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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Perry H. Gravely, Circuit Court Judge

BRIAN K. SEKERCHAK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002307

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

BRIAN KEITH SEKERCHAK,

DEFENDANT.

2011-GS-47-06

APRIL 20, 2012

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE LETITIA H. VERDIN, JUDGE

APPEARANCES:

JOSH UNDERWOOD, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

MIKE JOHNSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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State of South Carolina -vs- Brian Keith Sekerchak (2011-GS-47-06)
Exhibit List

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1

APRIL 20, 2012

2

(WHEREUPON, court convened with all parties

3

present and the following proceedings were had.)

4

THE COURT: Yes, sir.

5

MR. UNDERWOOD: May it please the court, Your

6

Honor. Before you is Brian Keith Sekerchak, along with

7

his attorney Michael Johnson. Mr. Sekerchak is

8

indicted under State Grand Jury Indictment 2011-GS-47-

9

06. He is charged under Count 1 of trafficking

10

methamphetamine, one hundred to two hundred grams by

11

conspiracy. However, today, pursuant to a written plea

12

agreement, which Your Honor, I believe, has in front of

13

her, he will be pleading to the lesser included offense

14

of twenty-eight to one hundred grams by conspiracy.

15

He's also charged under Count 13 with distribution

16

of methamphetamine, Count 14, Count 15, Count 16 and

17

Count 17, all also distribution of methamphetamine.

18

Your Honor, the facts of the case -- well, if Your

19

Honor wishes to question the defendant first. I'm

20

sorry.

21

THE COURT: Okay. Mr. Sekerchak, will you

22

raise your right hand, please?

23

Do you swear to tell the truth, the whole truth

24

and nothing but the truth under penalty of perjury?

25

THE COURT: Yes, ma'am.

State of South Carolina -vs- Brian Keith Sekerchak (2011-GS-47-06)
Guilty Plea

5

1 You're here today to plead to trafficking
2 methamphetamine second offense with a weight of twenty-
3 eight grams to a hundred grams, which carries a minimum
4 sentence of seven years up to thirty; and five counts
5 of distribution of methamphetamine second offense, and
6 each of those carries up to thirty years. Is that your
7 understanding?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And the recommendation of the
10 state is what?

11 MR. UNDERWOOD: Your Honor, the state will be
12 recommending a sentence of fifteen to eighteen years.
13 However, we would ask for sentencing to be deferred.

14 THE COURT: Sure. All right. And the state
15 is recommending a sentence of fifteen to eighteen
16 years. Is that your understanding, as well?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Have you discussed these charges
19 with your lawyer?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Are you happy with what your
22 lawyer has done for you?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you have any complaint to make
25 against the Attorney General's Office, law enforcement

1 or your attorney whatsoever as a result of these
2 charges?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Are you under the influence of
5 drugs or alcohol here today?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: These sentencing sheets say
8 you're forty-two years old; is that right?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you suffer from any mental
11 condition or anything like that, that would prevent
12 your understanding what you're doing here today?

13 THE DEFENDANT: No, ma'am.

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

15 THE DEFENDANT: Eleventh grade.

16 THE COURT: Has anybody forced you to plead
17 guilty?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Has anybody promised you anything
20 to get you to plead guilty?

21 THE DEFENDANT: No, ma'am.

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

25 THE DEFENDANT: Yes, ma'am.

State of South Carolina -vs- Brian Keith Sekerchak (2011-GS-47-06)
Guilty Plea

7

1 THE COURT: You also give up your right to a
2 jury trial. At that trial your attorney could call
3 witnesses for you and cross examine witnesses against
4 you. You would not be compelled to testify against
5 yourself and the state would have to prove your guilt
6 beyond a reasonable doubt. But when you plead guilty
7 you give up your right to a jury trial. Do you know
8 that, as well?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: How do you plead to each of these
11 charges; guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: All right. Yes, sir.

14 MR. UNDERWOOD: Your Honor, as to Count 1,
15 the conspiracy count, Mr. Sekerchak was involved with a
16 number of individuals in the Greenville area of South
17 Carolina in trafficking methamphetamine. The
18 methamphetamine -- we'll begin with an individual co-
19 defendant, Clyde Davis, who would distribute
20 methamphetamine down to Nicholas Dendy and Amy Brock,
21 as well as various other dealers, including Mr.
22 Sekerchak, Michael Robinson and Joshua Byers. These
23 individuals were also selling methamphetamine back and
24 forth amongst each other, as well as to other
25 individuals.

1 The total amount of that methamphetamine over the
2 time period of this indictment does weigh more than one
3 hundred grams. However, as indicated, Mr. Sekerchak is
4 pleading guilty to the lesser included offense of
5 twenty-eight to one hundred grams.

6 As to Count 13, distribution of methamphetamine,
7 on June 23rd, 2010, at the defendant's residence in
8 Greenville, the defendant sold more than five grams of
9 ice methamphetamine to a confidential informant who at
10 the time was working under a control purchase for SLED
11 and the Greenville County Sheriff's Office.

12 As to Count 14, distribution of methamphetamine,
13 on January 27th, 2011, another confidential informant
14 working for the Greenville County Sheriff's Office and
15 SLED approached the defendant making a controlled
16 purchase of methamphetamine. The confidential
17 informant gave cash to the defendant, who then went to
18 another location to get the methamphetamine. Returned
19 twenty minutes later and weighed out approximately half
20 of an eight ball or 1.6 grams of methamphetamine and
21 gave it to the confidential informant.

22 As to Count 15, distribution of methamphetamine,
23 on March 15th, 2011, a confidential informant working
24 with the Pickens County Sheriff's Office, Greenville
25 County Sheriff's Office and SLED made a controlled

State of South Carolina -vs- Brian Keith Sekerchak (2011-GS-47-06)
Guilty Plea

9

1 purchase from the defendant at a convenience store in
2 Pickens County.

3 Also, on Count 16, distribution of
4 methamphetamine, on June 1st, 2011, another
5 confidential informant made a controlled purchase from
6 Mr. Sekerchak.

7 As to Count 17, distribution of methamphetamine,
8 on August 16th, 2011, in Greenville County, Mr.
9 Sekerchak sold a quantity of methamphetamine to another
10 confidential informant as part of a controlled purchase
11 under the supervision of the Greenville County
12 Sheriff's Office.

13 THE COURT: Does he have a prior record?

14 MR. UNDERWOOD: He does, Your Honor. In
15 1987, a conviction for possession with intent to
16 distribution LSD; 1988, burglary third degree and grand
17 larceny; 1990, possession of marijuana; 1993, I'm not
18 sure, it's either a breach of trust or a breach of
19 peace, there's a discrepancy in his record; in 2003,
20 burglary second violent two counts, grand larceny three
21 counts, burglary third degree two counts, petit larceny
22 two counts and driving under suspension; in 2007,
23 harassment within ten years of a prior conviction and
24 harassment with an injunction or restraining order was
25 in effect; 2008, receiving stolen goods; and in 2009, a

1 conviction for manufacturing or distribution of cocaine
2 base, as well as a conviction for trafficking ice,
3 crank or crack ten to twenty-eight grams first offense.

4 THE COURT: Mr. Sekerchak, is that your
5 criminal record?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: That accurately states it? Is
8 that what happened? You heard the facts; is that what
9 happened?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Mr. Johnson, I'll
12 accept the plea. Is there anything you need to add?

13 MR. JOHNSON: Thank you, Your Honor. No,
14 Your Honor, assuming we can still address the court at
15 the time of the sentencing.

16 THE COURT: Oh, certainly. Absolutely.

17 All right. Well, Mr. Sekerchak, I'm going to
18 accept your plea as being freely and voluntarily made
19 with the advice of very competent counsel with whom
20 you're well satisfied. Furthermore, the plea has a
21 substantial factual basis. And I'll defer sentencing.

22 I wish you the best of luck.

23 MR. UNDERWOOD: Thank you, Your Honor.

24

25 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of General Sessions
9 for Greenville County, South Carolina, on the 20th day
10 of April, 2012.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 January 21, 2015
16
17

18 
19

20 Circuit Court Reporter

Sentencing

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF GREENVILLE	) Case No(s) : 2011GS4700006
	)
State of South Carolina,	)
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Brian Keith Sekerchak,	)
	)
Defendant.	)

November 06, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

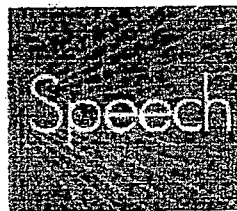
A P P E A R A N C E S:

JOSHUA UNDERWOOD, Esquire
CURTIS PAULING, Esquire
Attorneys for the Plaintiff

MICHAEL ROBINSON, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
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produced via



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I N D E XDIRECT CROSS REDIRECT RECROSS

Sentencing of the Court 4

Certificate of Reporter 8

EXHIBITS PAGENO.DESCRIPTIONID EV**PLAINTIFF EXHIBITS**

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 6th day of November, 2014 at approximately 2:41 p.m.)

(WHEREUPON, the defendant is first duly sworn.)

THE COURT: All right. On Mr. Sekerchak, y'all are recommending a sentence range of 15 to 18 years to run concurrently. Is that on all the charges or just on that one case?

MR. PAULING: On both cases, Your Honor. Mr. Sekerchak was also indicted in 2012-GS-47-14. That is the Gotham City State Grand Jury investigation, counts 1 and 14. As you recall, he pled guilty to those charges back on March -- actually, Heather Weiss from our office handled that particular plea, Your Honor. The recommendation is 15 to 18. It runs concurrent with the charges in the Icehouse investigation.

THE COURT: All right.

MR. UNDERWOOD: Your Honor, just for the record, the Icehouse indictment is 2011-GS-47-06. He pled guilty to counts 1, 13, 14, 15, 16 and 17. Michael Johnson represents Mr. Sekerchak on both cases. Your Honor may recall, Mr. Sekerchak did cooperate and testify in the trial against Clyde Davis earlier this

1 year.

2 **THE COURT:** I do remember that.

3 **MR. UNDERWOOD:** Mr. Sekerchak does have a
4 criminal history, Your Honor. It goes back to
5 1987. Most of these, I believe, are drug
6 related. 1987, Possession with Intent to
7 Distribute LSD; 1988, Burglary third degree and
8 Grand Larceny; 1990, Possession of Marijuana;
9 1993, Breach of Trust; 2003, Burglary second
10 degree, nonviolent, multiple counts, Burglary
11 third degree, multiple counts, Grand Larceny,
12 Petit Larceny, Driving under Suspension; 2007,
13 Harassment within 10 years of a prior
14 conviction and Harassment while in conjunction
15 of a restraining order in effect; 2008,
16 Receiving Stolen Goods; 2009, Manufacturing or
17 Distribution of Cocaine base or Meth and
18 Trafficking of Ice, Crank or Crack.

19 Your Honor, in light of Mr. Sekerchak's
20 cooperation, the states recommendation is 15 to
21 18 years. Mr. Sekerchak was quite cooperative
22 with pretrial preparation. As you may recall,
23 he did testify against Clyde Davis. The lower
24 end of that recommendation would be more
25 appropriate than the higher end.

1 **THE COURT:** All right. Yes, sir.

2 **MR. JOHNSON:** Thank you, Judge. If it
3 pleases the Court, Brian is 43 years of age.
4 He has told me that he began using meth when he
5 was 14. From that first hit, he was basically
6 addicted to the chemicals at that point
7 forward. I offer that not as an excuse, Your
8 Honor. Obviously, he has admitted his guilt
9 previously. He is taking responsibility for
10 what he was involved in and what he has done.

11 I will say that this is the longest stance
12 -- the two years that he has been incarcerated
13 is the longest and that he has been drug-free.
14 The difference between the Brian I met the
15 first time and I sat in front of him two years
16 ago and the Brian today are, there are two
17 extremes from a condition standpoint, demeanor
18 --

19 **THE COURT:** Yeah, he looks so much better.
20 He really does.

21 **MR. JOHNSON:** Yes, Your Honor. He looks
22 more healthy. The last two times I went to
23 talk with him, he was smiling. He was so proud
24 about how hard he works there in the detention
25 center in the kitchen. Apparently, a lot of

1 people look up to him for the job he does
2 there. Again, Your Honor, he is a 43-year-old
3 man. No offense to the state on the
4 recommendation, I think it is very reasonable.
5 But obviously, we hope Your Honor would maybe
6 consider something more along the lines of 10
7 or 11 or possibly 10 to 12 just to give him a
8 few years on the back end to try to get right
9 with himself when he gets out.

10 **THE COURT:** Mr. Sekerchak, anything you
11 want to say?

12 **THE DEFENDANT:** No, ma'am.

13 **THE COURT:** All right. Well, uh, in light
14 of his involvement -- I take into account his
15 cooperation has significantly reduced his
16 sentence. But in light of his involvement in
17 this case, I think it is appropriate, the
18 recommendation is appropriate. I'm going to
19 give him 15 years on each, all concurrent and
20 credit for all the time he has served. Good
21 luck to you.

22 **MR. JOHNSON:** Thank you, Your Honor.
23

24 **(WHEREUPON, the proceedings conclude at**
25 **approximately 2:47 p.m.)**

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Brian Keith Sekerchak 174113
 Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014-CP-23-0506

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
 GREENVILLE, S.C.
 PAUL D. WICKENHIMER
 2014 FEB 12 PM 2 23

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 Perry Correctional Institution
2. Name and location of Court which imposed sentence Greenville, SC.
3. Name(s) of co-defendant(s) (if any) Amy Beall, Michael Wayne Robinson, Josh Byers
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Conspiracy - To Traffic Meth,
 - (b) Traffic Meth - I,
 - (c) Distribution - Meth
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11-2014; 15 years violent
 - (b) —

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
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) My public lawyer Michael Johnson said they was no reason to
- (b) appeal, I cant do anything
- (c) I didnt really understand how to appeal myself.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: I have never seen my Motion of Discrepancy
Only my Lawyer says he's has it.

- (a) _____
- (b) _____
- (c) _____

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

- (a) My lawyer Michael F. Johnson; wasn't prepared enough
- (b) For a case as big as this was dealing with SLED
- (c) the state Grand Jury.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

Page 3) #11.

Referring to #10; I have never seen my Motion of Discovery, I only know what the Lawyer told me.

#11. The appointed Lawyer Michael F. Johnson, always in a hurry everytime I saw him. I had questions to ask he always talked around them never a straight answer. He promised as long as I cooperated and testified I would not get 15 years; He talked me into signing the plea. He always told me it was ok I would get less time because I had wore a wire in on Co-defendant I made 2 buys for SLED; And I testified in Court on Clyde B. Davis; I told the truth and; Then my Lawyer just left me standing there in the court; I was alone no Lawyer when I testified.

I filling for ineffective assistance of counsel, don't even no Michael F. Johnson's address he isn't in the phone book who I get in touch, so I can
 at my Motion of discovery
 has no address?

Dorian Keith Selaschuk.

He never tried to get me
a bond reduction.

I also asked for The Drug Court
Program, or any other program
for Drug Addicts, He never tried
to help me in any type of way.
He never tried to get me another

plea only the first plea.

Why didn't he appeal at the court?

June 2014; I still have not seen or got
my Motion of Discovery.

I have been incarcerated since Nov 2011;

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your ^{NO} ~~arraignment~~ and plea? yes
- (b) your trial, if any? NO
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
- i. Michael + Johnson, Greenville SC
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application: To be treated fairly like my Co-defendants they all got less time than I.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA

County of _____

)
)
)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Brian Keith Sokerchuk

SWORN to and subscribed before me this _____
day of _____, 2____.

(L.S.)

Notary Public

My Commission Expires: _____

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

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

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

Brian Keith Seberschke
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2_____.

Notary Public

My Commission Expires: _____

Sekerchak

Brian Keith Sekerchak 174115
430 Oaklawn Road Q4A223
Pelzer SC 29669

2014-CP-23-



RECEIVED

SEP 02 2014

P.C.I. MAILROOM

Paul B. Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, S.C. 29601

Q-4

SECDEC

SEP 25 11

COMMISSARY

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

BRIAN K. SEKERCHAK, 174115)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-23-~~24~~RETURN AND MOTION TO
DISMISS AND REQUEST FOR
APPOINTMENT OF COUNSELFILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 12 PM 3:55

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 6, 2013, 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 State Grand Jury Clerk of Court. The Applicant was indicted at the December 2011 term of the State Grand Jury for one (1) count of Conspiracy to Traffic Methamphetamine, five (5) counts of Distribution of Methamphetamine, and one (1) count of Possession with Intent to Distribute Methamphetamine. Applicant was represented by Michael Johnson, Esquire.

On April 20, 2012, the Applicant pleaded guilty to one (1) count of Conspiracy to Traffic Methamphetamine Second Offense and five (5) counts of Distribution of Methamphetamine Second Offense. Applicant was sentenced by the Honorable Letitia Verdin to confinement for a period of fifteen (15) years. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the State Grand Jury Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the plea agreement, and the notice of motion and motion for discovery and Brady and Kyle materials. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Allegations

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

1. Ineffective assistance of counsel.
 - a. "I have never seen my Motion of Discovery. Only my lawyer says he's has it."
 - b. "My lawyer Michael F Johnson wasn't prepared enough for a case as big as this was dealing with SLED the state Grand Jury."

III. WAIVER OF PCR

The agreement to waive his right to file a PCR application is permissible under Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008). In Spoone, this Court found permissible the terms of a plea agreement where Spoone waived the right to file a direct appeal and the right to file a PCR application. In exchange, the State refrained from pursuing the death penalty. Like the instant case, Spoone filed a PCR application and the State moved for dismissal based on the written agreement. This Court declared "such a waiver will be held effective only if it is knowing and voluntary." Id., 379 S.C. at 142, 665 S.E.2d at 607.

This Court then examined the facts and circumstances of Spoone's case as follows:

Looking at the particular facts and circumstances of the instant case, including: (1) the background, experience and conduct of the accused, (2) the text of the plea agreement, and (3) the transcript

of the plea hearing, we find petitioner's waiver was voluntarily, knowingly, and intelligently made. Although petitioner only has a ninth grade education, the text of the written plea agreement was straightforward. Furthermore, the plea colloquy shows that the trial court specifically asked petitioner about the waiver both in the language of the plea agreement, as well as in plain language. Petitioner was represented by two attorneys at the trial level. Both lawyers attended the plea hearing and both signed the written plea agreement, along with petitioner himself.

Id., 379 S.C. at 143-44, 665 S.E.2d at 608.

S.C. Code Ann. § 17-27-70(c) (2003) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's waiver of PCR. The Respondent requests that this matter be summarily dismissed as a violation of the plea agreement.

IV.

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).

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the issues raised by the Applicant in his application be summarily dismissed as the application is void *ab initio* and counsel be appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

LARONE K. WASHINGTON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6038

Jan. 29, 2015

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Brian K. Sekerchak,	)	
	)	
v.	)	Case No. 14-CP-23-5049
	)	
State of South Carolina,	)	

TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on October 21, 2015, before The Honorable Perry H. Gravely in the Court of Common Pleas for Greenville County, attended by counsel, as follows:

APPEARANCES:

R. Mills Ariail, Jr.
 11 North Irvine Street
 Greenville, South Carolina 29601
 Appearing for Applicant

Larone Washington, Assistant Attorney General
 OFFICE OF ATTORNEY GENERAL
 Post Office Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 296616
dgarrison@sccourts.org

Brian K. Sekerchak v. State of South Carolina

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Case No. 14-CP-23-5049

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

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MR. WASHINGTON: Your Honor, this is case of Brian Sekerchak, 2014-CP-23-05049. He pled guilty to one count of conspiracy for trafficking meth second offense, as well as five counts of distribution of meth second offense. He was sentenced to fifteen years on November 6th, 2013. He did not file an appeal. His PCR was timely filed on September 12th, 2014 on the basis of ineffective assistance of counsel. The State filed a return and Motion to dismiss based on waiver of the PCR.

THE COURT: All right. Mr. Ariail?

MR. ARIAIL: Yes, Your Honor. I know that they filed a Motion to dismiss. It is the belief of Mr. Sekerchak that he was not knowingly and voluntarily waiving his right to a PCR. He also believed that he -- he thought that he was getting ten years, and that was the understanding he was under at the time that he signed the plea agreement that you have in front of you.

THE COURT: The plea agreement that I have is a six-page agreement, which does not have a signature page on it. How many pages do

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1 you have?

2 MR. WASHINGTON: The one that I have
3 does have the signature page but I have one of
4 the plea agreement that does have the signature
5 page.

6 THE COURT: Does it have the signature
7 of Mr. Sekerchak?

8 MR. WASHINGTON: Yes, it has
9 Sekerchak's signature, and ---

10 THE COURT: I would like to review
11 that. Is there a copy in the file?

12 MR. WASHINGTON: Yes, sir. You can
13 certainly have this one, (tendering).

14 THE COURT: Thank you. I understand
15 that you should probably keep the original in
16 the file. You should give a copy to the
17 defense also.. Okay.

18 MR. ARIAIL: If I could call him to the
19 stand and ---

20 THE COURT: Certainly. I will be glad
21 to hear from you.

22 (WITNESS TAKES STAND)

23 BRIAN SEKERCHAK, having been sworn to
24 tell the truth, and nothing but the truth,
25 testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. ARIAIL:

3 Q. Mr. Sekerchak, how are you doing today?

4 A. Pretty good. How are you?

5 Q. Doing fine. You filed this PCR and
6 alleged ineffective assistance of counsel of
7 Mr. Michael Johnson. The first step that we've
8 got to get through is, you've done certain
9 things -- you signed a plea agreement, which is
10 not standard in normal Greenville County cases.
11 This was a statewide grand jury case, in which
12 they normally get you to sign these. Do you
13 remember reviewing this and understanding what
14 this document said as part of it?

15 A. Sort of, yeah.

16 Q. Were you aware that you were waiving
17 certain rights in this and that one of those
18 was a waiver of a PCR?

19 A. I didn't know I was waiving that.

20 Q. Okay. It actually says, "Actually,
21 Defendant Brian Sekerchak understands his right
22 to file a post-conviction relief, PCR action,
23 in this case agrees to knowingly and
24 voluntarily waive any post-conviction relief
25 action. Do you understand that?"

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1 A. Yeah.

2 Q. Were you aware when you signed this that
3 you were waiving that right?

4 A. I didn't read it all.

5 Q. So you didn't read it all?

6 A. (Negative gesture).

7 Q. Did Mr. Johnson tell you about that?

8 A. He might have did. I don't know.

9 Q. Did he also tell you that you had a right
10 to appeal this or anything of that nature?

11 A. No. He didn't never say nothing about
12 appealing it.

13 Q. So you -- to the best of your knowledge,
14 you can't recall whether or not that was said
15 to you or not?

16 A. No, sir.

17 Q. Okay. Based on that, you've got certain
18 grounds that you -- I think one ground that
19 you've saying is that you were told by him that
20 you were going to get ten years.

21 A. He said that he was going to get me ten
22 years, after I had signed the plea.

23 Q. But you also -- and this was what I
24 wanted to see. He told you that after you'd
25 signed the plea?

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1 A. (Affirmative nod), I signed the plea.

2 Then like seven or eight months later, -- I'd
3 done had that plea accepted when like seven or
4 eight months later they served some more
5 warrants on me.

6 Q. So -- normally the way that it happens in
7 these cases is you plead guilty at some time
8 and then you defer sentencing. Okay?

9 A. Yes, sir.

10 Q. So in this case you signed the plea
11 agreement and it indicates that your range -- I
12 think it says, on the second page, I think it's
13 in here, let me see, (reviewing). Fifteen to
14 eighteen years, first paragraph. You knew that
15 was the range?

16 A. Yes, sir.

17 Q. You knew that was the range of the
18 sentence?

19 A. (Affirmative nod).

20 Q. So they were recommending that.

21 A. (Affirmative nod).

22 Q. So did he tell you that he was going to
23 -- I'm trying to understand how you came to
24 believe that you were getting ten years.

25 A. He told me to cooperate with them by

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1 testifying on the man, Clyde Davis, and that --
2 I had done did some work for SLED, I'd wore a
3 wire and made two buys for them, and he just
4 kept telling me to cooperate with them and that
5 he would get me under the fifteen. The morning
6 that we come up here, he told me that he was
7 going to get me ten years.

8 Q. This was for the sentencing?

9 A. Yes, sir.

10 Q. Before you signed the plea agreement,
11 you -- were you aware that you were getting a
12 recommendation of a sentence fifteen to
13 eighteen years?

14 A. Yes, sir.

15 Q. But still you signed it understanding --
16 you thought you were going to get ten years?

17 A. Yes, sir.

18 Q. At the time that you signed it, was he
19 telling you that you were going to get -- that
20 he was going to try to get you ten years?

21 A. Yes, sir.

22 Q. Okay.

23 MR. ARIAIL: Your Honor, I have no
24 further questions.

25 THE COURT: Mr. Washington?

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1 CROSS EXAMINATION

2 BY MR. WASHINGTON:

3 Q. Mr. Sekerchak, you had met with Mr.
4 Johnson multiple times before you actually went
5 to plead guilty.

6 A. Yes, sir.

7 Q. And I think you were probably still
8 locked up for some of them and then you had
9 made bail on some of the other ones?

10 A. No. I was in County the whole time.

11 Q. The whole time?

12 A. Yes, sir.

13 Q. So every time that he came, he came and
14 visited you in jail?

15 A. Right.

16 Q. During those meetings, you would be
17 allowed to ask him questions; isn't that right?

18 A. Yes, sir.

19 Q. And then, you know, if you didn't
20 understand something he would explain it to
21 you?

22 A. Yes, sir.

23 Q. And there was never an issue with that,
24 with him being like 'I'm not going to tell
25 you.'

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1 A. No, sir.

2 Q. You would be like 'I understand', and you
3 guys had talked about what you were going to
4 get, what the State was offering and that kind
5 of thing?

6 A. Yes, sir.

7 Q. I am going to show you this plea
8 agreement that we were talking about. When you
9 and your lawyer were meeting, you would go
10 through all the things that you were charged
11 with; correct?

12 A. He -- we talked about stuff.

13 Q. You ended up having like, I think, six or
14 seven charges that the state grand jury got you
15 with, some -- I think probably most of them
16 were drug cases?

17 A. Yes, sir.

18 Q. They were trafficking meth and -- you
19 knew that you were facing thirty years, twenty-
20 five years, all those kinds of things?

21 A. (Affirmative nod).

22 Q. Together you probably had almost a
23 hundred years, correct?

24 A. Yes.

25 Q. And you went and signed this plea

1 agreement here, correct?

2 A. Yes, sir.

3 Q. This is your signature back here?

4 A. Yes, sir.

5 Q. It's dated April 2012?

6 A. (Affirmative nod).

7 Q. Then your lawyer's signature, Mr.

8 Johnson, signed it the same day?

9 A. (Affirmative nod).

10 Q. Then this is the guy that was processing
11 you? Josh Underwood?

12 A. Yes, sir.

13 Q. It goes through each count and it says
14 that the State recommends a range of fifteen
15 years to eighteen years, right?

16 A. I never seen that.

17 Q. This is the plea agreement with your
18 signature on it?

19 A. All right, but I never see that though.

20 Q. You would have had to have seen it to
21 sign it, though; right?

22 A. I didn't know -- I don't know if I seen
23 that part or not.

24 Q. But in each part it does say that 'for
25 the offense, we're going to recommend fifteen

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1 to eighteen years.'

2 A. (No verbal response).

3 Q. And you ended up getting fifteen, so you
4 actually got the lower end of the range?

5 A. Yes, sir.

6 Q. Then after the plea agreement was signed,
7 you went in front of the judge to plead guilty,
8 right?

9 A. Yes, sir.

10 Q. During that time the Attorney General who
11 was prosecuting the case made the
12 recommendation on the record to the judge of
13 fifteen to eighteen years. Right?

14 A. Yes, sir.

15 Q. And the judge questioned you about that,
16 told you how much time you were facing without
17 a recommendation. For each charge he said
18 'you're facing fifteen to eighteen years' or
19 that kind of thing?

20 A. Yes, sir.

21 Q. Actually it probably would have been more
22 like twenty-five to thirty.

23 A. (No verbal response).

24 Q. And then he would -- he gave you a chance
25 to speak, said 'do you understand that?'

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1 A. Yes, sir.

2 Q. You never at any point corrected the
3 judge and said, "I thought that I was getting
4 ten."

5 MR. WASHINGTON: Nothing further,
6 Judge.

7 THE COURT: Anything further, Mr.
8 Ariail?

9 MR. ARIAIL: No, Your Honor.

10 (WITNESS STEPS DOWN)

11 THE COURT: Any additional testimony?

12 MR. ARIAIL: No, sir, Your Honor.

13 That's our case.

14 THE COURT: All right, this is in the
15 form of a Motion to dismiss and Return. First
16 of all, reading the plea agreement from April
17 20th, 2012, that is signed by Mr. Sekerchak, it
18 clearly shows that was getting fifteen to
19 eighteen years. That was in the -- in the
20 actual plead part, which was on the same day
21 before Judge Verdin, uh, that was also gone
22 through that he was getting that amount.

23 Then during the actual sentencing phase,
24 which was November 6th, 2013, it also is
25 indicated as the recommendation and it appears.

1 that Mr. Johnson argued very vigorously --
2 looking at pages six and seven of the
3 transcript he argued vigorously to get
4 underneath that fifteen to ten, but there was
5 still -- and there was discussion about all the
6 work that Mr. Sekerchak had done and that that
7 was the basis for going with the lower part of
8 the recommendation.

9 So, first I find that it was clearly
10 within the plea agreement. Second of all,
11 under South Carolina law if you sign something
12 it is presumed that you have read it and
13 understand it. It also waives the right to a
14 PCR.

15 So the Motion to dismiss is granted on
16 those two grounds; one to dismiss the
17 application on the merits and, also, as to the
18 fact that the PCR was waived.

19 Thank you, Mr. Sekerchak.

20 Mr. Washington, if you will draft an
21 Order to that effect.

22 MR. WASHINGTON: Yes, sir.

23 (HEARING CONCLUDED)

24

25

14

Hearing of October 21, 2015

Before The Honorable Perry H. Gravelly

Charleston, South Carolina
November 25, 2015

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF
 GENERAL SESSIONS FOR
 THE THIRTEENTH JUDICIAL CIRCUIT
 APR 20 2012
 JAMES R. PARKS
 CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA)
)
 -VERSUS-)
)
 BRIAN KEITH SEKERCHAK,)
)
 DEFENDANT.)

CASE NO.: 2011-GS-47-06
 (COUNTS I, XIII, XIV, XV, XVI, & XVII)

PLEA AGREEMENT

AGREEMENT made this 20th day of APRIL, 2012, between and among the State of South Carolina, as represented by Attorney General Alan Wilson, Assistant Deputy Attorney General Curtis A. Pauling, III, and Assistant Attorney General Joshua R. Underwood and the Defendant, and his attorney, Michael F. Johnson, Esquire.

1. The Defendant, Brian Keith Sekerchak, agrees to plead guilty to the offense of Trafficking in Methamphetamine 28-100 grams (Conspiracy), second offense, a violation of S.C. Code Ann. §44-53-375(C)(2)(b), a lesser-included offense of that alleged in Indictment Number 2011-GS-47-06 Count I, which carries a sentence range from seven (7) years to thirty (30) years, and a fine of fifty thousand dollars (\$50,000.00). The State will recommend a sentence range of fifteen (15) years to eighteen (18) years to run concurrently with the Defendant's sentences on Counts IX, X, XI and XII of said indictment. This is considered a violent and serious offense.

2. The Defendant, Brian Keith Sekerchak, agrees to plead guilty to the offense of Distribution of Methamphetamine, second offense, a violation of S.C. Code Ann. §44-53-375(B)(2) as alleged in Indictment Number 2011-GS-47-06 Count XIII, which carries a sentence range from five (5) years to thirty (30) years, and a fine of fifty thousand dollars (\$50,000.00). The State will

recommend a sentence range of fifteen (15) years to eighteen (18) years to run concurrently with the Defendant's sentences on the remaining counts of said indictment. This is considered a violent and serious offense.

3. The Defendant, Brian Keith Sekerchak, agrees to plead guilty to the offense of Distribution of Methamphetamine, second offense, a violation of S.C. Code Ann. §44-53-375(B)(2) as alleged in Indictment Number 2011-GS-47-06 Count XIV, which carries a sentence range from five (5) years to thirty (30) years, and a fine of fifty thousand dollars (\$50,000.00). The State will recommend a sentence range of fifteen (15) years to eighteen (18) years to run concurrently with the Defendant's sentences on the remaining counts of said indictment. This is considered a violent and serious offense.

4. The Defendant, Brian Keith Sekerchak, agrees to plead guilty to the offense of Distribution of Methamphetamine, second offense, a violation of S.C. Code Ann. §44-53-375(B)(2) as alleged in Indictment Number 2011-GS-47-06 Count XV, which carries a sentence range from five (5) years to thirty (30) years, and a fine of fifty thousand dollars (\$50,000.00). The State will recommend a sentence range of fifteen (15) years to eighteen (18) years to run concurrently with the Defendant's sentences on the remaining counts of said indictment. This is considered a violent and serious offense.

5. The Defendant, Brian Keith Sekerchak, agrees to plead guilty to the offense of Distribution of Methamphetamine, second offense, a violation of S.C. Code Ann. §44-53-375(B)(2) as alleged in Indictment Number 2011-GS-47-06 Count XVI, which carries a sentence range from five (5) years to thirty (30) years, and a fine of fifty thousand dollars (\$50,000.00). The State will recommend a sentence range of fifteen (15) years to eighteen (18) years to run concurrently with the

Defendant's sentences on the remaining counts of said indictment. This is considered a violent and serious offense.

6. The Defendant, Brian Keith Sekerchak, agrees to plead guilty to the offense of Distribution of Methamphetamine, second offense, a violation of S.C. Code Ann. §44-53-375(B)(2) as alleged in Indictment Number 2011-GS-47-06 Count XVII, which carries a sentence range from five (5) years to thirty (30) years, and a fine of fifty thousand dollars (\$50,000.00). The State will recommend a sentence range of fifteen (15) years to eighteen (18) years to run concurrently with the Defendant's sentences on the remaining counts of said indictment. This is considered a violent and serious offense.

7. The State, as consideration for the above-mentioned pleas of guilty, agrees to *nol-pros* the Defendant's charge of Possession With Intent to Distribute Methamphetamine, a violation of S.C. Code Ann. §44-53-375(B)(2) as alleged in Indictment Number 2011-GS-47-06 Count XVIII, which carries a sentence range from five (5) to thirty (30) years.

8. The Defendant, Brian Keith Sekerchak, agrees to fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of the importation, possession, and distribution of controlled substances and related unlawful activities. This cooperation is to include, but is not limited to, truthful and complete debriefings of the Defendant's knowledge concerning unlawful drug activities and related unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so, subject to

prosecution for perjury for not testifying truthfully. The failure of the Defendant to be truthful or to cooperate at any stage can cause the obligations of the State of South Carolina under this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the State under this Agreement become null and void due to the lack of truthfulness or cooperation on the part of the Defendant, the Defendant understands that: (1) the Defendant will not be permitted to withdraw his plea of guilty to the offense described above; (2) any and all additional charges known to the State may be filed in the appropriate county; (3) the State may argue for a maximum sentence for the offenses to which the Defendant has pled guilty; (4) the State may use any and all information and testimony provided by the Defendant in the prosecution of the Defendant for all charges; and, (5) the State may advise the Department of Corrections of the Defendant's status as an uncooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial level.

9. The Defendant, Brian Keith Sekerchak, understands and agrees that any and all assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign,

which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are the proceeds of unlawful drug activities or are directly or indirectly related to the unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, in portions to be determined by the South Carolina Attorney General, all conveyances, including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of controlled substances. By signing this Agreement, the Defendant consents to civil forfeiture of all assets currently in the possession of the government and further consents to civil forfeiture of all drug related assets seized by law enforcement agents in connection with this investigation.

10. The Defendant, Brian Keith Sekerchak, further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should he be requested to do so regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related or not. This Plea Agreement is expressly contingent upon successful completion, to the satisfaction of the State, of the polygraph examination(s).

11. The Attorneys for the State reserve the right to summarize all evidence, which would have been presented at trial to establish a factual basis for the plea.

12. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

13. The Defendant, Brian Keith Sekerchak, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, Brian Keith Sekerchak, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, Brian Keith Sekerchak, understands that he has a right to file a post conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post conviction relief action.

14. The Defendant, Brian Keith Sekerchak, understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws, and complying with the terms and conditions of this Agreement, both before and after sentencing, and any bond executed in this case. This Agreement in no way limits or affects the Defendant's potential exposure to further prosecution by any Solicitor's Office in the State of South Carolina or the United States Attorney for conduct which is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

15. The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void.

4/20/12
DATE

Brian Keith Sekerchak
Brian Keith Sekerchak
Defendant

4/20/12
DATE

Michael E. Johnson
Michael E. Johnson, Esquire
Attorney for Defendant

Alan Wilson
Attorney General of South Carolina

Curtis A. Pauling, III
Assistant Deputy Attorney General

4/20/2012
DATE

By: Joshua R. Underwood
Joshua R. Underwood
Assistant Attorney General
State Grand Jury

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

BRIAN K. SEKERCHAK, 174115

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-23-~~244~~ 5829

ORDER OF DISMISSAL

FILED-CERT. OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 OCT 23 PM 3 43

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Brian Sekerchak (Applicant) on September 12, 2014. The State (Respondent) made its return on February 12, 2015, requesting the application be summarily dismissed.

This Court convened a hearing on the State's motion to dismiss on October 21, 2015, at the Greenville County Courthouse. Applicant and his counsel, R. Mills Ariail, Jr., Esquire, were present at the hearing. LaRone K. Washington, of the South Carolina Attorney General's Office, represented Respondent. This Court had before it the State Grand Jury Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, the pleadings in this case, the plea agreement, and the notice of motion and motion for discovery and Brady and Kyle materials.

This Court grants Respondent's motion to dismiss this PCR application and issues the following findings:

THC

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. The Applicant was indicted at the December 2011 term of the State Grand Jury for one (1) count of Conspiracy to Traffic Methamphetamine, five (5) counts of Distribution of Methamphetamine, and one (1) count of Possession with Intent to Distribute Methamphetamine. Applicant was represented by Michael Johnson, Esquire.

On April 20, 2012, the Applicant pleaded guilty to one (1) count of Conspiracy to Traffic Methamphetamine Second Offense and five (5) counts of Distribution of Methamphetamine Second Offense. Applicant was sentenced by the Honorable Letitia Verdin to confinement for a period of fifteen (15) years. The Applicant did not appeal his convictions or sentences.

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

1. Ineffective assistance of counsel.
 - a. "I have never seen my Motion of Discovery. Only my lawyer says he's has it."
 - b. "My lawyer Michael F Johnson wasn't prepared enough for a case as big as this was dealing with SLED the state Grand Jury."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and heard arguments presented at the hearing. Set forth below are the relevant findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

A.

This Court finds Applicant's claims that he "never seen my Motion of Discovery. Only my lawyer says he's has it" and his "lawyer Michael F Johnson wasn't prepared enough for a

case as big as this was dealing with SLED the state Grand Jury" were waived. Applicant and his lawyer signed a plea agreement with the State of South Carolina recommending Applicant receive a fifteen year sentence. In this plea agreement, Applicant waived his right to post-conviction relief and appeal. Applicant claimed he did not remember signing the plea agreement nor did he review sections of the agreement. However, a competent person generally is presumed to have knowledge and understanding of a document he or she signs *In re King's Will*, 132 S.C. 63, 128 S.E. 850 (1925). Applicant's claim of ineffective assistance of counsel was waived by Applicant and must be dismissed with prejudice and State's motion to dismiss is granted.

This Court finds this application must be summarily dismissed.

III. CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations or deprivations requiring this Court to further entertain this application. Therefore, this Court dismisses this PCR application with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203(b)(1), SCACR. Pursuant to *Austin v. State*, Applicant has a right to the assistance of appellate counsel if he seeks review of the denial of this order denying PCR. If Applicant wishes to seek appellate review, counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71.1(g), SCRCP. Applicant is directed to South Carolina Appellate Court Rule 243 for appellate procedures.

IT IS THEREFORE ORDERED THAT:

1. Applicant's PCR application is denied and dismissed with prejudice;
2. State's motion to dismiss is granted; and
3. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22nd day of Oct, 2015.


PERRY H. GRAVELY
Presiding Judge

Greenville, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP2305049

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 23 PM 3 44

Brian Keith Sekerchak vs. South Carolina State Of

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;☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Perry H. Gravely

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
Greenville, SC 29601

LaRoné Kashod Washington PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

CASE NO. 2011-GS-47-06

vs.

ORIGINAL FILED

DEC 13 2011

**SUPERSEDING
INDICTMENT FOR
UNLAWFUL DRUGS**CLYDE BOWEN DAVIS,
NICHOLOUS COSALL DENDY,
AMY ELIZBETH BROCK,JAMES R. PARKS
CLERK, STATE GRAND JURYMICHAEL WAYNE ROBINSON,
BRIAN KEITH SEKERCHAK,
JOSHUA ELLIS BYERS,

DEFENDANTS.

Trafficking Methamphetamine

(Conspiracy)

S.C. Code Ann. § 44-53-375(C)(3)

(1 Count)

Distribution of Methamphetamine

S.C. Code Ann. § 44-53-375(B)

(15 Counts)

Exposing a Child to

Methamphetamine

S.C. Code Ann. § 44-53-378

(2 Counts)

Possession With Intent to Distribute

Methamphetamine

S.C. Code Ann. § 44-53-375(B)

(1 Count)

Trafficking Methamphetamine

10 - 28 grams

S.C. Code Ann. § 44-53-375(C)(1)

(1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on December 13, 2011 the State Grand Jurors present upon their oath:

COUNT I
TRAFFICKING METHAMPHETAMINE
(CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)(3)

That CLYDE BOWEN DAVIS, NICHOLOUS COSALL DENDY, AMY ELIZABETH BROCK, MICHAEL WAYNE ROBINSON, BRIAN KEITH SEKERCHAK, JOSHUA ELLIS BYERS, and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville County and Pickens County of South Carolina, during the period of time extending from on or about January 1, 2010 until November 8, 2011, conspire to sell, manufacture, deliver, purchase, or bring into this State, one hundred (100) grams or more but less than two hundred (200) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT II
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CLYDE BOWEN DAVIS did in Greenville County, on or about September 8, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT III
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That NICHOLOUS COSALL DENDY did in Greenville County, on or about October 26, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That NICHOLOUS COSALL DENDY did in Greenville County, on or about November 2, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT V
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That AMY ELIZABETH BROCK did in Greenville County, on or about August 30, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That AMY ELIZABETH BROCK did in Greenville County, on or about August 30, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VII
EXPOSING A CHILD TO METHAMPHETAMINE
S.C. Code Ann. § 44-53-378

That AMY ELIZABETH BROCK did in Greenville County on or about September 6, 2011 knowingly permit a child to be in an environment where a person was selling, offering for sale, or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture methamphetamine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VIII
EXPOSING A CHILD TO METHAMPHETAMINE
S.C. Code Ann. § 44-53-378

That AMY ELIZABETH BROCK did in Greenville County on or about September 6, 2011 knowingly permit a child to be in an environment where a person was selling, offering for sale, or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture methamphetamine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about February 23, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT X
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about March 3, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about July 27, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about August 17, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about June 23, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XIV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about January 27, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Pickens County, on or about March 15, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Pickens County, on or about June 1, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about August 16, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVIII
POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Pickens County, on or about August 30, 2011, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet or conspire to manufacture, distribute, dispense, deliver, or purchase or possess with intent to manufacture, distribute, dispense or deliver a quantity of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XIX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That JOSHUA ELLIS BYERS did in Greenville County, on or about April 16, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XX
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)

That JOSHUA ELLIS BYERS did in Greenville County, on or about July 30, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

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

A True Bill

Michael E. Earnheart
FOREMAN

Alan Wilson
ALAN WILSON
ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF

GREENVILLE

STATE

VS.

BRIAN KEITH SEKERCHAK

JAMES R. PARKS

CLERK, STATE GRAND JURY

AKA:

Race:

W

Sex:

M

Age:

42

DOB:

1969

SS#:

Address:

City, State, Zip:

DL#

SID#

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

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

TO: TRAFFICKING METHAMPHETAMINE, 28-100 GRAMS (CONSPIRACY) (2ND OFFENSE)

In violation of § 44-53-375(C)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 0389

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

ATTEST:

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, ☐ under the Youthful Offender Act not to exceed _____ years for a determinate term of 15 days/months/years or _____ days/months/years and or payment of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning
Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40

Clerk of Court/Deputy Clerk

Court Reporter:

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

STATE OF SOUTH CAROLINA

COUNTY OF

GREENVILLE

STATE

VS.

BRIAN KEITH SEKERCHAK

AKA:

Race:

W

Sex:

M

DOB:

1969

SS#:

Address:

City, State, Zip:

DL#

2

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DISTRIBUTION OF METHAMPHETAMINE (2ND OFFENSE)

In violation of § 44-53-375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3199

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

ATTEST:

Assistant Attorney General SC Bar # 76207

Defendant Brian Sekerchak

Attorney for Defendant

SC Bar # 7792

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 185 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
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\$14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$ 8.40
		\$ 288.40

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

Clerk of Court/Deputy Clerk

Court Reporter:

IN THE COURT OF GENERAL SESSIONS

FILED

JUL 10 2013

JAMES R. PARKS

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011 -GS- 47 - 06 COUNT XVII

A/V#: DIRECT PRESENTMENT

Date of Offense: 8/16/2011

S.C. Code §: 44-53-375(B)(2)

CDR Code #: 3199

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

GREENVILLE

NOV 06 2013

STATE

VS.

JAMES R. PARKS

INDICTMENT/CASE#: 2011 -GS- 47 - 06 COUNT XVI

BRIAN KEITH SEKERCHAK

CLERK, STATE GRAND JURY

A/W#:

DIRECT PRESENTMENT

AKA:

Date of Offense: 6/1/2011

Race: W

Sex: M

Age: 42

S.C. Code §: 44-53-375(B)(2)

DOB: 1969

SS#:

CDR Code #: 3199

Address:

City, State, Zip:

DL#

* SID#

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

In disposition of the said indictment comes now the Defendant who was TO: DISTRIBUTION OF METHAMPHETAMINE (2ND OFFENSE)

☐ CONVICTED OF or ☒ PLEADS

In violation of § 44-53-375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3199

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

John R. Williams 76207 *Brian Sekerchak*
Assistant Attorney General SC Bar # Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*, the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on 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

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	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40

Clerk of Court/Deputy Clerk *James R. Parks*
Court Reporter: *Gerene Johnson*

SCCA/217 (03/2011)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning \$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Deferred Sentence
Presiding Judge *2162*
Judge Code: *2162*
Sentence Date: *4/20/12*

2162
11/1/12

STATE OF SOUTH CAROLINA

COUNTY OF

GREENVILLE

STATE

VS.

BRIAN KEITH SEKERCHAK

JAMES R. PARKS
CLERK, STATE GRAND JURY

AKA:

Race: W Sex: M Age: 42

DOB: 1969 SS#: [REDACTED]

Address:

City, State, Zip:

DL#

* SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DISTRIBUTION OF METHAMPHETAMINE (2ND OFFENSE)☐ CONVICTED OF or ☒ PLEADS

In violation of § 44-53-375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3199

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

John R. Johnson 76207
Assistant Attorney General SC Bar #Brian Sekerchak
Defendant[Signature] 7792
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on 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: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
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Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk

Presiding Judge

Judge Code:

Sentence Date

Clerk of Court/Deputy Clerk
Court Reporter: Terese Johnson

11/14/13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

FILED

GREENVILLE

STATE

NOV 06 2013

INDICTMENT/CASE#: 2011 -GS- 47 - 06 COUNT XIV

VS.

BRIAN KEITH SEKERCHAK

JAMES R. PARKS

AKA:

Race:

W

Sex: M

DOB:

1969

SS#:

Address:

City, State, Zip:

DL#

* SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DISTRIBUTION OF METHAMPHETAMINE (2ND OFFENSE)

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ATTEST:

76207

Brian Sekerchak

Attorney for Defendant

SC Bar #

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Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)		\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
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\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation

Presiding Judge

Judge Code:

Sentence Date

Clerk of Court/Deputy Clerk
Court Reporter:James R. Parks
Teresa Johnson

SCCA/217 (03/2011)

11/6/13

STATE OF SOUTH CAROLINA

COUNTY OF

GREENVILLE

STATE

FILED

NOV 06 2013

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011 -GS- 47 - 06 COUNT XIII

A/W#: DIRECT PRESENTMENT

Date of Offense: 6/23/2010

S.C. Code #: 44-53-375(B)(2)

CDR Code #: 3199

SENTENCE SHEET

BRIAN KEITH SEKERCHAK

VS. JAMES R. PARKS

CLERK, STATE GRAND JURY

AKA:

Race: W Sex: M Age: 42

DOB: 1969 SS#: [REDACTED]

Address:

City, State, Zip:

DL# * SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DISTRIBUTION OF METHAMPHETAMINE (2ND OFFENSE)☐ CONVICTED OF or ☒ PLEADS

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ATTEST:

Assistant Attorney General. 76207 SC Bar #

Defendant

Attorney for Defendant

SC Bar #

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PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

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May serve W/E beginning

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§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCJA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)		\$	
TOTAL		\$	280.40

Clerk of Court/Deputy Clerk

Court Reporter: James R. Parks

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date