's trailer] was a pretty large meth lab... there was oxycodone, marijuana, a lot of pseudoephedrine." (App.p.74, ln.5; p.74, ln. 12-13). He explained that case turned into a swearing match between Petitioner and his two co-defendants that rented the trailer in question from him. (App.pp.73-4). He testified that Respondent was an uncooperative client. Despite counsel's requests, Respondent did not communicate directly with him or provide beneficial information or witnesses to aid his defense. As a result, counsel was wary about the viability of the defense's case at trial. (App.pp.77-8).

Counsel testified to the circumstances that surrounded the plea agreement reached at trial. The solicitor entertained plea negotiations after Judge McMahon expressed his concerns about the non-discretionary penalty scheme of the possession of pseudoephedrine, 100 - 200 grams. (App.p.78). Thus, the solicitor offered to plead Applicant to the lesser-included offense of pseudoephedrine, 28 - 100 grams, and to not object to counsel's request for concurrent service on the other offenses. (App.p.79). Counsel was adamant that he never promised Respondent a specific sentence and term of actual service in Corrections. He elaborated, "**other than the fact that we were trying to get the minimum** mandatory seven, no. It was -- the sentence range from judge was seven to twenty-five." (App.p.80, ln. 18-20) (emphasis added). Counsel fervently disputed the contention that he promised Respondent that he would serve eighteen months active service in Corrections. He clarified that he advised Respondent that would be required to serve eighty-five percent of the possession of pseudoephedrine, 28 - 100 grams, offense before he would become eligible for parole. (App.p.80).

Order Granting Relief

The PCR Judge ruled “Respondent’s PCR should be granted where he was improperly advised as to the sentence he could and would receive.” (App.p.93). The PCR Judge made the finding that, “the Court is firmly convinced that [Respondent] relied on information that if he entered a plea to the charge he would be able to be paroled after a matter of approximately eighteen months of incarceration.” (App.p.92). The PCR Judge found counsel ineffective solely upon the testimony of Respondent and that of his family and friends.¹ (App.p.92).

¹ Petitioner notes the troubling nature of the PCR Judge’s failure to reconcile his findings of fact from testimony presented by Respondent and his witnesses with counsel’s consistent testimony on the issue before this Court in light of Judge McMahon’s finding that counsel was “a very competent attorney” at the guilty plea hearing. See App.p.38, ln. 18-19.

ARGUMENT

I.

The PCR Judge erred as a matter of law in finding that Respondent met his burden to prove counsel was ineffective for misadvising him on the exact sentence he would receive if he pled guilty absent a compulsory review of the plea colloquy. Further, reversal is necessitated where there is no evidence of probative value to support the grant of relief where the Plea Judge cured any founded or unfounded allegation as to counsel's advice on the particular sentence Respondent would receive if he entered guilty pleas.

The PCR Judge granted relief based upon a finding of fact that counsel misadvised Respondent he would serve eighteen months in Corrections on a guaranteed seven year prison sentence if he pled guilty; accordingly, advice concerning parole eligibility on a determinate sentence. However "firmly convinced" the PCR Judge was of the incredible notion that counsel promised Respondent a certain prison sentence and early release date, the finding is fatally flawed where Respondent pled guilty to all three offenses without negotiations or recommendations for the mandatory minimum on the possession of pseudoephedrine, 28 – 100 grams, along with the two other offenses as indicted. Petitioner contends that the question itself of whether counsel was ineffective for allegedly misadvising Respondent regarding parole eligibility is collateral to the determinative issue before this Court.

The PCR Judge erred as a matter of law in granting relief based upon the consideration of limited witness testimony presented at the PCR hearing that was entirely refuted by Judge McMahon's comprehensive plea colloquy with Respondent; in addition Respondent signed sentencing sheets prior to entering the plea that corroborated the plea agreement as memorialized at the hearing. Respondent presented no credible

reason on why he should be allowed to depart from the statements and assurances he made to Judge McMahon. There simply exists no competent, yet alone probative, evidence to support the PCR Judge's finding that Respondent met his burden under Strickland's prejudice prong. Farcically, the grant of PCR relies on a presumption of wishful thinking², all too common in the PCR forum, where an inmate litigant alleges his attorney promised him a certain prison sentence despite a plea judge's contrary instructions on the matter. Therefore, Petitioner submits that even a cursory review of the entire record, dictated by Holden v. State³ and its progeny, unequivocally necessitates reversal.

Standard of Review

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them. However, it will reverse the decision of the PCR court when its decision is not supported by probative evidence of record or it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007). "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber, 640 S.E.2d at 886(emphasis added). The transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367, 370 (1997). Even where counsel fails to advise, or even misadvises, a defendant regarding a critical aspect of his charges, such as the sentencing range, the

² See Wolfe, 485 S.E.2d, 371("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

³ Holden, 713 S.E.2d 611.

error is cured where the trial court during a guilty plea properly advises the defendant about the matter in question. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)(where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him.).

Effective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687.

A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). In contrast, parole eligibility has been held to be a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). However,

if the defendant's attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice, then the plea may be collaterally attacked. Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997).

Discussion

In Holden v. State, the South Carolina Supreme Court reversed a grant of PCR that was entirely based upon an adverse credibility finding concerning Holden's attorney. Holden v. State, 393 S.C. 565, 713 S.E.2d 611, 614 (2011). At the PCR hearing, Holden testified that she pled guilty to forty-six indictments based upon her attorney's promise that she would receive a three and one-half year prison sentence. Id. The court noted that Holden's claim of prejudice lacked any credible evidentiary basis in light of the thorough colloquy at her plea hearing. Id., 313 S.E.2d at 616. Her allegation of ineffective assistance of counsel was proven outlandish where the plea judge instructed her on the possible penalty that each offense carried in addition to the absence of a sentencing recommendation from the State. Id. The court also noted that her signature on the sentencing sheets refuted the PCR allegation and stated that "on each of the sentencing sheets there is a 'checked' box indicating that the plea was 'Without Negotiations or Recommendation.' By signing each of these forms, Holden manifested her desire to plead guilty and acknowledged the lack of a sentence recommendation." Id., Holden, 713 S.E.2d at 616-17. Thus, the court held Holden's allegation of ineffective assistance of counsel was the product of her wishful thinking as to sentencing. Id., Holden, 713 S.E.2d at 617. The court affirmed its longstanding jurisprudence that a plea colloquy is a sacred occasion that is all but immune from contrary *post-hoc* representations from the convicted. Id.

The present case before this Court bears numerous strikingly problematic similarities to Holden. Respondent assured Judge McMahon that he understood possession of pseudoephedrine, 28 – 100 grams, carried a non-suspendable penalty of a minimum seven years imprisonment to a maximum twenty-five years imprisonment (App.pp.24-5). Respondent did not dispute or correct this assurance in any way. Subsequent to Judge McMahon's instruction on the sentencing schemes, Respondent expressed his continued desire to plead guilty. (App.p.29, ln.22—p.30, ln.2). Respondent did not dispute or waiver on his intent in any way. He also expressly stipulated to the solicitor's recitation of the plea agreement and assured Judge McMahon of its correctness. See State v. Thrift, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994)("We also hold that prospectively for all plea agreements entered after the filing of this opinion, we will limit our review of a plea agreement only to those terms which are fully set forth in the record."). Respondent assured Judge McMahon he was pleading guilty absent improper inducement or coercion. (App.p.31, ln. 8-18). He did not contest or dispute his assurances here in any way. See Wolfe, 485 S.E.2d at 371("A statement that questions are "routine" is not an invitation to answer them untruthfully, nor does it constitute a reason to believe the questions and statements of the judge during a guilty plea proceeding mean nothing."). Furthermore, Judge McMahon did not leave the matter to conjecture. (App.p.65, ln.25—p.66, ln.14).

[The Court]: Tell me what you are doing in front of me today?

[Respondent]: Ruling out the chance of a mandatory 25 [sic] for a mandatory seven

[The Court]: The **hope of a mandatory seven?**

[Respondent]: **Yes sir.**

(App.p.41, ln. 14-16) (emphasis added). Importantly, Respondent again did not contest or dispute his assurances here in any way.

Further evidence shows that Respondent manifested his intent to plead 'straight-up' up to lesser-included offense in return for receiving the benefit of avoiding the indicted offense's, possession of pseudoephedrine, 100 – 200 grams, mandatory minimum penalty of twenty-five years imprisonment when he signed the sentencing sheet prior to enter his plea. (App.p.20, ln. 14-17). The boxes "lesser-included offense" and "without negotiations or recommendations" were checked on the sentencing sheet for the offense. (App.p.158). See Holden, 713 S.E.2d at 616-17(citing James v. State, 377 S.C. 81, 85, 659 S.E.2d 148, 150 (2008)). Importantly, the nominations on the sentencing sheets were consistent with memorialization of the plea agreement at the plea hearing.

Thus, Respondent's *post-hoc* representation made at the PCR hearing that he entered the plea because counsel promised him that he would get minimum seven year prison sentence for possession of pseudoephedrine, 28 - 100 grams, and obtain early release in eighteen months was ludicrous.⁴ The entire factual basis for the grant of relief was negated by Respondent's representations, assurances, and conduct at the plea hearing where he pled guilty with the certain knowledge that the Judge McMahon had the unbridled discretion to sentence him to the maximum, minimum, or anything in between on each of the three offenses. See Stalk v. State, 375 S.C. 289, 300-01, 652 S.E.2d 402, 407-08 (Ct. App. 2007) aff'd as modified, 383 S.C. 559, 681 S.E.2d 592 (2009)(holding that "[a]ny misconceptions concerning his constitutional rights, the charges, or potential sentences on [the defendant]'s part were cured by the colloquy.").

⁴ Implicit in Respondent's PCR testimony is the further presumption that he would receive a sentence of less than seven years imprisonment for Manufacturing Methamphetamine.

Last, Petitioner contends the presumption of truthfulness in Respondent's statements, assurances, and representations at his plea hearing must be deemed conclusive. Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (U.S.N.C. 1977). In Blackledge, 431 U.S. 63, the Court explained that a defendant's representations at the time of his guilty plea are not "invariably insurmountable" when challenging the findings made by the judge accepting the plea, "constitute a formidable barrier Solemn declarations in open court carry a strong presumption of verity," and a subsequent presentation of conclusory allegations and contentions that are wholly incredible in the face of the record are subject to summary dismissal. Id. at 73-74; Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). This Court in Dalton v. State noted that "statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements." Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007).

In the present case, Judge McMahon conducted a comprehensive colloquy with Respondent regarding his present mental state, waiver of constitutional rights, admission of guilt, satisfaction with counsel, understanding of the plea agreement, and acknowledgment of the penalty schemes on each offense. As a result, Judge McMahon adjudicated Respondent's guilty pleas as freely, voluntarily, knowingly and intelligently made. He evaluated the State's recitation of evidence and found a substantial factual basis for the plea. See S. Carolina Dep't of Soc. Servs. v. Forrester, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984) ("Because the appellate court lacks the opportunity for

direct observation of the witnesses, it should accord great deference to trial court findings where matters of credibility are involved.”).

Respondent testified at the PCR hearing that he was overcome with the novelty of General Sessions, or “big boy” court; yet, he was a competent adult, property holder, and father who made a logical decision to plead guilty in light of the alternative of facing a requisite twenty-five year prison sentence upon conviction. (App.p.64, ln 3-5; pp.40-2). He admitted his guilt as an accomplice to the methamphetamine manufacture and distribution operation. (App.p.41). Notably, he did not contest or dispute the summary of the State’s evidence of his guilt in any way. He explained that he recently became a first-time criminal offender in his middle ages because of a recent drug addiction. (App.p.41). During the mitigation phase of the plea hearing, Respondent candidly apprised the judge of his current inability to clear a drug test; a certain violation of his prior bond and an adverse factor in sentencing. (App.p.41). Fortuitously, Judge McMahon credited him for his candid response and admissions when the Judge employed his sentencing discretion in Respondent’s favor. (App.p.43). Thus, Respondent has presented no compelling, let alone credible, reason why he should be allowed to depart from the presumption of truthfulness in his statements at the plea hearing.

Accordingly, the PCR Judge erred where there is no evidence that supports the finding that Respondent met his burden to prove the second prong of Strickland – that he was prejudiced as a result of counsel’s performance. Judge McMahon’s colloquy with Respondent and the solicitor’s recitation of the plea agreement at the plea hearing, and the sentencing sheets indisputably prove Respondent knew he faced a possible twenty-five year term of imprisonment for possession of pseudoephedrine, a possible fifteen year term of imprisonment for the manufacture of methamphetamine, and a possible five year

term of imprisonment for PWID marijuana. Respondent's hope of an aggregate term of seven years imprisonment with eighteen months active service in Corrections in comparison to his expectation on the matter is a distinction with a difference that compels reversal.

As Respondent entirely failed to meet this burden of proving ineffective assistance of counsel on this issue, the PCR Judge erred in granting the PCR application. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.").

CONCLUSION

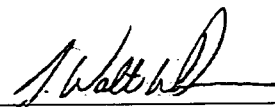
For the foregoing reasons, Respondent submits this Court should reverse the PCR Judge's grant of relief and return Respondent to the State's custody so that he may serve the remainder of his sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

WALT WHITMIRE
Assistant Attorney General
S.C. Bar # 100793

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

August 21st, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas

Honorable Eugene C. Griffith, Circuit Court Judge

Case No. 2011-CP-32-1356
Appellate Case No. 2012-211546

THE STATE,

Petitioner,

vs.

JAMES C. HELMS,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Petitioner complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WALT WHITMIRE
Assistant Attorney General

BY:


Walt Whitmire

182

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

August 8, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas

Honorable Eugene C. Griffith, Circuit Court Judge

Case No. 2011-CP-32-1356
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THE STATE,

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vs.

JAMES C. HELMS,

Respondent.

CERTIFICATE OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Brief of Petitioner on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 8th day of August, 2014.

Ellen R. DuBois
ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Eugene C. Griffith, Jr., Circuit Court Judge

JAMES CLAYTON HELMS,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2012-210227

BRIEF OF RESPONDENT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR RESPONDENT.

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STATEMENT OF ISSUE ON APPEAL

1.

Did the PCR Court err in finding that plea counsel was ineffective for improperly advising Respondent as to the sentence Respondent could and would receive?

COUNTERSTATEMENT OF ISSUE ON APPEAL

1.

Was there any evidence to support the PCR Court's ruling that, based on the testimony of respondent and that of four other PCR witnesses, and where the PCR court was firmly convinced that respondent relied on information from counsel indicating he would be paroled early, after a matter of "approximately eighteen months of incarceration," particularly where counsel acknowledged mentioning early release, other witnesses remembered an early release date involving about eighteen months of service, and since the PCR Court's credibility findings are entitled to great deference?

STATEMENT OF FACTS

Respondent James Helms agrees with petitioner's procedural statement of the case. The order of the Honorable Eugene C. Griffith, Jr. the state is appealing appears at App. 90-93. Respondent was represented at his guilty plea by Gene Stockholm. App. 1; App. 21, ll. 15-19. That guilty plea was before the Honorable R. Knox McMahon. App. 1.

The state correctly asserts respondent was sentenced to seven years imprisonment for manufacturing methamphetamines first offense, and concurrent sentences of seven years imprisonment for possession of ephedrine, 28 to 100 grams, and a concurrent sentence of five years for possession with intent to distribute marijuana, first offense. App. 43, ll. 1-12.

The PCR hearing was held on January 31, 2012 before the Honorable Eugene C. Griffith, Jr. Benjamin Stitely represented respondent, and Kaelon E. May was the Assistant Attorney General. App. 59.

Judge Griffith ordered a grant of post-conviction relief in his order dated February 8, 2012. App. 90-93. The state filed a "motion for rehearing and/or motion to alter or amend judgment pursuant to Rule 59(a) and Rule 59 (e), SCRCPP" dated February 22, 2012. App. 95 – 103. The state also included an unsigned proposed order of dismissal in its appendix before this Court. App. 105 – 119.

Inadvertently, Judge Griffith on March 2, 2012, signed a proposed order of dismissal sent to him by the state. App. 122-136. Judge Griffith vacated his March 2, 2012 order, on March 12, 2012, noting it was "improvidently signed by the court on March 2, 2012 and filed in the Lexington County Clerk of Court's Office." App. 139. Judge Griffith also denied the state's "motion for rehearing and/or motion to alter or amend judgment pursuant to Rule 59(a) and Rule 59 (e), SCRCPP" motion on March 13, 2012. App. 140-141.

The state filed a petition for writ of certiorari through Assistant Attorney General Kaelon May. Respondent filed a return to the petition for writ of certiorari through Chief Appellate Defender Robert M. Dudek.

This Court granted certiorari. The state then filed its brief of petitioner. This brief of respondent follows.

ARGUMENT

There was evidence to support the PCR Court's ruling that, based on the testimony of respondent and that of other PCR witnesses, that the PCR Court was firmly convinced that respondent relied on information from defense counsel indicating he would be paroled early, after a matter of "approximately eighteen months of incarceration" particularly where counsel acknowledged mentioning early release, other witnesses remembered an early release date involving about eighteen months of real time service, and since the PCR Court's credibility findings are entitled to great deference.

Introduction

The state in its brief of petitioner seems to have overlooked the fact that the record in a PCR appeal consists of the guilty plea record, and the post-conviction relief record. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (the voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge *alone*, but is determined from *both* the record made at the time of the entry of the guilty plea *and the record of the post-conviction proceeding*). (emphasis added). Cf. Brief of Petitioner at 15.

The state also appears to have overlooked the fact that the judge ruled he was "*firmly convinced that respondent "relied on information from defense counsel indicating he would paroled early . . . particularly where counsel acknowledged mentioning early release . . . and other witnesses remembered an early release date . . .,"*" App. 92-93. (emphasis added). The PCR judge's findings are entitled to great deference as to the credibility of the witnesses. Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010).

Consequently, the state attacking the testimony of witnesses for respondent as “ludicrous,” and writing that the PCR court was under the “incredible notion” that plea counsel made certain promises is an attack on the standard of review, the deference to which the PCR court’s findings are given under the “any evidence” standard, and an attack on the PCR judge himself. Bell v. State, 410 S.C. 436, 440, 765 S.E.2d 4, 6 (Ct. App. 2014). See Brief of Petitioner at 9; (“The PCR Judge was of the *incredible notion* that counsel promised Respondent a certain prison sentence and early release date. . .” Brief of Petitioner at 14 (Respondent’s *post-hoc* representation made at the PCR hearing the he entered the plea because counsel promised him that he would get minimum seven year prison sentence . . . was *ludicrous*.”).

Evidence

At the post-conviction relief hearing respondent James Helms testified that he was forty-eight-years-old and had lived “around” 244 Golf Cart Road in Lexington County his “whole life.” App. 63, ll. 9-18. Respondent had never been “in any real trouble,” never been on probation, and this was his first time dealing “with big court.” App. 63, l. 16 – 64, l. 5.

Respondent said he had every intention of going to trial because he did not think he was responsible for the drugs. As will be seen infra, respondent blamed his tenants – his co-defendants for having the drugs. However, respondent learned at some point shortly before the case was called to trial that he was facing a mandatory minimum of twenty-five years if convicted. App. 65, ll. 10-18.

Respondent said he understood in return for the guilty plea that occurred after jury selection -- and where trial the judge told the solicitor to talk to defense counsel -- that he

was facing seven to twenty-five years. Respondent's testified his understanding from the trial counsel was to expect a seven year sentence - - "because that's what I was told" - - "meant that I'd get the seven, but I'd only to like *three, three and a half* and *I'd be out [in] a year and a half on parole.*" App. 65, l. 15 - 66, l. 14; app. 78, l. 17 - 79, l. 10. (emphasis added).

Respondent said that it was based on this advice that he pled guilty. Respondent said the co-defendants were "caught" multiple times, and they also had prior criminal records, yet he understood they were already out of jail despite their apparent guilt. App. 66, l. 15 - 69, l. 12.

Respondent's "long-time friend" Kim Sandy testified she was in the courtroom when defense counsel Stockholm discussed the plea offer with respondent. Ms. Sandy said respondent was told the sentence would be "*seven years and he would do about three - three and a half and he would be out in about eighteen months.*" App. 70, ll. 18-23. (emphasis added).

Following the testimony of Ms. Sandy, the Assistant Attorney General stated he would stipulate that the testimony of Ronnie Sandy, Rusty Murphy, and Tina Finley on respondent's behalf would be "to the exact same thing" as Ms. Sandy's testimony highlighted above. The Assistant Attorney General therefore said "I would stipulate that that's what their testimony is so we don't have to call every single one." Respondent and the Court accepted the stipulation. App. 71, ll. 5-21.

Consequently, respondent is at a loss to understand the state's venomous attack on the credibility of these witnesses where the state stipulated to their testimony, and could have insisted they be called as witnesses, and cross-examined them. The Appellate Court

does not sit to assuage buyer's remorse. Again, the PCR judge's findings are entitled to great deference as to the credibility of the witnesses. Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). The appellate shoe in this case is on the other foot, and is giving the state a bunion.

The state then called trial counsel Gene Stockholm as a witness. Stockholm remembered that respondent and his girlfriend came to his office around October of 2009 because respondent was not happy with the Public Defender and he wanted "to hire us." App. 72, ll. 6-16. Stockholm recalled he was retained that day. However, the case got more complex when the solicitor indicted petitioner on the pseudoephedrine offense which carried a potential "mandatory twenty-five years." App. 73, ll. 5-12.

Stockholm said he was "surprised they [the state] had not offered him pretrial intervention. I just didn't understand it." Stockholm said respondent was adamant that he was not guilty and that co-defendants had been renting his mobile home. He "[r]eally had nothing to do with it and, you know, he had just been in the wrong place at the wrong time." App. 73, l. 5 – 74, l. 5. Stockholm said his defense was going to be that drugs in the rented trailer did not belong to respondent, and "he had nothing to do with it." App. 74, l. 1 – 76, l. 4.

Stockholm remembered that he spoke multiple times with respondent's girlfriend, but he maintained that he had trouble getting in touch with respondent as the trial date grew nearer. App. 76, l. 9 – 77, l. 12. Stockholm recalled that since respondent had no prior criminal record he wanted respondent to testify. Their trial strategy before the jury was that the co-defendants were admitted drug dealers who were "just pointing fingers any way they could to get a lighter sentence." App. 77, ll. 1-2. Stockholm said the solicitor's office was

very aggressive, and that he could not understand why since respondent did not have a criminal record. The solicitors told defense counsel they had already made the public defender's office their best offer. App. 78, ll. 3-13.

Stockholm said he told respondent if he pled guilty "it would be an 85 percent offense, which is - - I'd estimated five years, ten months, I think. However it was being checked as *a nonviolent offense*, which could mean if *they had an overcrowding situation*, *he could be out earlier on an early release*." App. 80, ll. 3-22. (emphasis added).

On cross-examination Stockholm again repeated that he did not understand the solicitor's hard position with respondent. "It just amazes me because I've had people who are quite frankly bad people who have been treated better." App. 81, ll. 5-20. However, Stockholm said he could not agree with the way the witnesses were "recounting" his conversations about the plea negotiations. App. 82, ll. 11-12.

In his order granting PCR relief, the judge ruled that:

In his initial application for post-conviction relief, Applicant asserts he detrimentally relied upon information from his trial counsel that the charge which he was accepting a plea to was a non-violent, non-"eighty-five percent," parole-eligible offense. *Through testimony of the Applicant and that of his family and friends, the Court is firmly convinced that the Applicant relied on information that if he entered a plea to the charge he would be able to be paroled after a matter of approximately eighteen months of incarceration. Applicant's trial counsel further did admit that he informed the Applicant that he would be eligible for some form of early release. But for this reliance on counsel, the Applicant would not have accepted the plea.* The Applicant was severely prejudiced in that he entered a plea to a non-parole eligible offense without proper information. The applicant's PCR should be granted where he was improperly advised as the sentence he could and would receive; this amounted to ineffective assistance of counsel and created prejudice

sufficient to satisfy the standards established in Cherry¹ and Strickland², *Id.* App. 92 – 93. (emphasis added).

Discussion

The Court has held it will “uphold the findings of the PCR court when there is any evidence of the probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law.” Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). The Court has further held that “The PCR court’s findings on matters of credibility are given great deference by this Court.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010).

Here, there was no error of law made by the PCR court. The PCR court ruled that it was “firmly convinced” that respondent had been led to believe he would likely earn “early release” on his mandatory seven-year sentence. Respondent testified he was told “I’d get the seven, but I’d only [have] to [do] like three, three and a half and *I’d be out [in] a year and a half on parole.*” App. 65, l. 15 – 66, l. 14. (emphasis added). Kim Sandy testified -- and it was stipulated that three other witnesses for the applicant would also testify that -- defense counsel told respondent the sentence would be “*seven years and he would do about three – three and a half and he would be out in about eighteen months.*” App. 70, ll. 18-23. (emphasis added).

The state cannot stipulate to the testimony of three witnesses at the PCR hearing, and then complain to the appellate court that the judge was bound by the plea colloquy,

¹ Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989)

² Strickland v. Washington, 466 U.S. 668 (1984)

which is an error of law anyway. The judge found credible the testimony of respondent, Kim Sandy, and three other witnesses the state stipulated to in this case. The state argues respondent was engaged in “wishful thinking” regarding his sentence at the guilty plea proceeding. Brief of Petitioner at 10, n. 2. Respectfully, the state should not stipulate to testimony and “wishfully think” the PCR judge will disregard it.³

Defense counsel in this case admittedly entered into the potentially “dangerous area” of discussing early release. When counsel does so, he must *properly* advise a criminal defendant regarding sentencing exposure. See Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991).

Defense counsel here acknowledged he would have had respondent testify during a trial because respondent had no prior criminal record, and that he was “amazed” at how aggressive the solicitor’s office was in dealing with this respondent who had no prior criminal record. There was no error of law made in this case, and the PCR Court’s finding on the credibility of the witnesses - - particularly where defense counsel admitting discussing the possibility of early release - - should not be reversed since this Court has held it gives deference to the PCR court’s finding because *that judge*, and not this Court, had the personal opportunity to directly observe the demeanor of the witnesses.

The PCR court being “firmly convinced” in its findings of the factual determinations here strongly shows there was evidence of probative value - - more than the “any evidence” required - - in this record to uphold the PCR court’s ruling. See

³ Present Appellate Counsel for Petitioner was not trial level PCR counsel.

Solomon v. State, 313 S.C. 526, 529, 443 S.E.2d 540, 542 (1994)⁴; Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000).

⁴ *Overruled on other grounds*, State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013).

CONCLUSION

By reason of the foregoing argument, the ruling of the PCR court should be affirmed as there is evidence to support it pursuant to the “any evidence” standard of review

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR RESPONDENT.

This 13th day of February, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Eugene C. Griffith, Jr., Judge

JAMES CLAYTON HELMS,

RESPONDENT,

V.

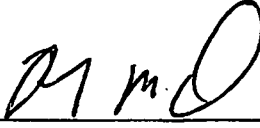
STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2012-210227

CERTIFICATE OF SERVICE

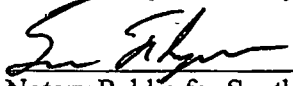
The undersigned attorney hereby certifies that a true copy of the Brief of Respondent and Designation of Matter in the above referenced case has been served upon John Walt Whitnire, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. James Clayton Helms, 244 Goff Ct., West Columbia, 29172 this 13th day of February, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 13th day of January, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

James Clayton Helms, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2012-210227

Appeal From Lexington County
R. Knox McMahon, Plea Judge
Eugene C. Griffith, Jr., Post-Conviction Relief Judge

Unpublished Opinion No. 2016-UP-011
Heard October 13, 2015 – Filed January 13, 2016

AFFIRMED

Attorney General Alan McCrory Wilson, Assistant
Attorney General Patrick Lowell Schmeckpeper, and
Assistant Attorney General John Walter Whitmire, all of
Columbia, for Petitioner.

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Respondent.

PER CURIAM: The State appeals the granting of post-conviction relief (PCR) to James Helms. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (holding to establish a claim for ineffective assistance of counsel, the PCR applicant must show (1) counsel's performance was deficient and (2) the deficient performance prejudiced the applicant); *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (explaining the *Strickland* test also applies when an applicant seeks PCR after a guilty plea); *id.* (stating to show prejudice in the context of a guilty plea, the PCR applicant must show "there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial"); *Smith v. State*, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997) ("[P]arole eligibility has been held to be a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. However, if the defendant's attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice, then the plea may be collaterally attacked." (citation omitted)); *Moorehead v. State*, 329 S.C. 329, 333, 496 S.E.2d 415, 416 (1998) ("When considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing."); *Holden*, 393 S.C. at 573, 713 S.E.2d at 615 (stating appellate courts must give "great deference" to the PCR judge's findings of fact and conclusions of law and "will uphold the findings of the PCR judge 'if there is any evidence of probative value sufficient to support them'" (quoting *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005))).

AFFIRMED.

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Plea Judge
The Honorable Eugene C. Griffith, Post-Conviction Relief Judge

Appellate Case No. 2012-210227

JAMES C. HELMS,.....Respondent,

v.

THE STATE, ...Petitioner.

PETITION FOR REHEARING

I.

On January 13, 2016, this Court affirmed the post-conviction relief (PCR) judge's grant of Respondent's application for post-conviction relief. Helms v. State, 2016-UP-011 (S.C. Ct. App. filed January 13, 2016). This Court misapprehended or overlooked relevant facts of this case and the applicable law. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing and affirm the PCR judge's denial of relief.

a. Procedural History

Respondent was indicted at the February 2010, term of the Lexington County Grand Jury for possession of pseudoephedrine, 100-200 grams (2010-GS-32-0465), possession with intent to distribute marijuana (2010-GS-32-0464), and manufacturing methamphetamine (2010-GS-32-

0463). (App.pp.144-58). On June 21, 2010, the Respondent pled guilty to the lesser-included offense of possession of pseudoephedrine, 28-100 grams, and to the remaining two (2) charges as indicted. App. p. 1-43. The Honorable R. Knox McMahon sentenced Respondent to a term of seven (7) years imprisonment for possession of pseudoephedrine, a term of seven (7) years imprisonment for manufacturing methamphetamine, and to a term of five (5) years imprisonment for possession with intent to distribute (PWID) marijuana. The sentences were to be served concurrently. App. p. 43. Respondent did not appeal his conviction or sentence.

Respondent filed an application for post-conviction relief on April 5, 2011 (2011-CP-32-1356). App. p. 45-52. The State made its Return to the application on September 8, 2011. App. p. 53-58. An evidentiary hearing into the matter was convened on January 31, 2012, at the Lexington County Courthouse. App. p. 59-86. Respondent was present at the hearing and was represented by Benjamin A. Stitley, Esq. The State was represented by Kaelon E. May, Esq., of the Office of the Attorney General. At the hearing, the Respondent testified on his own behalf. App. p. 63-70. Additionally, the Respondent offered the testimonies of Kim Sandy, Ronnie Sandy, Rusty Murphy, and Tina Finley. App. p. 70-71. The State offered the testimony of Gene Stockholm, Esq. (plea counsel). App. p. 72-82.

The Honorable Eugene C. Griffith, Jr. granted post-conviction relief to Respondent by Order dated February 8, 2012 and filed February 9, 2012. App. p. 88-93. Petitioner filed a timely Motion for Rehearing and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(a)(e), SCRPC. App. p. 94-102. In conjunction with its Motion, Petitioner submitted a Proposed Order of Dismissal. App. p. 104-19. The Proposed Order of Dismissal was signed by Judge Griffith on March 2, 2012. App.p.136. Subsequently, Judge Griffith issued an Order Vacating Dismissal because the Proposed Order of Dismissal was improvidently signed by the

Court on March 2, 2012. App. p. 139. The Order Vacating Dismissal directed the February 8, 2012 Order Granting Respondent's post-conviction relief remain the final order of the Court. App. p. 139. On March 13, 2012, Judge Griffith issued a Form 4 Order denying Petitioner's motion for rehearing and/or motion to alter or amend judgment pursuant to Rule 59(a)(e), SCRCF. App. p. 140.

Following Oral Arguments on October 13, 2015, the South Carolina Court of Appeals affirmed the PCR judge's order granting relief. Helms v. State, 2016-UP-011 (S.C. Ct. App. filed January 13, 2016). This Petition for Rehearing follows.

b. Argument

Petitioner submits the Appellate Panel misapprehended applicable law and overlooked relevant facts in its affirmance of the PCR court's ruling that counsel was ineffective for "advising [Respondent] that he would be paroled after a matter of approximately eighteen months after incarceration." App. p. 92. Specifically, there was no probative evidence to support the PCR judge's finding on prejudice where Respondent did not rely on any representations¹ concerning parole eligibility, but instead on what counsel purportedly said concerning his *actual release*; and the plea judge's thorough colloquy cured any misconception on what the actual sentencing range was. Moreover, the PCR judge failed to consider the plea transcript, in which Respondent stated that he was pleading to avoid a twenty-five (25) year mandatory minimum (rather than guarantee an eighteen month maximum sentence).

As a general rule, deficient performance may result from incorrect advice given by counsel to a criminal defendant concerning parole eligibility. Smith v. State 329 S.C. 280, 494 S.E.2d 626 (1997). However, even assuming – without conceding – that counsel was deficient

¹ Petitioner notes that the PCR judge did not make a credibility finding with regards to Counsel's contrary testimony. App. p. 92-93.

and gave erroneous advice on parole eligibility, Respondent was still required to show prejudice at the evidentiary hearing in order to prove a violation of his Sixth Amendment right to the effective assistance of counsel. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (reversing PCR court's finding of ineffective assistance where any alleged deficiency in plea counsel's alleged incorrect representation regarding sentencing was cured by the plea colloquy). "Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability that he would not have pleaded guilty **and instead would have insisted on going to trial.** Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (emphasis added) (*citing* Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985)).

Petitioner submits that the PCR judge's finding of prejudice – and, by extension, the Appellate Court panel's affirmance of that finding - is tainted to the extent that it failed to take into account Respondent's own words at his guilty plea hearing. See Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) ("In determining guilty plea issues, **it is proper to consider the guilty plea transcript** as well as evidence presented at the PCR hearing") (emphasis added). Such a failure requires reversal. See, e.g., Holden, 393 S.C. 565, 713 S.E.2d 611; Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (reversing grant of PCR on the ground that there was no evidence to support the PCR judge's finding that applicant received ineffective assistance of counsel due to erroneous sentencing advice where "[a]ny misconception was cured at the plea hearing").

At the evidentiary hearing, Respondent testified that counsel told him he would be out of prison “within a year and a half on parole.”² App. p. 66. Similarly, Respondent’s witnesses at the evidentiary hearing testified that they heard counsel say Respondent would be out in about eighteen months. App. p. 70. In this context, the issue of whether counsel gave incorrect advice concerning parole eligibility is collateral³ to the actual issue that was before the Appellate panel: whether Respondent’s expectation of an eighteen month sentence was reasonable in light of the plea judge’s clear explanation of what the sentencing range was.

Turning to the plea hearing, the answers Respondent gave during the plea colloquy directly refuted the testimony he gave at the evidentiary hearing. The pleas were entered absent a recommended or negotiated term of imprisonment from the State, (App.p.29), and the entirety of the agreement was memorialized at the hearing as follows:

[Solicitor]: Your Honor, we are **reducing the pseudoephedrine charge** to the lesser included as you just indicated. There are also **two other charges that we are not going forward with** on this case, a disposal of methamphetamine product and a possession of Oxycodone.

[The Court]: All right, [counsel], has the solicitor correctly and completely stated the negotiations into the record.

[Counsel]: Yes, Your Honor.

[The Court]: [Respondent], **has the solicitor fully and completely stated what you understand the negotiations to be?**

[Respondent]: Yes Sir.

[The Court]: **Is there anything more in your mind?**

[Respondent]: No Sir.

(App.p.30, ln.5-10; p.30, ln.20—p.31, ln.5) (emphasis added).

Toward the end of the guilty plea proceedings, the plea judge made a deeper inquiry:

² To the extent Respondent’s testimony was ambiguous, Petitioner submits it must be resolved in favor of his actual words and those of the witnesses the PCR judge found credible rather than an affirmative response to a leading question. App. p. 68.

³ No pun intended.

[The Court]: Tell me what you are doing in front of me today?

[Respondent]: Ruling out the chance of a mandatory 25 [sic] for a mandatory seven

[The Court]: The **hope of a mandatory seven?**

[Respondent]: **Yes sir.**

(App.p.41, ln. 14-16) (emphasis added).

These statements further accentuate the problems with the PCR judge's ruling: even if counsel told Respondent that he would be out of prison within eighteen months (or simply parole eligible after eighteen months), the fact that he told the plea judge that he was foregoing trial to "rule out a mandatory twenty-five for the *hope* of a mandatory seven" highlights that the impetus behind Respondent's guilty plea was avoiding the maximum – even if he understandably hoped for the minimum.

Petitioner submits that even assuming Respondent truly believed that seven years meant eighteen months, such a belief was still subject to being swallowed by what could have been a much lengthier sentence. The fact that Respondent was fortunate to receive the minimum allowable sentence does not, by any stretch of the imagination, mean that such a result was guaranteed. In this context, the PCR judge's failure to take into consideration the plea transcript constitutes a clear error of law, and requires reversal.

[Signature follows]

Conclusion

For the foregoing reasons, Petitioner respectfully requests the panel grant this petition for rehearing, find the PCR judge incorrectly granted Respondent's PCR application, and reverse the order of dismissal.

Respectfully submitted,

ALAN WILSON
Attorney General

PATRICK L. SCHMECKPEPER
Assistant Attorney General
S.C. Bar # 102100

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By:



Attorneys for Respondent

January 28, 2016

The South Carolina Court of Appeals

James Clayton Helms, Respondent,

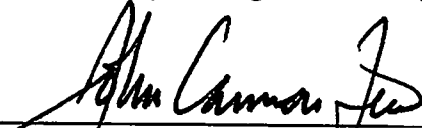
v.

State of South Carolina, Petitioner.

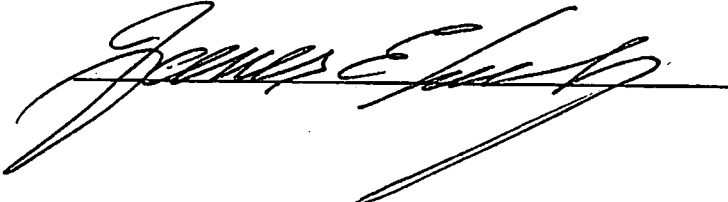
Appellate Case No. 2012-210227

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.

J.

J.

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
John Walter Whitmire, Esquire
Patrick Lowell Schmeckpeper, Esquire

FILEDFebruary 22, 2016