

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Roger M. Young, Circuit Court Judge

RECEIVED

JUN 20 2016

SC SUPREME COURT

ARTEASA M. WHITLOCK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-00001

A P P E N D I X

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

THE STATE)
-vs-) TRANSCRIPT OF RECORD
ARTEASA MAURICE) 2004-GS-46-01845
WHITLOCK,) 2004-GS-46-01846
JUNE 6, 2013
YORK, SOUTH CAROLINA
DEFENDANT.

B E F O R E :
THE HONORABLE LEE S. ALFORD, JUDGE.

A P P E A R A N C E S :
MISTY SHELTON, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE
TWANA BURRIS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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(NO EXHIBITS MARKED)

(PROCEEDINGS, JUNE 6, 2013)

MS. SHELTON: May it please the court, Your Honor?

THE COURT: Solicitor.

MS. SHELTON: This is Arteasa Whitlock. He was tried in front of Your Honor I believe in 2005 for a trafficking, third offense, and a possession with intent to distribute crack cocaine within proximity of a park. At that time he was represented by Jim Morton's office. He was found guilty during that trial and sentenced and Your Honor gave a sealed sentence.

He was -- the bench warrant was issued. We were unable to locate Mr. Whitlock.

He was arrested and served time with -- in federal time, starting in 2009. We tried to get it worked out to get him here while he was in federal custody. We were unable to get that worked out. They never officially -- we never got the bench warrant served while he was in custody, but once he was released from federal custody, after some talking with Ms. Burris about the case, he eventually turned himself in voluntarily where the bench warrant was served at that point and he's here before you today to be sentenced.

THE COURT: All right.

Counsel?

MS. BURRIS: Thank you, Your Honor. May it please the court?

1 THE COURT: Yes.

2 MS. BURRIS: Standing to my right is Mr. Arteasa
3 Whitlock. He is thirty-three years of age. He has six
4 children; four sons and two daughters.

5 The opening of the sealed sentence today arises
6 from a trial, as was previously stated, in 2005.

7 I submit to the court that during that particular
8 time I was also -- just to be candid with the court, in 2005
9 I was an employee of the York County solicitor's office. I
10 was assistant solicitor; however, I was not involved in the
11 case at all. I did not receive any privileged information
12 that would -- any qualifying or non-qualifying information
13 that would be a conflict of interest for me or either Mr.
14 Arteasa Whitlock. I have also notified him of that and he
15 has also signed documentation as to that, informed him
16 since.

17 I have a couple of issues to address, Your Honor.

18 Understanding that South Carolina requires that,
19 number one, he receive notice of his right to be present and
20 was warned he would be tried in his absence, we do not have
21 any paperwork, other than we did actually have an e-mail
22 from this court and indicated the date of the trial and that
23 she made attempts to reach the bondsman. I did not have any
24 additional information from his attorney. However, I did
25 actually have the opportunity to review Mr. Morton's file.

1 I know that during this particular time Mr.
2 Whitlock tells me that initially David Woods, now current
3 Judge Woods, was representing him, and then he transitioned
4 out of that office. Judge Woods, of course, was elevated to
5 the bench, and then that's when I think Mr. Morton then took
6 over the file. So he did indicate to me there was some
7 miscommunications there, but to the extent of that I'm not
8 sure. I did speak with Mr. Morton personally and he did not
9 actually remember the case. However, he was able to go in
10 archives and pull up the file and give it to me.

11 He was arrested in 2000 -- Arteasa Whitlock was
12 actually arrested in 2009 by the Federal Government for
13 other unrelated charges and he was sentenced to a total of
14 forty-seven months. He fully cooperated with the Federal
15 Government.

16 He also engaged in what we call substantial
17 assistance, which is a Five-K Motion, where he provided
18 substantial information in regards to two major drug
19 trafficking organizations to the Federal Government.

20 I also received an e-mail from the Federal
21 Government indicating that oftentimes when Arteasa Whitlock
22 was actually in the federal prison he would notify them of
23 unprofessional conduct that was going on with staff.

24 He was also notifying them in regards to federal
25 inmates and some of the crimes they were committing.

1 So what the e-mail indicated was that Arteasa
2 Whitlock contributed majorly to keeping the jail safe, or
3 the federal prison safe, and they just wanted me to make
4 sure that I communicate that to the courts.

5 Your Honor, also at that particular time, as
6 stated by Ms. Shelton, Mr. Whitlock did have -- South
7 Carolina had a detainer on Mr. Whitlock. Once they were
8 notified of his immediate release by Pennsylvania, they
9 refused to pick him up. I know that numerous times I would
10 e-mail Ms. Merry Collins in regards to my understanding that
11 he will be released at this time, but he got actually got
12 released early from the Federal Government. And knowing
13 when he was going to be released, I was notifying Merry.

14 And one of the -- an additional reason why I was
15 notifying her is because I wanted to make sure that his
16 sentences were run concurrent, because, of course, he would
17 have needed to come to South Carolina to be sentenced. And
18 then my understanding is that the state sentence and the
19 federal sentence could actually be run concurrent. However,
20 I know specifically that Merry Collins was trying to contact
21 the appropriate agencies to try to get this done, to get
22 Arteasa Whitlock transported to South Carolina so we could
23 get him sentenced so he could actually get credit in South
24 Carolina for the time he was actually spending in the
25 Federal Government and she was not able to do this. I have

1 spoke with Merry numerous times to try to get this done.
2 However, apparently South Carolina -- or they we weren't
3 interested in transporting him here.

4 THE COURT: Didn't we -- didn't we sentence him
5 first?

6 MS. BURRIS: He was actually sentenced here, yes,
7 sir, in 2005. Well, he was sentenced in 2005.

8 THE COURT: Yeah, March the 2nd.

9 So he already had been sentenced here before he
10 got sentenced by the federal prison, right?

11 MS. BURRIS: Right, but my understanding is based
12 on some case law that he still could -- the sentences still
13 could run concurrent, as long as in the -- well, I guess the
14 State would have had to actually indicate that the time was
15 to run concurrent, but at that time he had not actually been
16 in --

17 THE COURT: Couldn't run it concurrent, because he
18 wasn't serving any -- he wasn't serving any federal sentence
19 and didn't have any pending at that time, as I understand
20 it, did he, or did he?

21 MS. SHELTON: He did not, Your Honor. That's --
22 the federal charges were not until 2009, after he had been
23 missing from the State of South Carolina for four years.

24 THE COURT: Yeah. There is no way I could run
25 this concurrent to a federal sentence when that didn't --

1 the federal sentence didn't even occur until years later.

2 They could have run theirs concurrent to the state
3 sentence imposed --

4 MS. BURRIS: Uh-huh.

5 THE COURT: -- but I don't think I could run it
6 concurrent to the federal.

7 MS. BURRIS: No, they -- well, based on Robinson
8 v. The State of South Carolina, states could actually run it
9 concurrent with any state sentence. It says he would be
10 entitled to credit against the state sentence for time spent
11 in federal incarceration.

12 THE COURT: Yeah, that would be -- wouldn't that
13 be a Federal Court decision, not --

14 MS. BURRIS: Yes, sir. Yes, sir.

15 THE COURT: They could have done that. If they
16 were the second sentence, they could have run it concurrent.
17 We are the first sentence. I don't think we can run it
18 concurrent, particularly --

19 MS. BURRIS: When you don't have a sentence.

20 THE COURT: -- when it's not even anticipated at
21 that time.

22 Now, if somebody has got charges pending against
23 them on the feds and they come back, we can make it -- go
24 ahead and make it concurrent with whatever sentence they
25 might receive on this pending charge when they are taken

1 from here to there. This didn't occur until years later,
2 correct?

3 MS. BURRIS: Right.

4 THE COURT: So there is no way we could have done
5 that.

6 MS. BURRIS: Right, but the federal could have
7 sentenced -- could have made his state sentence run
8 concurrent to theirs. They could have.

9 THE COURT: They could have made the federal
10 sentence run --

11 MS. BURRIS: -- concurrent to the State.

12 THE COURT: Yeah.

13 MS. SHELTON: Had it been imposed in 2005, when he
14 was convicted, or any time before 2009.

15 MS. BURRIS: Right, but they wouldn't transport
16 him, so we couldn't get it imposed.

17 MS. SHELTON: Had his sentence been imposed in
18 2005, he wouldn't have -- most likely would not have been
19 out to be arrested by the Federal Government.

20 MS. BURRIS: I guess what I'm saying, Your Honor,
21 is because the State of South Carolina, of course, had a
22 detainer, he didn't ever fight extradition or anything like
23 that.

24 Had the agency actually transported him in South
25 Carolina to be sentenced and then sent him back to federal

1 incarceration, the Federal Court could have run the sentence
2 concurrent.

3 And so there wasn't anything that Arteasa Whitlock
4 did. It's just that the agency here in the State of South
5 Carolina didn't bring him before the courts so that they
6 could impose the sentence, so that then he would have gone
7 back to the Federal Government so that the Federal Courts
8 could have imposed that sentence and run it concurrent.

9 And my understanding is -- I mean, I have done the
10 calculations of the time served, of which Arteasa Whitlock
11 has actually served, and it's a total of 1,496 days.

12 My understanding from the assistant solicitor is
13 that she would not oppose to the courts giving him credit
14 for the time served. I have done the calculation. I do
15 have some of his federal -- I know for sure that the dates
16 are accurate, because I have some of his federal paperwork
17 that I was able to get from the federal system.

18 He did -- he spent -- York County detention
19 center, of course, when he first got arrested in 2004,
20 February 27th, 2004, to February 28th, he spent one day. I
21 did use that in the computation of the time served.

22 When he -- as he was awaiting the sealed
23 sentenced, he turned himself in. He voluntarily turned
24 himself in to York County detention center. That was
25 forty-four days.

1. And then the federal detention center March 3rd,
2 2009, to February 21st, 2013, he spent 1,461 days.

3 So that's 1,496 days that he spent, and I would
4 ask for time served on that.

5 MS. SHELTON: Your Honor, I told Ms. Burris I
6 would not take a position. I don't think that it's
7 appropriate to call it running it concurrent, because I
8 don't think you can run the sentences concurrent. I told
9 her I would not take a position, if the court thought that
10 it was appropriate to give him credit for those days.

11 MS. BURRIS: Right.

12 MS. SHELTON: I don't think it's a concurrent
13 sentencing issue, but once we learned he was in federal
14 custody, and I cannot tell the court when that was. I don't
15 think it was as early as 2009. I'm not sure when he
16 retained Ms. Burris. I was not working in this office at
17 that time.

18 I know that Merry Collins with our office and
19 Teasa Weaver both made attempts to get information from the
20 feds about his sentence and about trying to make
21 arrangements to get him transported here and they didn't
22 have any luck with the feds. And when the feds were done
23 with him, they I think contacted law enforcement here to
24 transport him and we did not do that. No one contacted the
25 solicitor's office, as far as I know about that, but he did

1 turn himself in voluntarily and he did serve that time in
2 federal prison while awaiting the sentencing on these
3 issues, on these cases, so I don't take a position to -- if
4 the court wishes to give him credit for that time.

5 MS. BURRIS: And Ms. Shelton is exactly right in
6 the sense that she said it's not concurrent. It's just that
7 he's actually served that time. He's completed that time in
8 the Federal Government, so it's not a concurrent issue.
9 It's a confrontation, so I'm just asking for credit for time
10 served.

11 I actually do have proof from the Federal Courts
12 in regards to the 2009, so I can definitely pass that up to
13 the court, Your Honor.

14 Also, in addition, which you need to consider here
15 is he was being federally indicted on February 18th, 2009,
16 but the time that I used was March 3rd, 2009, because the
17 PACES System told me March 3rd, 2009. That would have
18 actually give him some more time for credit for time served.

19 Okay. And if I may continue, Your Honor, Mr.
20 Whitlock, of course, throughout this process has suffered a
21 lot of shame and humiliation on his wife when he was
22 released by the Federal Government, of course, because South
23 Carolina would not actually transport him back, or they
24 wouldn't actually go get him. He never, of course,
25 contested extradition.

1 THE COURT: Let me ask you this. Once he was
2 released, was there anything stopping him from driving back
3 down here and turning himself in?

4 MS. BURRIS: What I was going to tell you, Your
5 Honor, what he did, he actually got a job quickly and then
6 what he did was got transportation to get down here, because
7 he needed transportation. He needed some money, so he did
8 get a job to live. And then as soon as he got enough money
9 to get down here, he did that. So --

10 THE COURT: How much does it cost for a bus fare
11 down here? At that time sixteen bucks, or something?

12 There is no reason why he couldn't have come on
13 down here if he knew this was outstanding.

14 MS. BURRIS: While he was in --

15 (Off the record)

16 (Back on the record)

17 MS. SHELTON: Your Honor, may I -- at the
18 beginning when Ms. Burris was speaking, it seemed as though
19 that she was alluding that he was not given notice for the
20 trial. And if she is, I would like for her to say that
21 plainly and let me address whether or not he was noticed for
22 the trial.

23 MS. BURRIS: Your Honor, I can't explicitly state
24 exactly what he and his attorney did, but I do know that I
25 did see in the file an e-mail from Ms. Shelton stating that

1 this case was going to be set for trial on this date, and
2 she indicated -- I think she was telling his attorney to
3 notify him. That's what I do know, but I don't know exactly
4 what the attorney communicated to Arteasa Whitlock, because,
5 again, I wasn't involved.

6 MS. SHELTON: And I guess I'm saying if he is
7 saying he was not notified? And if he is, I think that
8 needs to be placed on the record so that I can address that.

9 MS. BURRIS: Sure.

10 I know that he told me that there was some
11 miscommunication between he and, again, Judge Woods, and at
12 that time Judge Woods was leaving and that's when Mr. Morton
13 took over.

14 And the file did indicate initially I know the
15 preliminary hearing and some of the prior communications
16 with the solicitor's office was with Judge Woods. And then
17 it looks like Mr. Morton was the one who actually tried the
18 case.

19 As far as timing, I'm not sure. Maybe this is
20 something that Mr. Whitlock can address briefly.

21 THE COURT: He don't need to address it much. He
22 might say whether he got notice or not. I do not go forward
23 with a trial in absence, unless I make sure all the ducks
24 are in a row. I don't like trials in absence and I will not
25 go forward with one, unless I know the person received

1 notice and knows they were supposed to be here and they
2 deliberately do not show up or refuse to cooperate and
3 contact their attorney when the attorney is trying to get
4 them to come in. I don't start one until I go through all
5 of those steps. We have to go over the bond form that told
6 him if he wasn't here, he is going to be tried in his
7 absence, number one. That's usually put on the record. I'm
8 assuming that was probably done in this case. I send the
9 bailiff out to ask. I ask the attorneys. The attorney puts
10 the position on the record. That should be part of the
11 record. I don't know if we can get a transcript at this
12 late date or not.

13 MS. BURRIS: I tried, Your Honor, and the
14 transcript had actually been deleted and expunged.

15 THE COURT: Because it's been so long. That's his
16 fault.

17 Now, the thing is -- because he didn't come in
18 when this happened. He went years before he picked up
19 federal charges when he was absconded. He knew this was
20 outstanding. He knew that he had been tried and convicted.
21 He knew that there was a sealed sentence here and knew there
22 was a bench warrant out for him. I'm sure they were trying
23 to pick him up. They had the known address. They couldn't
24 find him. He absconded. That's his problem. I mean, he
25 should have -- if he would have come in at that time,

1 because, you know, he could have dealt with it. That fact
2 that there was no transportation.

3 But I can tell you for sure that I do not go
4 forward with a trial in absence, unless I go through all of
5 the steps I'm required to to prove that the person had
6 notice and they did not show up, did not -- refused to
7 contact their attorney, or when the attorney told them to be
8 here and they knew they were supposed to be here and they
9 didn't come in. And so I don't do it. I don't go forward
10 with it. If I have a question about that, I will not
11 proceed in a trial in absence. I'll continue it and let
12 them give the notice and that. So that's always been my
13 policy, because I don't want to go forward with a trial in
14 absence. I prefer to have the defendant here who is charged
15 so he can participate in his trial, and so I will not go
16 forward, unless I make sure that the person is deliberately
17 not attending his trial with notice.

18 MS. BURRIS: And with due diligence, Your Honor,
19 what I did is when I looked at the clerk's file, again, I
20 don't have a transcript. However, the clerk does take notes
21 throughout the trial and they did indicate that the bailiff
22 went outside and called the name of the defendant. That's
23 to the extent of the information that I did have. Again, I
24 don't know the communication, but I do know --

25 THE COURT: Standard operating procedure. I'm

1 telling you what I do in every single case, okay, and I did
2 in his case.

3 It's his fault that we don't have the transcript
4 so I can show you right where I did to what findings were
5 made on the record and that. If I had it, I could show you
6 that I followed the same procedure I follow in every other
7 case. And the law is that it's presumed to have been done
8 correctly if you don't have the transcript, okay?

9 MS. SHELTON: And, Your Honor, just from my notes,
10 I sent an e-mail to Mr. Morton on February 4th, which was a
11 Friday. He had a -- and per that e-mail he had a meeting
12 scheduled with Mr. Whitlock for that following Monday. That
13 would have been February the 7th, where I said "let me know
14 how that meeting goes. If he doesn't wish to plead, then I
15 will schedule the trial for February 28th."

16 Then I had a followup e-mail to that one that
17 says -- that just notified Mr. Morton that I was scheduling
18 it for trial for February 28th; that I had spoken with Mr.
19 Adams, Chauncey Adams, who was Mr. Whitlock's bondsman, and
20 Mr. Adams said that he was aware that Mr. Whitlock was
21 running, that he could not find him and was not able to find
22 him, that he would continue to look for him up until that
23 February 28th term.

24 I informed Mr. Morton that should Mr. Whitlock not
25 show up, that we would go forward as a TIA and that I was

1 planning to go forward with it as a third offense, instead
2 of a second offense, but that if Mr. Whitlock showed up, I
3 would still allow him to plead to a second offense, and that
4 was sent prior to the February 28th trial date.

5 And Mr. Morton -- I do believe from having many
6 trials with Your Honor, had he told Your Honor that he had
7 not notified Mr. Whitlock, we would not have gone forward
8 with the case. So even though we don't have a transcript, I
9 would allege that Mr. Morton did not put that on the record.

10 MS. BURRIS: And, Your Honor, if I may continue,
11 while he was actually in federal custody at Eastern District
12 of Pennsylvania, he received his diploma from Commonwealth
13 Department of Education.

14 He completed courses throughout the American Bible
15 Academy and received numerous awards of distinction from the
16 federal detention center.

17 He took classes in anger management and stress
18 management. He did extraordinary work, according to himself
19 and according to his federal file.

20 He was a rec aid volunteer where he put in
21 thousands of hours, even in a two year period.

22 So according to the record that I read, this
23 indicated that he made substantial steps in reforming
24 himself to better protect the public.

25 We, again, are asking for credit for the time

1 served in the federal detention center on his state
2 sentence.

3 The only other issue, Your Honor, I have to be
4 resolved is -- and I know it doesn't actually become an
5 issue until the opening of the sealed sentence, and the
6 issue that I do have is in regards to his prior -- again, we
7 don't have a transcript, but we have two prior convictions
8 used for the purpose of enhancement on whether or not, you
9 know, they should be treated as one or two separate offenses
10 for enhancement.

11 What I was able to pull was the sentencing sheet
12 and they happened as the date of offense was in 2001. It
13 was February 2nd, 2001, and then February the 6th of 2001,
14 which is four days apart.

15 It's the typical, -- when I initially looked at it
16 and I confirmed it with Mr. Whitlock, it was the typical
17 case. It was distribution of crack cocaine where it looked
18 like there was actually a buy with a confidential informant
19 and then the execution of the search warrant, and then, of
20 course, going into the home to --

21 THE COURT: Let me ask you this. Are you saying
22 that shouldn't have been a third, it should have been a
23 second?

24 MS. BURRIS: That is my position.

25 THE COURT: It was treated -- I got news for you.

1 It was treated as a second. That's what I got on the
2 sentencing sheet.

3 MS. SHELTON: And I told Ms. Burris I could not
4 remember. I know that we litigated this issue and I knew
5 that at least in one of my trials with Your Honor that you
6 took the position that since he pled on the same day, that
7 you would not treat them as separate offenses.

8 THE COURT: There is a disagreement about that
9 between some judges to that effect.

10 I treated it as a second, on the sentencing sheet
11 as a second.

12 MS. BURRIS: Okay.

13 THE COURT: So you don't have to worry about that.

14 MS. BURRIS: Thank you, Your Honor.

15 And respectfully, Your Honor, he is actually
16 supported in the courtroom by his aunt, his cousin, as well
17 as his fiancé.

18 And, again, we would just ask for credit for time
19 served on the trafficking crack, second, and the PWID within
20 proximity of a school or park.

21 Thank you very much.

22 MS. SHELTON: Your Honor, and just for the record,
23 Mr. Whitlock, after being arrested for the trafficking
24 charge, was arrested for a subsequent distribution charge.
25 That was dismissed at the time of the trial, based on the

1 fact that he wasn't here any more and there wasn't any
2 purpose in keeping it pending. I don't -- the State at this
3 point has no intention of restoring that case.

4 THE COURT: Well, let me tell you, I don't have to
5 give him credit -- in my opinion, I don't have to give him
6 credit for anything but forty-five days. That's all I have
7 to give him credit for, but I hear what you are saying about
8 what he did while he was in federal prison, and I hear what
9 you said about it, but I think the State would have tried to
10 get him back here to dispose of this charge if they could
11 have gotten him back, but the federal folks all don't always
12 cooperate with them, and it's up to them whether they are
13 going to release him out of their custody to come back here
14 or not. Sometimes they will and sometimes they won't. I
15 don't understand all that. Sometimes they won't, so I don't
16 know what happened in his case. I don't know if they
17 refused to do it, refused to release custody back to them
18 and couldn't get that worked out and -- or, you know, the
19 State didn't really try too hard to get him back because of
20 that, maybe, because they already had a sealed sentence
21 anyway. And so -- because he wasn't here, so -- but, in any
22 event, I don't have to give him credit for that time, but
23 I'm going to give him credit for those days, and that's --
24 and that's quite a concession here.

25 MS. BURRIS: Yes, sir.

1 THE COURT: 1,496 days, that's -- you are talking
2 about, what, about four and a half years worth of time that
3 I'm giving him, giving him credit for these days.

4 But I take into consideration all that, the fact
5 that if it could have been worked out and the sentence
6 imposed, it could have been run concurrent, but they
7 couldn't get it worked out, so I'm going to give him credit
8 for that.

9 MS. BURRIS: Thank you, Your Honor.

10 THE COURT: Mr. Whitlock, anything that you want
11 to say to the court?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Yes.

14 THE DEFENDANT: I just want to apologize, first of
15 all, to the court, to my family for putting them through
16 this, for making a dumb mistake. I just truly and sincerely
17 apologize for it, Your Honor.

18 THE COURT: Sometimes we get wise as we get a
19 little older and have problems, but, in any event, at that
20 time --

21 Of course, what was going on at that particular
22 time, you know, you were sentenced accordingly and that
23 sentence has been on the record and I can impose that
24 sentence on -- I wrote the sentence. I haven't imposed it.
25 I'm imposing it today, but I wrote the sentence on March the

1 2nd, 2005, which was some more than eight years ago, what
2 were you doing at that time regarding the charge.

3 So in case number -- and I'm reading to you what
4 the sentence already is. I'm again giving you credit for
5 your time.

6 Case number 2004-GS-46-1846, Arteasa Whitlock,
7 having been convicted in a trial in absence by a jury of
8 trafficking crack cocaine of more than ten grams, but less
9 than twenty-eight grams, second drug offense, the sentence
10 of the court is to be committed to the State Department of
11 Corrections for a determinate term of eighteen years.

12 This sentence is concurrent to the sentence in
13 04-GS-46-1845.

14 He is given credit for time served of 1,496 days.

15 MS. BURRIS: Thank you, Your Honor.

16 THE COURT: Case number 2004-GS-46-1845, Arteasa
17 Whitlock, having been convicted of possession with intent to
18 distribute crack cocaine within proximity of a park by a
19 jury, the sentence of the court is to be committed to the
20 State Department of Corrections for a determinate term of
21 ten years.

22 Now, this sentence is concurrent to the sentence
23 in 04-GS-46-1846.

24 And, again, he's given credit for the 1,496 days
25 in jail on these two charges.

1

MS. BURRIS: Thank you, Your Honor.

2

MS. SHELTON: Thank you, Your Honor.

3

(END OF REQUESTED TRANSCRIPT OF RECORD)

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1 CERTIFICATE

2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Sixteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for YORK County, South Carolina, on the 6th
9 day of June, 2013.

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

12
13
14 September 20, 2013

15
16
17 Michael R. Watts

18 Michael R. Watts
19 Circuit Court Reporter
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

ARTEASA MAURICE WHITLOCK, SCDC#277009)

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

v.)

State of South Carolina)
ALAN WILSON, ATTORNEY GENERAL)
STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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 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 BROAD RIVER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GENERAL SESSION YORK COUNTY
3. Name(s) of co-defendant(s) (if any) HENDRICK ANTONIO COUSAR
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) TRAFFICKING IN CRACK COCAINE 2004-GS-46-1846
 - (b) POSSESSION WITH INTENT TO DISTRIBUTE COCAINE 2004-GS-46-1845
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) TRAFFICKING 18 YEARS 3/2/2005 ^{aw} 6/6/2013
 - (b) POSSESSION W/I 10 YEARS 3/2/2005 ^{aw} 6/6/2013

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty FOUND GUILTY
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. CONVICTION AFFIRMED
- 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) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

(a) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

(b) _____

(c) _____

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

(a) SEE ATTACHMENT

(b) SEE ATTACHMENT

(c) _____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. N/A _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A _____
 - ii. _____
 - iii. _____
 - iv. _____

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

NO

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

- (a) which grounds have been presented:

- i. NONE _____
- ii. _____
- iii. _____

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

- i. NONE _____
- 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) POST CONVICTION IS THE AVENUE TO RAISE THESE ISSUES _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

- (a) the name and address of each attorney who represented you:
- i. JIM MORTON, ATTORNEY AT LAW P.O. BOX 707, ROCK HILL 29731 (Trial Counsel)
 - ii. BENJAMIN JOHN TRIPP, APPELLATE COUNSEL P.O. BOX 11589-COLA., S.C.
 - iii. Twanna Burris 204 Johnson St Rock Hill, SC 29730 (Sentencing)
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
 - ii. APPEAL
 - iii. Sentencing

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

NEW TRIAL/SENTENCE VACATED

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

NO^{aw} YES

STATE OF SOUTH CAROLINA)

County of YORK)

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.

Arteasa Maurice Whitlock
ARTEASA MAURICE WHITLOCK, SCDC#277009

SWORN to and subscribed before me this 15th
day of July, 2014.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires: 12/31/13

**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:

Artisan Bookshop
Applicant

Applicant

SWORN or affirmed to and subscribed before me this

15th day of July, 2014.

Susan H. Frye
Notary Public

Notary Public

Commission Expires
March 5, 2018

My Commission Expires: _____

ATTACHMENT 10 (a)

"INEFFECTIVE ASSISTANCE OF COUNSEL"

"TRIAL COUNSEL FAILURE TO KNOW THE LAW OF THE CASE RENDER COUNSEL'S ASSISTANCE INEFFECTIVE"

COUNSEL KNEW THE REASONS THAT APPLICANT WAS NOT PRESENT FOR TRIAL AND DID NOT PROVIDE THE COURT WITH THOSE FACTS. THOSE FACTS WOULD HAVE ALLOW THE COURT TO ASCERTAIN WHAT RULING TO MAKE IN RESPECT OF THE APPLICANT ABSENCE.

THE SOUTH CAROLINA COURT OF APPEALS HAVE RENDER A RULING IN APPLICANT CASE WHICH WOULD IS A MISAPPREHENSION OF THE LAW OF THE CASE. (SEE ATTACHED COURT RULING). THE FULL FACTS OF THE APPLICANT'S CASE WILL BE DEVELOPED AS THE WITNESSES TESTIFY AT THE (PCR) HEARING AND THE COURT WILL THEN HAVE THE OPPORTUNITY TO SURRENDER A JUST DEISION.

THE APPLICANT ALSO RESERVE HIS RIGHT TO AMEND HIS APPLICATION PRIOR TO ANY HEARING AND UPON THE APPOINTMENT OF COUNSEL AND FOR SUCH OTHER RELIEF THE COURT DEEMS JUST FAIR AND PROPER.

"INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL"

" APPELLATE COUNSEL RENDER INEFFECTIVE ASSISTANCE BY COUNSEL'S FAILURE TO PROVIDE THE COURT WITH A FULL RECORD ON APPEAL.

AS A RESULT OF APPELLATE COUNSEL'S FAILURE TO ALERT THE APPEALS COURT TO THE LOWER COURTS INCORRECT RULINGS, CAUSED THE LOWER COURT DECISION TO BE CONSIDER AND DECIDED UPON A IMPROPER BASIS. THE COURT SHOULD HAVE KNOW THAT THE TRIAL COURT MAY HAVE OVERLOOKED OR MISAPREHENDED THAT IT'S DECISION WAS NOT IN UNIFORMITY OF THE HIGHER COURTS DECISION.

THE LOWER COURT KNEW THAT APPLICANT WAS ARRESTED BY THE FEDERAL GOVENMENT ON UNRELATED CHARGES ON FEBRUARY 27, 2009. DURING THAT TIME SOUTH CAROLINA KNEW WHITLOCK'S WHERE ABOUTS AND WASN'T INTERESTED IN TRANSPORTING WITHLOCK BACK TO SOUTH CAROLINA TO GET SENTENCE IMPOSED BEFORE THE RULE 607 (i) OF SCACR LIMITATIONS RAN OUT. THEERFORE, THE QUESTION OF JURISDICTION EXIST AS TO THE STATES WAIVER OF THE APPLICANT CHARGES. THIS WOULD ALSO BE AN ISSUE TO BE CORRECTED AT (PCR).

THE APPLICANT ALSO RESERVE HIS RIGHT TO AMEND THIS APPLICATION UPON AND/OR AT THE POST-CONVICTION RELIEF HEARING.

ATTACHMENT PAGE #1 OF #6



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 03, 2014

Arteasa Maurice Whitlock, 277009
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210

Re: The State v. Arteasa Maurice Whitlock
Appellate Case No. 2013-001340

Dear Mr. Whitlock:

This responds to your recent correspondence May 30, 2014. Since you are represented by counsel in this matter, no action will be taken on this *pro se* filing. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). Therefore, your correspondence is being returned to you with this letter. Any further filings need to be made by your attorney of record, Benjamin John Tripp of Appellate Defense.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Benjamin John Tripp, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

June 03, 2014

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Arteasa Maurice Whitlock
Lower Court Case No. 2004GS4601845, 2004GS4601846
Appellate Case No. 2013-001340

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Arteasa Maurice Whitlock, 277009
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Benjamin John Tripp, Esquire

LEGAL MAIL

May 28, 2014

MAY 29 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Lee S. Alford, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

ARTEASA MAURICE WHILOCK,
APPELLANT.

Appellate Case #2013-001340

PETITION FOR ORDER
OF REHEARING

RECEIVED

MAY 30 2014

SC Court of Appeals

LEGAL MAIL

May 28, 2014 39

MAY 29 2014

Pursuant to Rules 219 and 221(a). SCACR. Arteasa Whitlock, Appellant in the above captioned appeal, respectfully seeks that this Court reviews with specificity the following points that may have been overlooked or missapprehended and consideration by the court is necessary to secure or maintain uniformity of its decisions.

Brief:

The case that was used to deny Whitlock's motion was State v. Serrette, 375 S.C. 650, 654 S.E. 2d 554 (2007) His willful decision to remain a fugitive from justice for nearly eleven years following his conviction, presented an obstacle to orderly appellate review in the decision led to the destruction of trial transcript pursuant to Rule 607(i), and thus, on appeal, defendant was not entitled to remand for reconstruction hearing. The facts in Whitlock's case is different from those in Serrette case and was missapprehended

acts:

According to Rule 607(i) SCACR a court reporter can reuse or destroy tapes of proceedings after 5 years. Serrette absconded and was nowhere to be found for over 10 years until his arrest, and brought to court. In Whitlock's case he was arrested by the Federal Government on unrelated charges on February 27, 2009. During that time South Carolina knew Whitlock's whereabouts and wasn't interested in transporting Whitlock back to South Carolina to get the sentence imposed before the Rule 607(i) of SCACR limitations ran out. Even after Whitlock's release from federal jail in 2013 Whitlock self surrendered to

LEGAL MAIL

MAY 29 2014

South Carolina to get the sentence imposed, as the judge stated on the record that "The state didn't really try too hard to get him back because of that, maybe, because he already had a sealed sentence anyway." Pg 22 line 19-21 of sentence transcript. South Carolina refusal to transport Whitlock back to South Carolina and by doing so, it prejudice him of a complete record of what happened during trial.

The state showed where Serrette presented an obstacle for an appropriate appellate review. Serrette lawyer died within the time of his conviction and sentence. In Whitlock's case everyone is available for reconstruction, also the state showed where Serrette prejudiced them, but didn't in Whitlock's case.

I prayfully request for this motion to be granted and all the facts be taken into consideration.

Respectfully Submitted,
Antonia M. Whitlock

LEGAL MAIL

41

MAY 29 2014

STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Appeal from York County
Lee S. Alford, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

v.

ARTEASA MAURICE WHITLOCK,

APPELLANT

RECEIVED

MAY 30 2014

SC Court of Appeals

CERTIFICATE OF SERVICE

This hereby certifies the petition for order of rehearing of Appellate Court's decision. In the above referenced case has been served upon Salley W. Elliott, Esquire, Office of the Attorney General, at Rembert Dennis Building 1000 Assembly Street, Rm 519, Columbia, S.C. 29201,

Arteasa M Whitlock

ARTEASA MAURICE WHITLOCK

Appellant

SUBSCRIBED AND SWORN TO before me

this 28th day of May, 2014

SWORN N. Frye (S.)

Notary Public for South Carolina

My Commission Expires: _____ Commission Expires
May 5, 2018

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Arteasa Maurice Whitlock, #277009,

2014-CP-46-2336

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on July 18, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the June 2004 term of the York County Grand Jury for Trafficking Crack Cocaine (2004-GS-46-1846) and Possession of Crack Cocaine with intent to distribute (PWID) within proximity of a park (2004-GS-46-1846). He was represented by Jim Morton, Esquire. On March 2, 2005, the Applicant proceeded *in absentia* to a jury trial pursuant to which he was found guilty of both charges as indicted before the Honorable Lee S. Alford. The sentence was sealed and the sentence was opened on June 6, 2013. Judge Alford sentenced the Applicant to confinement for eighteen (18) years for Trafficking Crack Cocaine 10-28 grams, 2nd offense and ten (10) years, concurrent, for PWID Crack Cocaine within proximity of a park.

A notice of appeal was filed and an appeal perfected on Applicant's behalf. A "Petition for Order to Reconstruct" the trial record was filed on Applicant's behalf on March 26, 2014. The South

Carolina Court of Appeals denied the petition to reconstruct the record and affirmed the Applicant's conviction and sentence. State v. Whitlock, Order Appellate Case No. 2013-001340 (filed May 14, 2014). The Remittitur was issued on June 3, 2014.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel Failure to Review the Law of the Case Render's Counsel's Assistance Ineffective"
2. "Ineffective Assistance of Appellate Counsel"
 - a. "Appellate Counsel Render(sic) Ineffective Assistance by Counsel's Failure to Provide the Court with a Full Record on Appeal"

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

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is

constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

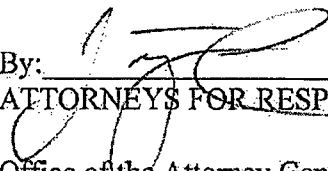
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 14, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2014-CP-46-2336

ARTEASA M. WHITLOCK, 277009)

Applicant,)

vs)

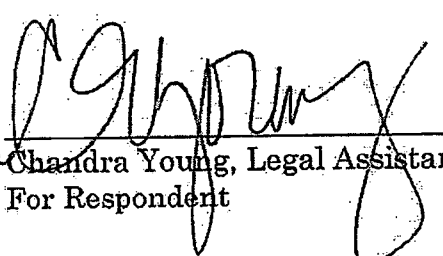
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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

Nathan J. Sheldon
Post Office Drawer 36250
Rock Hill SC 29732

DATED this 20th day of March, 2015.

 Chandra Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 -----X

3 ARTEASA M. WHITLOCK,

4 Petitioner,

5 Case No.

6 -against-

2014-CP-46-2336

7 STATE,

8 Respondent.

9 -----x

10 August 5, 2015

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ROGER M. YOUNG, Judge.

15

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

17 HATTIE E. BOYCE, Esquire

18 Attorney for the Plaintiff

19

20 DAVIDA MATHIS, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1				
2				
3	Arteasa Whitlock			
4	Mr. Shelton	6		23
5	Mr. Hunter		16	
6				
7	Kelly McClure			
8	Mr. Sheldon	24		
9	Mr. Hunter		--	
10				
11	Michael Whitlock			
12	Mr. Sheldon	26		
13				
14	Jim Morton			
15	Mr. Hunter	29		
16	Mr. Sheldon		31	
17				
18	Twanna Burris			
19	Mr. Hunter	38		
20	Mr. Sheldon		43	
21				
22	Misti Shelton			
23	Mr. Hunter	48		
24	Mr. Sheldon		54	
25				

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
State's 1	Bail Form		19
State's 2	Bench warrant	53	53
Deft's 1	Letter		46

1 MR. HUNTER: May it please the Court, Your Honor,
2 this is Arteasa Whitlock verses the State of South
3 Carolina. That is 2014-CP-46-2336.

4 Your Honor, he was indicted by the York County
5 Grand Jury for trafficking crack cocaine and possession
6 of crack cocaine with intent to distribute within the
7 proximity of a park. He was represented by Jim Morton
8 and Your Honor this -- as far as representation I know
9 that Nathan will fill in the gaps as I leave them out,
10 but it is my knowledge he was represented by Jim
11 Morton.

12 In 2005 this case was called for trial, March 2,
13 2005, by the Honorable Lee Alford. He was tried in his
14 absence and found guilty as indicted on both charges.
15 The sentence was then sealed until June 6, 2013 when he
16 returned to this jurisdiction. He was sentenced to 18
17 years on the trafficking charge and ten years on the
18 possession charge.

19 Your Honor, a Notice of Appeal was filed and on
20 that Direct Appeal his appellant counsel filed a
21 petitioned for an order to reconstruct the record
22 because it had been destroyed five years after his
23 trial pursuant to rule -- the Appellant Court Rules.
24 The Court of Appeals denied this petition and affirmed
25 his conviction by unpublished opinion. The remittitur

1 was then sent back June 1, 2014.

2 He is present in the courtroom and represented by
3 in Nathan Sheldon.

4 THE COURT: Okay. What do you want to say?

5 MR. SHELDON: Thank you. We are going to call
6 some witnesses here in a minute, but I would just like
7 to add that as we discussed in chambers with the
8 assistant attorney general that we are stipulating to
9 the fact that the court reporter in this case, Shannon
10 McGilberry did in fact purge the transcript some time in
11 2010 or 2011 pursuant to the rules that they have to
12 abide by. So the transcript was in fact purged in that
13 timeframe. Somewhere in there. And that no attorney
14 prior to the transcript being purged had actually
15 requested a copy of that transcript. So, I believe the
16 assistant attorney general will stipulate to those
17 facts.

18 MR. HUNTER: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. SHELDON: Thank you, Your Honor. We are ready
21 to proceed. I will call Arteasa Whitlock to the
22 stand.

23 ARTEASA MAURICE WHITLOCK, called as a witness,
24 having been duly sworn by The Clerk, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY NATHAN SHELDON:

3 Q Thank you, Your Honor. May it please the Court. Mr.
4 Whitlock please state your name for the record.

5 A Arteasa Maurice Whitlock.

6 Q And Mr. Whitlock, you heard the general fact pattern
7 given by the attorney general's office. Do you agree with it in
8 terms of what you were sentenced to and the time that you
9 received that is accurate?

10 A Yes.

11 Q So you are doing essentially a 18-year sentence on a
12 trafficking second charge, is that right?

13 A Yes I am.

14 Q All right. I want to take you all the way back now to
15 2004. You were arrested in 2004, weren't you?

16 A Yes.

17 Q Who did you retain to represent you on your criminal
18 charges back then?

19 A Mr. David Woods which is now the Honorable David woods.

20 Q And at that time was Judge Woods working for Morton &
21 Gettys?

22 A Yes.

23 Q And when did you retain him on these charges?

24 A I don't know the exact date but it was in 2004. Maybe
25 March.

1 Q And this case ended up going to trial in early March of
2 2005; is that right?

3 A Yes.

4 Q So in the year that you were represented by Mortan &
5 Gettys how much of that representation was with Judge Woods?

6 A The majority of it.

7 Q And then when did Jim Morton get involved in the case?

8 A Maybe a few months before trial.

9 Q What was -- how many discussions did you have with Jim
10 Morton about this case?

11 A Maybe three.

12 Q How often did you speak with your prior attorney Mr.
13 Wood?

14 A At least once a week.

15 Q When you were discussing this case with Jim Morton did
16 you all discuss trial versus plea?

17 A We didn't discuss too much at trial, no.

18 Q Did you discuss potential plea offer?

19 A We had.

20 Q What kind of advice did he give you as to whether or
21 not to plea or go to trial?

22 A I can't remember. As far as -- like I said we didn't
23 talk about much at trial. As far as plea, I think it was third
24 offense trafficking, he wanted me to plead too. I told him no.
25 I wouldn't plead to third offense. I think it was from 8 to 13

1 years, 8 to 12 or 8 to 13.

2 Q So you end up getting tried in your absence some time
3 in early March; is that right?

4 A Yes.

5 Q Describe for the Court exactly what kind of notices you
6 got for trial from your attorney?

7 A I hadn't received no notice of trial as far as the date.
8 I was going to trial.

9 Q So a month, two months, three months that Mr. Morton is
10 representing you, what discussions did you have about trials?

11 A Again, we really didn't discussion trial. We really
12 didn't discussion it that much.

13 Q Did you know your case was set for trial?

14 A No.

15 Q Did Mr. Morton discuss the potential consequences of
16 not showing up for a trial?

17 A No.

18 Q Where were you in March when this -- in March of 2005
19 when this case goes to trial?

20 A I was in Georgia actually and I found out later on that
21 it had went to trial.

22 Q When did you -- why did you go to Georgia?

23 A We actually went to Georgia just -- he gave us time. I
24 guess to discuss if I wanted to take a plea.

25 Q Let me stop you for a minute. Who gave you time?

1 A Mr. Morton.

2 Q Give you time to do what?

3 A To get my house and stuff in order.

4 Q And so were you going to take a plea?

5 A I did eventually tell him I would take it for second
6 offense if they would do it and he said he don't think they
7 would go second.

8 Q So what affairs were you getting in order if you said
9 you weren't going to take a plea?

10 A My house. I had a house and stuff that I had to, you
11 know, and a newborn baby and I had to get all that stuff
12 situated.

13 Q What conversation -- so you and Mr. Morton had no
14 conversations about trial?

15 A No.

16 Q What about -- what conversations did you have with
17 Morgon Gettys whether it be Mr. Morton or Mr. Wood about
18 potential defenses in your case?

19 A The search -- the illegal search and seizure with Mr.
20 Woods.

21 Q Was it your impression that the search, the illegal
22 search motion, some sort of suppression motion would be argued
23 at the pretrial hearing?

24 A Yes.

25 Q To the best of your knowledge do you know if that was

1 ever argued or not at trial?

2 A I don't know.

3 Q What sort of circumstances surrounded the search that
4 you discussed with your attorney?

5 A The fact that they said the search was consensual and
6 it wasn't. The witnesses that was in the car with me was never
7 questioned about the search.

8 Q Well, let's discuss that for a minute. How many people
9 were in the car when you were arrested?

10 A Two.

11 Q There were two people in the car when you were
12 arrested?

13 A Besides myself.

14 Q So there were three people total?

15 A Yes.

16 Q Did you discuss with your attorneys the -- that the
17 other people in the car could potentially be helpful witnesses
18 to you?

19 A Absolutely, with Mr. Wood.

20 Q And who were those two individuals that were in the car
21 with you?

22 A Devon Brice and Bobby Thompson.

23 Q Were they arrested on drug charges as well?

24 A Devon was arrested for a Family Court bench warrant.

25 Bobby Thompson had I think a small possession of marijuana.

1 Q So they weren't co-defendants in the general sessions
2 case with you?

3 A No.

4 Q And to the best of your knowledge did your attorneys
5 whether it be Mr. Wood or Mr. Morton ever contact those
6 witnesses?

7 MR. HUNTER: Your Honor, I would object. If we
8 are going to start talking about Mr. Wood about
9 anything that he did or didn't do we don't have him
10 here. He wasn't listed on the application. If we
11 would just keep it to Mr. Morton.

12 THE COURT: How else are you going to know what
13 some else did or didn't do?

14 MR. SHELDON: Your Honor, I think Mr. Morton was
15 the supervising attorney in the law firm. I mean I
16 think he represented -- Mr. Morton represented him at
17 trial, but may or may not be able to speak as to what
18 the other attorneys in his firm working on the case
19 were doing. I mean, we are simply just trying to
20 state whether or not there was affective
21 representation at trial. I mean, clearly when a judge
22 assumes the bench you are going to have -- the file
23 has to go somewhere and the attorney has to be brought
24 up to speed on what is going on with the file and so
25 it is ultimately leading to what was done at trial and

1 couched in what was done in terms of discussed
2 pretrial strategy and that is really where we are
3 going with it.

4 THE COURT: Tell me what your question is again
5 then.

6 MR. SHELDON: Whether or not there were
7 conversations regarding potential helpful witnesses
8 that was overlooked by the time this case goes to
9 trial, in terms of the uncharged people that were in
10 the vehicle when he was arrested.

11 THE COURT: How is he going to know that without
12 it being hearsay?

13 MR. SHELDON: Whether or not he discussed those
14 potential witnesses with his attorney?

15 THE COURT: If he discussed it with his lawyer he
16 can say that, but otherwise how are you going to know
17 what his lawyer did.

18 MR. SHELDON: I don't think he can say whether or
19 not they testified at trial. I agree with that
20 because he doesn't know. But if that was implied we
21 are going to get to that with his trial attorney. I
22 was just simply asking him what was discussed in terms
23 of preparing for trial.

24 THE COURT: Between he and his lawyer?

25 MR. SHELDON: Between he and his lawyer.

1 THE COURT: Okay. Go ahead then.

2 DIRECT CON'T:

3 Q Did you discuss these potential witnesses with your
4 attorney?

5 A Yes. Yes.

6 Q So I want to move forward a little bit in time now. So
7 you are tried in your absence, is that right?

8 A Yes.

9 Q Prior to trial were you ever brought in front of a
10 judge and told that if you didn't show up for trial that you
11 could be tried in your absence?

12 A Absolutely not. I never -- from the best of my
13 knowledge I never came to none of my pretrial stuff because
14 David Wood always told me I didn't have to show up. He'd like
15 take care of it like the roll calls and all of that so I wasn't
16 pretty much involved.

17 Q So you are tried in your absence and your convicted, is
18 that right?

19 A Yes.

20 Q And there is a sealed sentence that is issued?

21 A Yes.

22 Q When did you find out about the sealed sentence?

23 A I found out about the sealed sentence maybe three or
24 four weeks afterwards.

25 Q Why didn't you come back to York County at that time?

1 A To be honest, stupid, but I fingered I was already
2 sentenced. I wanted to have a good time. I was young and
3 stupid.

4 Q How did you eventually end up in federal prison?

5 A I caught another drug charge actually while I was on
6 the run and did federal time.

7 Q When were you put in to federal prison?

8 A February 2009.

9 Q In February. And did you hire an attorney at some
10 point to represent you on the sealed sentence issue here in
11 South Carolina?

12 A Yes.

13 Q And who was that attorney?

14 A Twanna Buris.

15 Q When was Twanna Burris hired on your behalf?

16 A 2009. I don't know the exact date, but it was 2009.

17 Q And for what purpose was she hired?

18 A For this case to see the sentence.

19 Q Was -- what did she do between 2009 and 2013 when you
20 end up getting sentenced?

21 A I reached out to Twanna, but I really didn't we didn't
22 really talk too much from the federal jail. We really did most
23 of our contact once I got released from federal jail. To much
24 of nothing I guess.

25 Q Was a transcript obtained at the time of -- was a

1 transcript obtained by Mr. Morton to the best of your knowledge?

2 A No.

3 Q Was a transcript obtained by Miss Burris?

4 A No.

5 Q Do you -- did you know that it was going to be a
6 problem that there was no transcript in existence?

7 A No. No, I didn't.

8 Q What effort did you make to obtain a transcript in the
9 case?

10 A From federal jail, none. I really didn't know the
11 rules as far as the destruction of transcripts and plus I had an
12 attorney for all that. And if I may I want to back up because I
13 also reached out to Jim Morton during those times when I was in
14 federal jail. I have no response. My family reached out to him
15 and I never got a response back. So that was the reason of
16 hiring Twanna.

17 Q So you attempted to contact Mr. Morton but didn't
18 receive a response?

19 A Yes.

20 Q And was that while you were in federal prison or while
21 you were in prison waiting for that sealed sentence?

22 A When I was in federal prison.

23 Q Okay. What relief are you seeking from the Court
24 today?

25 A Vacate sentence or new trial, reconstruction of the

1 record or something.

2 Q And you understand that that you were originally
3 charged with a trafficking third offense, is that right?

4 A Absolutely.

5 Q And you also understand even if you were tried in your
6 absence you were only convicted of trafficking second offense?

7 A Absolutely.

8 Q But you understand if you get a new trial you will go
9 forward potentially on a trafficking third offense?

10 A Yes.

11 Q And you are still asking the Court for a new trial?

12 A Yes.

13 Q Do you believe that Mr. Morton could have done more
14 representing you?

15 A Absolutely.

16 Q What about Miss Burris?

17 A Absolutely.

18 MR. SHELTON: Your Honor, I don't have any more
19 questions.

20 THE COURT: Mr. Hunter.

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

22 CROSS EXAMINATION

23 BY MR. HUNTER:

24 Q So you stated that you had no notice of trial of when
25 it was going to happen?

1 A Yes.

2 Q That would be no notice by Mr. Morton?

3 A Yes, absolutely.

4 Q So, what type of contact did you have with him before
5 the trial happened? Did he ever call you? Did you call him?

6 A I usually just go to Mr. Morton's office.

7 Q Okay. And during that time he said you all were
8 talking about a plea, but might have been preparing for trial?

9 A Well, we were talking about a plea.

10 Q But he never gave you any timeframe of when anything
11 was going to happen?

12 A No. No.

13 Q Did the Court ever give any timeframe of when anything
14 was going to happen?

15 A No.

16 Q Did the bondsman ever give you any timeframe of when
17 anything was going to happen?

18 A No.

19 MR. HUNTER: Your Honor, if I may approach.

20 THE COURT: Go ahead.

21 (WHEREUPON, a document was handed to the witness.)

22 Q Do you recognize this piece of of paper.

23 A It's the bond's paper.

24 Q On page two on the the bottom right is that your
25 signature?

1 A Yeah.

2 Q Okay. And on the first page did you check all those
3 boxes that are checked?

4 A I didn't check it.

5 Q You didn't check those?

6 A I signed it.

7 Q They were read to you?

8 A I can't remember.

9 Q Okay, but that is your signature?

10 A Yes.

11 Q Could you read what 2-B says --

12 MR. HUNTER: And Your Honor, these are the -- I
13 apologize for not showing you earlier -- this is the
14 checklist from the Magistrate Municipal Judge. It is
15 essentially the bail form.

16 Q On the first page under 2-B?

17 A "His right and obligation to be present at trial and
18 that trial will proceed in his absence if he fails to attend."

19 Q Okay. On the second page, do you see that box in the
20 middle?

21 A Yes.

22 Q Could you just read what's in that box?

23 A "The defendant should appear at the term of the Court
24 of General Session beginning on 4-19-04 at time nine o'clock
25 a.m. many at the M.J.C., York, South Carolina, and remain there

1 throughout the term of Court. If no deposition (sic) is made
2 during that term the defendant should appear and remain
3 throughout each proceeding term of Court until final deposition
4 is made of this case unless otherwise ordered by the Court.

5 Q Okay. Thank you, and again at the bottom right the
6 date reads -- could you read the date for me please?

7 A 2-28-04.

8 Q And then right above that that signature is your
9 signature?

10 A Yes.

11 MR. HUNTER: Your Honor, we would move to enter
12 this as an exhibit. To have mark as State's Exhibit.

13 And Your Honor, again this is a bail form that he
14 signed and he acknowledged that he signed. Your
15 Honor, at this time we would move that into evidence.

16 MR. SHELDON: Without objection.

17 THE COURT: Admitted.

18 (State's Exhibit One, Bail Form, received in
19 evidence as of this date.)

20 Q Now, so you acknowledge that was your signature on that
21 form?

22 A Yes, sir.

23 Q And the part that read told you to be there at certain
24 date and time and that you would have to be there at every term
25 until it was disposed?

1 A Yes, sir.

2 Q And now you are saying that absolutely not did you
3 receive any sort of notification?

4 A I didn't receive no notification of the exact court
5 term date and when I was going -- like when I was going to the
6 terms and everything my lawyer was always telling me not to show
7 up at those and he would take care of them. So the actually
8 date for trial I didn't have.

9 Q All right, but this says to show up every date. So
10 essentially you got to be there every week they have General
11 Sessions. Did you do that?

12 A Unless my attorney tell me otherwise.

13 Q Okay. So you didn't follow the court rules? I mean
14 the court orders you to be there every week and you weren't
15 there?

16 A Yeah, if my attorney told me not to be there and he
17 will take care of it and I never had no bench warrant issued for
18 not going, sir, so evidently he was taking care of it.

19 Q Okay. You say you never had a bench warrant?

20 A Not for showing up for like the roll calls and all
21 that. I seen a bench warrant. Once I got in the federal jail I
22 seen a bench warrant for my arrest, 2005.

23 MR. HUNTER: The Court's indulgence one second.

24 Q Now you said during the time of your trial you were in
25 Georgia?

1 A Yes.

2 Q Okay, so I assume during those times you didn't show up
3 to court either?

4 A I never had a court date.

5 Q Okay.

6 A For those times.

7 Q Okay. But you said you discussed what was going to
8 happen at your trial?

9 A With Mr. Wood.

10 Q Any defenses or anything like that?

11 A With Mr. Wood.

12 Q Okay, so you were somewhat involved there, is that
13 correct?

14 A Yes.

15 Q Okay. Now from 2005 until 2009 where were you?

16 A The later part of 2005 I was in Pennsylvania.

17 Q And did you ever call to check up on hey, I got these
18 out standing charges what is going on?

19 A The mother of my child called Mr. Morton --

20 Q Okay.

21 A But still no ---

22 Q So you never took it upon yourself to call the attorney
23 or call the court to figure out what happened to these
24 outstanding charges?

25 A No, I didn't.

1 Q Okay. Did you ever talk to your bondsman? Did he ever
2 contact you?

3 A No.

4 Q And you said you hired Miss Burris in 2009?

5 A Yes.

6 Q And I assume at that point what happened with your
7 trial?

8 A Yes.

9 Q Okay. Did she tell you that or who told you what
10 happened with your trial?

11 A In the federal you do a PSI and I learned through there
12 paperwork.

13 Q Okay. But you never -- while you were in federal
14 prison did you ever reach out to Mr. Morton, say hey, how did
15 the trial go? Anything like that?

16 A I reached out to Mr. Morton after the trial. I still
17 have no response from him when I was in Federal Court.

18 Q And did your family contact him?

19 A Family contacted him. If I'm not mistaken from the
20 best of my knowledge I think I wrote him a letter, but I'm not
21 sure.

22 Q Okay.

23 MR. HUNTER: One second, Your Honor. I have no
24 further questions.

25 THE COURT: Redirect?

1 MR. SHELDON: Very briefly.

2 REDIRECT EXAMINATION

3 BY MR. SHELDON:

4 Q Mr. Whitlock, you learned of the sealed sentence very
5 quickly after the trial, is that right?

6 A Oh, yes, with that I did.

7 Q So it wasn't like until 2009 that you didn't know that
8 there was -- that you had at some point come back to South
9 Carolina, is that right?

10 A Yes. Yes.

11 Q Were you given specific notice of a trial date?

12 A No.

13 Q So -- but throughout the course of your case were there
14 several different roll calls?

15 A Yes.

16 Q And throughout the entire lent that you were out on
17 bond do you recall ever being bench warranted for any of those
18 roll calls?

19 A No.

20 MR. SHELDON: Your Honor, I don't have any more
21 questions.

22 THE COURT: Anything.

23 MR. HUNTER: Nothing in response, Your Honor.

24 THE COURT: All right. You may step down. Next
25 witness.

1 MR. SHELDON: Thank you, Your Honor. We would
2 call Kelly McClure to the stand.

3 KELLY MCCLURE, called as a witness, having been
4 duly sworn by The Clerk, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. SHELDON:

8 MR. SHELDON: May it please the court Your Honor.

9 THE COURT: Yes, sir.

10 Q Miss McClure, state your full name for the record?

11 A Kelly McClure.

12 Q What is your relationship to Mr. Whitlock?

13 A I am his fiancée.

14 Q When did you all -- how long have you all been
15 together?

16 A On an off, probably it has been maybe four years.

17 Q When did you get involved in this case? When did you
18 find out about what was going on in this case?

19 A That would be -- that is actually when he was released
20 from federal prison in reference to this particular case.

21 Q In 2013?

22 A Well, correct. But his previous case about him being
23 sentenced in his absence I was aware of that.

24 Q Did you have involvement with obtaining representation
25 for him on the sentencing portion of this case?

1 A From 2005..

2 Q The 2005 case, but his representation of -- obtaining
3 representation with Twanna Burris?

4 A Yes, I asked for Twanna to represent the case as well.

5 Q How often would you speak with Twanna about the case?

6 A I would probably touch base with her maybe once every
7 -- if not every week every two weeks just trying to keep in
8 communication.

9 Q How long did she represent Mr. Whitlock?

10 A To my understanding she had the case as of 2009. My
11 communication with her was as of when he was released from
12 federal prison.

13 Q In 2013?

14 A Right.

15 Q So were -- were you essentially speaking on Mr.
16 Whitlock's behalf in the communications with her?

17 A With her or if he had questions he didn't understand so
18 I would reach out and to try and see if there was information to
19 better explain.

20 Q To the best of your knowledge did she ever discuss with
21 you the obtaining of a transcript or attempt to obtain a
22 transcript?

23 A Well, yes, I did speak in reference to the transcript.
24 As far as my understanding when the transcript was requested I
25 guess it came back that it was not available. That had it been

1 destroyed.

2 Q So there was an attempt made to get -- it's your
3 understanding there was an attempt made to get the transcript
4 but it had already been purged and destroyed?

5 A Correct.

6 MR. SHELDON: Thank you, Your Honor. I don't have
7 any more questions for this witness.

8 THE COURT: Cross?

9 MR. HUNTER: Nothing from the State, Your Honor.

10 THE COURT: You may step down.

11 Any other witnesses.

12 MR. SHELDON: Yes, Your Honor. We would call
13 Michael Whitlock to the stand.

14 MICHAEL WHITLOCK, called as a witness, having been
15 duly sworn by the clerk, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY SHELDON:

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

20 Q Mr. Whitlock, please state your name for the record.

21 A Michael Whitlock.

22 Q And how are you related to Arteasa Whitlock?

23 A That's my brother.

24 Q And Mr. Whitlock did -- were you involved in the
25 obtaining of his attorney Twanna Burris?

1 A Yes, sir.

2 Q Were you the one that actually met with her to get the
3 retainer signed?

4 A Yes, sir.

5 Q When was that?

6 A It had to be in 2009.

7 Q Where was Mr. Whitlock at that time, Mr. Arteasa
8 Whitlock at that time?

9 A Federal prison.

10 Q And would it be fair to say that Mr. Arteasa Whitlock
11 reached out to you to obtain Miss Burris?

12 A Yes.

13 Q And how much did you all pay her?

14 A We were at the time -- I really don't know the grand
15 total what we paid, but she couldn't really help us with the
16 case, so we ended up getting our money back.

17 Q So -- but you met with her in 2009, is that correct?

18 A Yes. Yes.

19 Q And I guess off and on she represented him until
20 sentencing in 2013, is that right?

21 A Yes.

22 Q And during that course of representation to the best of
23 of -- did you have contact with her or were you only involved on
24 the front end?

25 A I was involved on the front end.

1 MR. SHELDON: Okay. Thank you, Your Honor. No
2 more questions.

3 MR. HUNTER: Nothing from the State Your Honor.

4 THE COURT: You may step down.

5 THE WITNESS: All right.

6 THE COURT: Next witness.

7 MR. SHELDON: Your Honor, that is our case. We
8 will rest.

9 THE COURT: Anything from the State?

10 MR. HUNTER: Your Honor, if we may, in quick
11 discussions with our witness can we have maybe a
12 two-minute break?

13 THE COURT: Sure.

14 (Whereupon, there was a brief recess.)

15 MR. HUNTER: May it please the court.

16 I appreciate the Court's indulgence for this short
17 break that turned into a little lengthy break. The
18 State would call Mr. Jim Morton.

19 JIM MORTON, called as a witness, having been duly
20 sworn by the clerk, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. HUNTER:

24 Q Good morning. Please state your name for the record.

25 A Jim Morton.

1 Q Mr. Morton, can you go through when you were first
2 retained Mr. Whitlock's case? What you remember?

3 A Frankly, I don't remember a whole lot. I had an
4 associate at the time by the name of David Wood who primarily
5 was handling Mr. Whitlock's case and I think what happened was
6 in between the time that Mr. Whitlock hired us, hired David, and
7 the trial that Mr. Wood left my firm. I just don't remember a
8 whole lot about it.

9 Q I understand. About what date generally do you recall
10 taking over for Mr. Wood? Do you remember about what date?

11 A You know, I really don't. The first note that I have
12 in my file was March the 1st. I'm not sure when Mr. Wood left.
13 I'm not sure what my contact with Mr. Whitlock was up until that
14 point, and the first note in the file that I have was that on
15 March the 1st, 2005 I went to Mr. Whitlock's address on Stony
16 Creek to tell him that his -- they were calling him to trial and
17 then I also called his mother and told her to tell Mr. Whitlock
18 to be in court the next day.

19 Q The address you say was that address given to you by
20 Mr. Whitlock?

21 A It was 460 Stony Creek Lane, Rock Hill.

22 Q Right, and Mr. Whitlock gave you that address?

23 A I am sure, yes, the address on the file. Yes.

24 Q And I believe you already stated you don't recall your
25 meetings with him before trial?

1 A I don't.

2 Q Okay. And aside from what you just told us do you have
3 any other information about his whereabouts right before the
4 trial? What about the day of trial?

5 A No. He wasn't there.

6 Q Right. Did -- and if you recall did Judge Hayes --

7 A I think it was Judge Alford.

8 Q Alford. Right. I apologize. Judge Alford before he
9 proceeded with the trial, with the TIA, do you recall if he made
10 an inquiry about his whereabouts?

11 A I don't recall.

12 Q You don't recall. Do you remember anything else about
13 the trial itself?

14 A You know, I really don't.

15 Q Okay. Post trial, is there anything you can tell us or
16 anything you remember about your actions post trial?

17 A I don't recall.

18 Q Did you contact his family to tell them what had
19 happened at the trial?

20 A I don't have that written in my notes. So I don't
21 recall.

22 Q Would it have been your usual practice to do so?

23 A You know, TIA's -- I don't know.

24 Q Have you done any TIA's before?

25 Q I have done several TIA's?

1 Q Okay. Was there anything different about this TIA that
2 stuck out to you?

3 A No, sir.

4 Q Okay. Now again, if you recall post trial when was the
5 next time you heard anything about this case?

6 A I think I do remember a call from Mr. Whitlock or from
7 his family or from a Whitlock. I want to say that I represented
8 other Whitlocks, but that recollection is very vague and I can't
9 remember the nature of the call and I don't know when that was.

10 Q Okay. Now, when you done trials is it your usual
11 practice to request a transcript right away or would that
12 usually be done by the appellant lawyers?

13 A Usually the appellant lawyers.

14 Q That is not something that you as trial attorney would
15 do?

16 A Right.

17 Q So you would have had no reason to do it in this case?

18 A I didn't have any reason to.

19 MR. HUNTER: Okay. That's all I have.

20 THE COURT: Cross.

21 MR. SHELDON: May it please the Court.

22 CROSS EXAMINATION

23 BY MR. SHELDON:

24 Q Mr. Morton, you stated that Mr. Wood primarily handled
25 this case, is that correct?

1 A To the best of my recollection.

2 Q Do you recall if he left your office essentially to
3 ascend to the Magistrate's bench?

4 A Correct.

5 Q That was the reason he left Morton and Gettys?

6 A Yes.

7 Q So you indicate that your first annotation that you
8 have in that file is from March 1st, is that correct?

9 A Correct.

10 Q And you were basically the supervising attorney of your
11 associates at that time, weren't you?

12 A Correct.

13 Q And is that how you essentially inherited this file?

14 A Correct.

15 Q Are there any other and notations from any other
16 attorneys in the file?

17 A From David Wood.

18 Q And that's -- basically you inherited the case from
19 him, is that right?

20 A Correct.

21 Q When you inherited these cases from Mr. Wood did you go
22 over the cases with him or was it just, here are my files I'm
23 out the door?

24 A Let me rephrase what I said because I see notes in my
25 file now in my writing where I had a meeting with Teddy Whitlock

1 on February 6th of '05 and I have notes in my handwriting from
2 February the 8th of 05, and I think the notes from February the
3 8th. I'm not sure when Mr. Wood left my office, but there are
4 notes in here indicating that David wood was going to contact
5 Mr. Whitlock's wrestling coach. Mr. Whitlock was I think a
6 champion wrestler at Rock Hill High and so there was a note
7 February eight that Mr. Wood was going to contact the coach.
8 So, I was aware of facts and I knew what was going on.

9 Q And so there is a February 6th note where you met with
10 Mr. Whitlock, is that right?

11 A That's right.

12 Q And then there is a February 8th note where you met
13 with Mr. Wood regarding the case?

14 A And I don't know if Mr. Whitlock was there or not.

15 Q Do you have any notes because there's some issue about
16 a bench warrant being issued ob February 7th for Mr. Whitlock.
17 Do you recall that?

18 A I do.

19 Q So you don't know, but on February 8th we do know that
20 Mr. Wood is suppose to contact the wrestling coach, is that
21 right?

22 A Correct.

23 Q And based on your experience, I mean, if you are going
24 to contact somebody on February 8th regarding a case would it
25 seem to you that that person was on the run at that time?

1 A Not necessarily.

2 Q Okay. But you don't know what -- why they were going
3 to contact -- why Mr. Wood or yourself was going to contact the
4 wrestling coach or anything like that?

5 A Probably for mitigation.

6 Q Okay. So on February 8th would it be fair to say that
7 the case based on your notes was probably in a plea posture as
8 opposed to a trial posture?

9 A Probably.

10 Q And the case ends up actually being tried on March 2nd,
11 is that right?

12 A Yes.

13 Q Let's talk about the trial a little bit. I know you
14 said you don't remember anything. Do you have any notes from
15 the trial?

16 A I do. I have my notes either in preparation for the
17 trial and probably some during the trial.

18 Q Have you had an opportunity to review those notes?

19 A I have.

20 Q What light can you shed on what happened at trial?

21 A And again, in my file I do not have the warrant, the
22 indictment, the report. I do not where all that stuff is.

23 From my notes I have that several narcotic's officers
24 went to a scene, an apartment complex looking apparently for Mr.
25 Couzar. That they observed Mr. Whitlock I think coming from the

1 location where they thought Mr. Couzar was. They did a pat-down
2 search and found more than ten grams of crack on his person.

3 Q Do you recall or did you do a suppression motion on the
4 drugs found?

5 A I would assume that I did. I don't remember and I
6 don't know.

7 Q Do you remember any other pretrial motions, maybe a
8 Jackson/Denno Hearing or anything?

9 A I don't remember.

10 Q You have no recollection of the trial whatsoever?

11 A I don't.

12 Q Any recollection of any of the trial in absentia issues
13 that may have come up at trial?

14 A I really don't recall it.

15 Q You said you tried several trials in absentia; is that
16 right in the past?

17 A I was public defender at one time.

18 Q And of those TIA's was it -- did you ever have any that
19 were not properly done? Where the judge did not properly
20 instruct the defendant of his rights to be present?

21 MR. HUNTER: Your Honor, we would object to the
22 relevance.

23 A I don't think so.

24 THE COURT: Sustained.

25 Q So, do you have any notes in there regarding other

1 witnesses that Mr. Whitlock wanted to call on his behalf at
2 trial?

3 A I do have notes regarding other witnesses to the
4 arrest, yes.

5 Q And were those witnesses called at trial?

6 A I do not know. Probably not. But I do not know.

7 Q Okay. What would be the reasoning behind not calling
8 those witnesses at trial?

9 A Either I couldn't find them or they weren't going to be
10 helpful.

11 Q Do you have any notes indicating whether or not you
12 were able to find those witnesses?

13 A Do not.

14 Q After the trial was over you testified that you didn't
15 obtain a transcript. That you would normally leave that up to
16 appellant defense?

17 A Right.

18 Q Is that -- is that your common practice in trial in
19 absentia cases?

20 A Probably.

21 Q Would you agree that if it is a trial in absentia
22 because the witness isn't there that it would be more important
23 to secure that transcript.

24 A I mean not necessarily more important, no.

25 Q But you indicated that your common practice was to --

1 in trial was to if there was a suppression issue to argue that
2 pretrial, if there is a Denno issue to argue that pretrial, if
3 there are pretrial issues you are going to argue them at trial,
4 right?

5 A Right.

6 Q So, even if a case has potential significant pretrial
7 issues you still wouldn't order a transcript on an case like
8 that?

9 A I wouldn't.

10 Q Okay.

11 MR. SHELDON: Your Honor, beg the Court's
12 indulgence for just one second.

13 Your Honor, I don't have any mother questions.

14 THE COURT: Redirect?

15 MR. HUNTER: Nothing further from the State.

16 THE COURT: You may step down. Anything else from
17 the State?

18 MR. HUNTER: Your Honor, our next witness just
19 went to the restroom. If I could just beg the Court's
20 indulgence for one moment.

21 We will go ahead and call Twanna Burris.

22 TWANNA BURRIS, called as a witness, having been
23 duly sworn by the clerk, was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. HUNTER:

2 Q Good morning. Please state your name for the record?

3 A Good morning. Twanna Burris-Alcide.

4 Q Now Miss Burris, do you recall when you were first
5 retained or first contacted about this case?

6 A I remember having communications with a Miss Edna
7 Coleman who was the fiance of Jonathan Joseph. I think that was
8 actually December of 2009. Miss Coleman contacted me on -- I
9 believe I also had communications with Jonathan Joseph, a cousin
10 of Mr. Whitlock, and then I believe that I was actually retained
11 at some point in 2010.

12 Q By the same individuals?

13 A Yes, by the same individuals.

14 Q Now obviously, without getting into what they said,
15 what was your impression about his whereabouts when you were
16 retained?

17 A So upon initial contact I remember there being an issue
18 with first identifying Arteasa Whitlock because the question was
19 whether or not -- there was some confusion in the federal system
20 as to Arteasa Whitlock and Michael Whitlock. So initially upon
21 contact there is some problems with identification because I
22 didn't quite know the name of the individual and whom they were
23 asking me to represent. And so after finding out that Arteasa
24 was Arteasa Whitlock and not Michael Whitlock that was I believe
25 in 2010.

1 Now I have loss track of of your question. What is
2 your question again?

3 Q That was -- you answered correctly.

4 Q What was your impression of his procedure history? How
5 did you find that it out?

6 A Miss Coleman I remember shared with me that Arteasa or
7 Michael Whitlock she was calling him at that particular time
8 because upon my initial contact with the solicitor's office I
9 was identifying him as Michael Whitlock but it was actually
10 Arteasa Whitlock, and she indicated that he was in custody. I
11 did not know exactly where. My understanding I later found out
12 either in I believe it was in 2010, I later found out he was in
13 Philadelphia.

14 Arteasa Whitlock communicated with me through the
15 federal system and asked that I get in contact with an attorney
16 there. The attorney whom he was going to retain. His name was
17 Mr. Waldrin in Philadelphia and he asked that I get in contact
18 with the attorney to assist in this case so that I may get the
19 federal file to assist in the State case. And so my
20 understanding is that he was in Philadelphia in federal
21 government custody.

22 Q Okay, and it's my understanding you received some
23 information about the State case against him as well?

24 A Yes. Yes.

25 Q And just to clarify you were retained for the purposes

1 of the State?

2 A I was retained for the purpose of opening the sealed
3 sentence for the State.

4 Q Okay. And from late 2010 that's when you said you were
5 retained?

6 A Yes. I believe it was 2010 because again I was
7 contacted by Miss Edna Coleman, the end I believe it was
8 December 2009 and then later Jonathan Joseph and then in 2010 is
9 when I was retained, and again when I initially started working
10 on that particular case I was not identifying Mr. Whitlock as
11 Arteasa Whitlock I was identifying him as Michael Whitlock
12 because I believe there was some confusion as to their
13 identification and I was told there was some confusion in the
14 federal system.

15 Q And do you recall when in 2010 you were retained?

16 A I do not remember the date.

17 Q Do you remember around what time of year?

18 A It would have been probably months after Miss Edna
19 Collin contacted me.

20 Q Any notes in your file that would say when exactly?

21 A No, sir.

22 Q Okay. But you said it was months after December 2009?

23 A Correct.

24 Q Now during your representation did you have contact
25 with Mr. Whitlock?

1 A I did have limited contact with Mr. Whitlock. It was
2 later I believe during 2010. I recall him sending me one vague
3 e-mail and the e-mail indicated that I should get in contact
4 with Mr. Waldrin who he was going to retain for his federal
5 case.

6 Q Okay. So as far as this case goes was there ever any
7 discussion about transcript?

8 A There was no discussion in regards to a transcript. I
9 did, after identifying Arteasa Whitlock for whom he was I
10 remember making efforts to get a transcript but of course at
11 that time the transcript had been purged from the system.

12 Q Pursuant to the rule?

13 A Pursuant to the rule.

14 Q Okay, so just to clarify once you found out who he
15 was --

16 A Yes.

17 Q -- officially due to the confusion you then made
18 efforts to get that transcript?

19 A Yes, I made an efforts. In addition too I found out
20 exactly whom was representing him. I found out it was Mr. Jim
21 Morton. I contacted Mr. Morton and Mr. Morton was able to pull
22 the file out of archives because it had been a while since he
23 was tried in his absence. So he did pull the file. I looked
24 through the file. I contacted the solicitor's office. I did
25 have some communications with Miss Weaver and I know that she

1 did make efforts to try to get Mr. Whitlock transported here.
2 In addition to doing all of that, I also made efforts to reach
3 out to first of course you had to identify the court reporter.
4 So how did I do that. I remember I believe I went to the
5 clerk's office. Found out who the court reporter was and then I
6 actually reached out to the court reporter to try to obtain the
7 transcript and at that time, again, the transcript had been
8 purged from the system according to the rules. But in addition
9 to that, like I said, Miss Weaver once we identified Mr. Arteasa
10 Whitlock we made efforts to try to get Mr. Whitlock here in the
11 State of South Carolina so we could have the sentence imposed
12 here so that when I represent him in his sealed sentence that
13 the federal government would be able to run the sentences
14 concurrent. So that was my goal. So I did that. It was some
15 time in between 2010 and 2011.

16 Q Right and that was brought up at sentencing, correct?

17 A Absolutely.

18 Q And just to make sure that I am getting my times
19 correct, right after you figured out who he was, who the court
20 reporter was, you immediately diligently went to go look for
21 that transcript?

22 A Yes.

23 Q You didn't wait around? You didn't wait months? You
24 were diligent in your pursuit of the transcript?

25 A I was definitely diligent in my pursuit in not only in

1 trying to obtain the transcript but also in trying to find out
2 more about the case so that I would know substantively what to
3 communicate and zealously and effectively represent Mr. Whitlock
4 during the representation of the sealed sentence.

5 Q Okay. That's all I have. Thank you.

6 A Yes, sir.

7 THE COURT: Cross.

8 MR. SHELDON: May it please the Court.

9 CROSS EXAMINATION

10 BY MR. SHELDON:

11 Q Miss Burris, you indicated that you were contacted by
12 members of his family in 2009, is that right?

13 A Yes.

14 Q But that you didn't actually start representing him
15 until 2010?

16 A It would have been month after 2010.

17 MR. SHELDON: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes.

20 Q I will show you this letter. Tell me if you recognize
21 that?

22 A Yes, November the 11, 2009. December of 2000 and --

23 Q Hold on. Do you recognize that?

24 A Yes. Yes, this is my signature.

25 Q Is that a letter from your office?

1 A Yes.

2 Q And it has your signature on it?

3 A Yes. Yes.

4 Q And that letter is dated November 11, 2009?

5 A That's correct.

6 Q And it's actually filed in the clerk's office?

7 A Yes.

8 Q And in that letter you say that you are representing
9 Arteasa Whitlock?

10 A It does.

11 Q So you would have had to be retained in November of
12 2009 before you had sent a letter saying you represent him,
13 right?

14 A I wasn't actually officially retained. It would have
15 been after December of 2009. Again because I had communications
16 with Miss Edna Colon and I believe -- I don't know why I was
17 thinking December the 3rd -- I had communication with Miss Edna
18 Collin in 2009. She wasn't the one that was going to actually
19 retain me. It was going to be Jonathan Joseph, so I was
20 actually retained after that date.

21 Q But you sent a letter to the clerk saying that you
22 represented Arteasa Whitlock --

23 A Right.

24 Q -- in November of 2009?

25 A That's correct.

1 Q And you testified that you had a hard time finding out
2 who Arteasa Whitlock was?

3 A That's correct.

4 Q But you indicated in your letter that you in fact you
5 were representing Arteasa Whitlock?

6 A That's correct.

7 Q In 2009?

8 A The end of 2009, yes.

9 Q And you also testified that you diligently sought the
10 transcript out?

11 A That's correct.

12 Q But you couldn't -- you wouldn't have diligently sought
13 the transcript out in November of 2009 when you indicated you
14 were representing him because had you done that the transcript
15 would have been available, right?

16 A Well, let me say this again. I sent the letter
17 November of 2009. There was some confusion as to -- I remember
18 speaking to Miss Weaver even coming here we didn't even know if
19 it was Arteasa Whitlock versus Michael Whitlock because there
20 wasn't really anything in the system and that was the end of
21 2009. And I remember it must have been the beginning of 2010 we
22 actually realized who he was.

23 There was some confusion in regards to his
24 identification when I started representing him on the sealed
25 sentence.

1 Q Confusion in the federal sentence?

2 A In the federal system so that I would know who I was
3 representing in the state system.

4 Q But in the letter you sent to the clerk you have
5 specific indictment numbers. You have his name and everything
6 else on it, correct?

7 A That's correct.

8 Q So just help me understand where is the confusion as to
9 who you represent?

10 A I think when Miss Weaver and Miss Collins was looking
11 to try to get Mr. Whitlock transported from the federal system I
12 remember communicating with them in person and they weren't sure
13 exactly whether it was Michael Whitlock or Arteasa Whitlock.
14 That's what I do remember.

15 MR. SHELDON: Your Honor, I would like to go ahead
16 and put that letter in as Defendant's Exhibit One.

17 THE COURT: All right.

18 MR. HUNTER: No objection.

19 THE COURT: Admitted.

20 (Defendant's Exhibit ONE, Letter, received in
21 evidence as of this date.)

22 BY MR. SHELDON:

23 Q Miss Burris, so help me understand this again. So you
24 are representing him on the unsealing of the sentence, is that
25 right?

1 A Yes.

2 Q Okay. Which eventually happens in 2013, right?

3 A That's correct.

4 Q But would you agree that had you pursued the transcript
5 from the outset when you sent that letter of representation the
6 transcript would have been available?

7 A I'm not sure if it would have been available.

8 Q But you didn't pursue the transcript in 2009 -- in
9 November of 2009?

10 A I didn't pursue the transcript in November of 2009.
11 Again I was officially -- I was contacted -- I remember Edna
12 Colon in December and I would have starting representing Mr.
13 Arteasa Whitlock sometime -- I believe in the beginning of 2010.
14 So, correct, I did not ask for the transcript in 2009.

15 Q Or the beginning of 2010?

16 A I am not sure if I made efforts because I do recall
17 going to the clerk's office to find out who the court reporter
18 was and then once I found out who the court reporter was I
19 located her and I contacted her to ask for the transcript and
20 then she got -- I remember her getting back with me. It was a
21 while later but she did get back to me that it had been purged
22 from the system according to the rule.

23 MR. SHELDON: Thank you. No more questions.

24 MR. HUNTER: Nothing from the State Your Honor.

25 THE COURT: You may step down.

1 MS. BURRIS: Thank you.

2 THE COURT: Anything else from the State?

3 MR. HUNTER: Yes, Your Honor. The State would
4 call Misti Shelton.

5 MR. SHELTON: And Your Honor I just got asked, I
6 have no objection to either of these witnesses being
7 excused if the attorney is okay with that.

8 THE COURT: You are free to go. Thank you.

9 MS. SHELTON: Your Honor, is it okay if I bring my
10 laptop? I don't have a paper trail.

11 THE COURT: Sure.

12 DIRECT EXAMINATION

13 BY MR. HUNTER:

14 Q Good morning Miss Shelton.

15 A Good morning.

16 Q Can you tell the Court how you got involved in this
17 case?

18 A It came in on my regular rotation as drug prosecutor
19 with this solicitor's office in 2004 I believe.

20 Q And what attorney were you primarily involved with in
21 beginning of this case?

22 A Per my notes David Wood with Morton & Gettys.

23 Q And then what point did Mr. Wood phase out and Mr.
24 Morton take over?

25 A From my notes I had a lot of discussions with Mr. Wood

1 about Mr. Whitlock cooperating with the State. At some point he
2 was re-arrested on a distribution of crack charge and at that
3 point we decided we no longer wanted to use him as a witness.
4 At that point he had ruined his credibility from my standpoint.
5 That was the last communication that I had with David. I don't
6 have a date but I did let David know that we were no longer
7 interested in working with him. That we would make a of a high-
8 low cap of 8-12 years for trafficking crack, second offense, and
9 that I would agree to dismiss the newer set of charges; the
10 distribution charges.

11 My next note that I have as far as communication, I
12 have both the note and an e-mail that was sent to Mr. Morton the
13 week before our February 7th term of court. In that e-mail I
14 reiterated the plea offer and the date of the plea. That I
15 wanted to plead the case the week of February 7th. That if the
16 case did not plead that week then I would call the case to trial
17 the week of February 28th. At some point after that e-mail I
18 sent Mr. Morton another e-mail just asking how that conversation
19 with Mr. Whitlock went and then I have another e-mail, but that
20 was about the trial schedule.

21 MR. SHELTON: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes.

24 A If I may have State's one.

25 (Document handed to the witness.)

1 Q Miss Shelton, do you recognize that document?

2 A Yes.

3 Q Is that typical of your practice here in York?

4 A Yes.

5 Q And what all does that explain to the defendant?

6 A It's the bond form that is processed through our bond
7 judge. It just gives them their court dates and what is
8 expected of you; remain on good behavior, come to Court when you
9 are scheduled, that you can be tried in your absence if you fail
10 to show at any point in time.

11 Q Is there anywhere in that document that says don't show
12 up to court?

13 A No.

14 Q Even with your attorney's advice?

15 A No.

16 Q Okay.

17 A It also says don't leave the state.

18 Q And as we heard from --

19 A Yes.

20 Q From Mr. Whitlock himself he was in Georgia, correct?

21 A Yes.

22 Q So he was in total disregard of that Order?

23 A Yes.

24 Q And what is that date on that?

25 A February 28, 2004.

1 Q Okay. Thank you. And you stated you had discussions
2 with Mr. Morton early February 2005?

3 A Yes.

4 Q And that was saying that here is the offer and if he
5 doesn't accept it then you will go to trial.

6 A Yes.

7 Q Would you have put it on the March docket?

8 A It was the February 28th was the court docket. At some
9 point I had a phone conversation with Mr. Morton where he
10 confirmed he had an appointment with Mr. Whitlock to discuss the
11 February 7th term, plea offer. Because in my followup e-mail I
12 asked how did that conversation go.

13 Q And did he show up on the February 28th docket?

14 A He didn't show up on the February 7th docket or the
15 February 28th docket. I issued a bench warrant after the
16 February 7th docket.

17 Q And what action subsequent to that occurred?

18 A I spoke with his bondsman on February the 11th. His
19 bondsman was Chauncey Adams. And at that point Mr. Adams
20 informed me that he believed that Mr. Whitlock was running.
21 That he was unable to find him. That he would attempt to find
22 him before the court date. At that point I informed Mr. Adams,
23 Chauncey Adams, that I would call the case to trial the week of
24 February 28th.

25 I also at that point sent an e-mail to Mr. Morton

1 letting him know that I spoken to the bondsman. That the
2 bondsman confirmed that Whitlock was running and confirmed with
3 Mr. Morton that I planned to call the case to trial the week of
4 February 28th.

5 Q And after he did you not show up for the February 28th
6 docket what action if any do you take?

7 A We move forward with the trial in absence.

8 Q And than would be the beginning of March?

9 A Yes.

10 Q And that resulted in a guilty verdict, correct?

11 A Yes.

12 Q Okay. And then after there is a sealed sentence what
13 if anything happens?

14 A We move to estreat the bond.

15 MR. HUNTER: May I approach the witness?

16 THE COURT: You may.

17 Q Miss Shelton, do you recognize that document?

18 A Yes.

19 Q And what is that purported to be?

20 A It's a bench warrant for Mr. Arteasa Whitlock.

21 Q And is that a true and accurate copy of that bench
22 warrant?

23 A It appears to be, yes.

24 Q Okay. May I have it back.

25 MR. SHELTON: May I have it marked as State's

1 Two.

2 (State's Exhibit Two, bench warrant, marked for
3 identification as of this date.)

4 Q And is that your signature located at bottom of the
5 page?

6 A Yes.

7 Q And what does this document show? It's a bench warrant
8 is it not?

9 A Yes.

10 Q And does it say or give the reason for it, for what the
11 reason of the issuance?

12 A The defendant failed to report to court on February 7,
13 2005 and then we have certain things that we check. That he is
14 not in the detention center or the South Carolina Department of
15 Corrections. He is not enrolled in PTI. The case has not been
16 non-prosed. The defendant was notified and the defendant's
17 attorney was notified pursuant to our docket which is published
18 on line.

19 MR. HUNTER: And Your Honor, at this point we move
20 this in as State's Two.

21 MR. SHELDON: Without objection.

22 THE COURT: Admitted.

23 (State's Exhibit Two, bench warrant, received in
24 evidence as of this date.)

25 MR. HUNTER: Court's indulgence, Your Honor.

1 No further questions, Your Honor, at this time.

2 THE COURT: Cross.

3 MR. SHELDON: May it please the Court.

4 CROSS EXAMINATION

5 BY MR. SHELDON:

6 Q Miss Shelton, I just want to speak with you briefly
7 about some of your testimony.

8 Is it your position today that if the solicitor's
9 office tells the defense attorney that someone has to be in
10 court that in fact they do have to be in court?

11 A No, I didn't tell Mr. Morton that he didn't have to be
12 in court on February 7th. He was bench warranted for February
13 7th. He asked me if the bond's form says that they don't have
14 to be in court and it doesn't say that. I do on occasion excuse
15 the defendants from coming to court but he was not excused from
16 February 7th or February 28th.

17 Q Okay. So in general though, if the solicitor's office
18 gives permission to an attorney they do not have to be there
19 then the defendant does not have to be there?

20 A That is a common practice.

21 Q I want to talk to you now about the trial. What do you
22 remember about the trial?

23 A I remember the case very well. I also have notes from
24 the trial.

25 Q Was there a suppression motion argued?

1 A There was.

2 Q And I am assuming that was denied, is that correct?

3 A Yes.

4 Q Did you all have a Jackson v. Denno Hearing?

5 A We did.

6 Q And I assuming that the statements were allowed in, is
7 that correct?

8 A Yes.

9 Q Mr. Morton and Mr. Whitlock lost the Jackson v. Denno?

10 A Yes.

11 Q Did Mr. Morton present a defense, do you recall?

12 A I do not believe that he presented a defense because he
13 got last close.

14 Q And what else -- is there anything else that you
15 remember about the trial?

16 A We did address the TIA issue.

17 Q And what -- how was that addressed?

18 A As Judge Alford normally does, he wants to make sure
19 the state has notified the defendant to be here. So we put the
20 bond paperwork on the record where they checked that they know
21 they can be tried in their absence at any point in time. Also
22 Mr. Morton was questioned. We have a note that Mr. Morton
23 affirmatively said that Mr. Whitlock did have notice to be here
24 February 7th, but after that he lost contact with him because at
25 that point the State's position was he was running. So he was

1 noticed to be here February 7th. Was noticed of his offer. Was
2 noticed that the offer was going to deadline that week. The
3 judge made a definitive ruling that both the State had meet its
4 burden of notification, that the defense attorney had tried to
5 locate Mr. Whitlock and the bondsman had to tried to locate Mr.
6 Whitlock and that Mr. Whitlock voluntarily was not in court that
7 day.

8 Q And so was that made as part of a motion? What was the
9 motion before the Court at that time?

10 A Normally, when I do a trial in absence, I get the
11 Court's permission to proceed with a trial in absence, and to do
12 that the State -- my understanding, is the State has to meet the
13 burden the defendant has been noticed to be here and is
14 voluntarily absent from Court. And so the way I do that is I
15 normally put everything on the record as far as the bond
16 conditions, any communications I have had with the defense
17 attorney, and my understanding of what the defendant has been
18 noticed of. And then the defense attorney has to confirm and in
19 that case the note that we have as far as what was put on the
20 record, is that Mr. Morton affirmed that he had notified Mr.
21 Whitlock of the February 7th term of court and that his offer
22 would expire, but after that had lost contact with him, and that
23 the judge found that the State could move forward with the trial
24 in absence.

25 Q But I don't know if you remember this. Do you remember

1 whether or not Mr. Morton actually moved for a continuance in
2 that case?

3 A I know he moved to be relieved.

4 Q Okay, he moved to be relieved on what grounds; do you
5 recall?

6 A That Mr. Whitlock had not been available to him to help
7 prepare the defense is my memory and kind of what the notes
8 confirm.

9 Q Fast forward now to 2009 when Mr. Whitlock gets picked
10 up on federal charges. What effort did the State make to have
11 him transported back down to South Carolina?

12 A At that point I was with the public defender's office
13 in Union and so I only know what Miss Teasa Weaver told me when
14 I got back because I came back to this office in 2011. Since I
15 had prosecuted Mr. Whitlock originally she gave it back to me
16 and at that point she said she had made several attempts to have
17 him transported and I made a couple of calls to -- a couple of
18 calls to have him transported and no one would return my calls
19 from the federal system. And I know Merry Collins who works for
20 our office and is not an attorney, she's an investigator. She
21 made several attempts and we were unsuccessful in getting him
22 here and I don't know the reason why that occurred, but I do
23 know that when he was he released from federal custody I made
24 attempts to get him to turn himself in on the bench warrant and
25 he failed to do that for several weeks until I contacted his

1 federal probation officer to track him down that was when he
2 decided to turn himself in.

3 Q But so to the best of your knowledge Miss Weaver was
4 trying to get him in South Carolina?

5 A At some point, yes, but I don't know when. I don't
6 know if that started at 2009 or 2010. I have no idea.

7 Q But it had to be 2009 or 2010 because you come back on
8 the case in 2011?

9 A I came back in I believe April of 2011.

10 Q Okay. Thank you, I have no more questions.

11 MR. HUNTER: Nothing further from the State, Your
12 Honor.

13 THE COURT: Thank you. All right. Next.
14 Anything else?

15 MR. HUNTER: That is all we have from the State
16 Your Honor.

17 THE COURT: All right. Got anything in reply?

18 MR. SHELDON: No, Your Honor.

19 THE COURT: All right, Mr. Sheldon, do you want to
20 make an argument?

21 MR. SHELDON: Your Honor, we would argue that
22 there's essentially two forms of ineffectiveness in
23 this case. One on behalf of Mr. Morton for not
24 communicating with his client and really not informing
25 his client of the trial in absence and things like

1 that. He doesn't have a ton of recollection in his
2 notes. He doesn't have a ton of information, but
3 ultimately he is the attorney -- he is the supervising
4 attorney of that law firm or whether the judge takes
5 the bench -- or whether the lawyer takes the bench or
6 whether a lawyer leaves, it ultimately falls on Mr.
7 Morton to be prepared to go to trial on that case.
8 There are essentially no notes in his file whatsoever
9 regarding Mr. Whitlock's case until February 6th, but
10 yet there is an e-mail saying he was notified to be in
11 court February 7th. We just simply don't have any
12 communication in his file prior to February 6th that
13 Mr. Whitlock was in fact notified to be in Court on
14 February 7th.

15 Your Honor, furthermore, we would argue Miss Burris
16 has been ineffective in this case. Her testimony
17 confused me a little bit. She sent a letter of
18 representation to the solicitor's office and to the
19 Clerk of Court in November of 2009. We have
20 stipulated to the facts in this case that a transcript
21 existed at that time and wasn't destroyed until
22 sometime in 2010 or 2011. And so, had she diligently
23 pursued the the transcript like she stated she did she
24 would have had no problem obtaining it. It doesn't
25 make any sense when you take her letter where she

1 identifies Arteasa Whitlock as the client, she
2 identifies the state charges by the indictment numbers
3 to then say I didn't know who it was. I didn't know
4 what I was doing. I mean, she would have had
5 significant amount of time to get a hold of the court
6 reporter and order that transcript. It's ineffective
7 not to because as we heard going back to the actual
8 trial there was Jackson v. Denno hearing argued, there
9 was a suppression motion argument. All of that is
10 lost at this point because that transcript was never
11 obtained. Mr. Whitlock is not able to have his
12 appeal. The reconstructive transcript was denied.
13 But ultimately the original transcript would have been
14 exactly what everybody needed to put a finality in
15 this case in the Court of Appeals, Supreme Court,
16 wherever it had gone. She had every opportunity to do
17 that. She waited to do that. She indicated in her
18 testimony that at some point she did try to obtain the
19 transcript. Had she been diligent in obtaining that
20 transcript in 2009 when she initially undertook
21 representation she would have been able to have the
22 transcript and because she failed to do that Mr.
23 Whitlock has been prejudiced in case. So, I believe
24 Miss Burris is also ineffective, Your Honor.

25 THE COURT: All right. What is the State's

1 position?

2 MR. HUNTER: Just briefly, Your Honor.

3 First off, we don't feel he has met his burden to
4 show that either Mr. Morton or Miss Burris acted
5 unreasonably or below the professional standard, Your
6 Honor, when dealing with absconding client.

7 Your Honor, I think it is clear that Mr. Morton
8 tried to contact him. Regardless, he had signed his
9 bail form saying he had to be there every week and
10 obviously he didn't do that.

11 Your Honor also, Miss Burris stated that she acted
12 reasonably, as least as best she could under the
13 circumstances given essentially no information about
14 her client at first, and dealing with whatever
15 confusion that may have occurred.

16 Your Honor, regardless, as far as this case is
17 concerned he has to show it would have to be a
18 winnable issue on appeal. We don't believe he can
19 show that. And just lastly Your Honor, if you look at
20 the sentencing transcript that's up there in the
21 packet, that Judge Alford kind of said it best, page
22 18 line three and four -- line three. It's his fault
23 we don't have the transcript and that's where all the
24 problems originate. We don't believe he met his
25 burden.

1 THE COURT: Anything in reply?

2 MR. SHELDON: No, Your Honor.

3 THE COURT: All right. Well, you know, as far as
4 Mr. Morton goes it sounded like to me he did try to
5 communicate with the client before the trial. He went
6 to the house, went to his mother's house and he wasn't
7 there and the reason why he wasn't there was because
8 he had taken off. Later on based on the evidence that
9 I heard from just now from the solicitor, it sounded
10 like not only did you have the bond saying, you know,
11 you got a trial date and these other notices telling
12 him there was a trial date. But Judge Alford made a
13 finding prior to going forward with the trial
14 according to her recollection, and her notes that
15 Judge Alford did make a finding that he had been
16 notified. So I find that he did attempt to
17 communicate with the client and the client did have
18 notice that he had to be there. In any event -- and
19 so it really boils down to did he have the duty to
20 order a transcript after the TIA trial was completed
21 and I don't find that he had any such duty absent
22 there being a communication from the client that he
23 wished to appeal.

24 So, then you got this issue with Miss Burris and,
25 you know, while there was a matter of weeks and months

1 perhaps if she would have instantly ordered a
2 transcript -- it sounded like to me like she hadn't
3 been fully retained. She sent out communication
4 saying that she was going to represent the person --
5 represent the applicant, but wasn't officially
6 retained. She tried to ascertain whether or not the
7 person that was being held by the Feds was in fact her
8 client or whether it was somebody else, but absent an
9 absolutely retention she was under no duty to order a
10 transcript and when she did she found out that it had
11 already been purged from the system. So I don't find
12 that either one ever then their conduct had fallen
13 below the threshold of what competent counsel should
14 have you done and even if they had there is no
15 prejudice because it sounds like based on the evidence
16 that I heard this morning that the record had it been
17 available would show that Judge Alford in fact made an
18 inquiry into all of this at the trial and even though
19 we don't have a reconstructive record we do have some
20 evidence that he made a finding that the defendant had
21 been notified of the trial and that he was on notice
22 that if he didn't show up that he would be tried in
23 his absence. So there is no prejudice by the fact
24 that there wasn't any record at this point, and in any
25 event all of this is of his own making because he he

1 is absconded and he has a duty to show and he had got
2 a duty to try and communicate with his lawyer down the
3 road if he wanted to make any kind of appeal on that.
4 And so you can't go off and abscond and then claim you
5 were prejudiced when it was of your own making. So,
6 the application is denied and dismissed.

7 Good luck.

8 MR. HUNTER: Thank you, Your Honor.

9 MR. SHELDON: Thank you.

10 MR. HUNTER: Your Honor, will issue an Order in
11 thirty days.

12 THE COURT: Thank you.

13 (END OF TRANSCRIPT)
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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Family Court for Yourk County, South Carolina, on the 5th day of August, 2015.

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

January 16, 2016

Aileen Butler

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Arteasa Maurice Whitlock,
S.C.D.C. No. 277009,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-2336

ORDER OF DISMISSALDAVID HAMILTON
J.C.C.P. & G.S.
YORK COUNTY, SCFILED-RECEIVED
2015 DEC 10 PM 3:14

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 18, 2014. Respondent made its Return on or about March 19, 2015. An evidentiary hearing into the matter was convened on August 5, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Also testifying on behalf of Applicant were Kelly McClure and Michael Whitlock. Applicant's trial counsel, Jim Morton, Esquire, testified. Applicant's sentencing counsel, Twana Burris, Esquire, testified. Misti Shelton, Esquire, of the Sixteenth Circuit Solicitor's Office also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's sentencing hearing, Applicant's PCR Application, Respondent's Return, Applicant's Petition for Order to Reconstruct the Record of Appellant's Criminal Trial, and the Order dismissing Applicant's direct appeal.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. Applicant was indicted at the June 2004 term of the York County Grand Jury for Trafficking Crack Cocaine (2004-GS-46-1846) and Possession of Crack Cocaine with intent to distribute (PWID) within proximity of a park (2004-GS-46-1846). He was represented by Jim Morton, Esquire. On March 2, 2005, Applicant proceeded *in absentia* to a jury trial before the Honorable Lee S. Alford, after which he was found guilty of both charges as indicted. The sentence was sealed and was opened on June 6, 2013. Applicant appeared with his counsel, Twana Burris, Esquire, before Judge Alford and was sentenced to confinement for eighteen (18) years for Trafficking Crack Cocaine 10-28 grams, 2nd offense and ten (10) years, concurrent, for PWID Crack Cocaine within proximity of a park.

A notice of appeal was filed and an appeal perfected on Applicant's behalf by Benjamin Tripp, Esquire. A "Petition for Order to Reconstruct the Record of Appellant's Criminal Trial" was filed on Applicant's behalf on March 26, 2014. The South Carolina Court of Appeals denied the petition to reconstruct the record and affirmed the Applicant's conviction and sentence. State v. Whitlock, Order Appellate Case No. 2013-001340 (filed May 14, 2014). The Remittitur was issued on June 3, 2014.

Allegations

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

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel Failure to Review the Law of the Case
Render's Counsel's Assistance Ineffective"

2. "Ineffective Assistance of Appellate Counsel"
 - a. "Appellate Counsel Render(sic) Ineffective Assistance by Counsel's Failure to Provide the Court with a Full Record on Appeal"

II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he met with Mr. Morton in early 2005 after being previously represented by another attorney. He testified that he met with Mr. Morton three times and discussed plea offers. He testified that he did not have any notice of his trial, did not know the case was set for trial, and did not discuss with Mr. Morton the consequences of not showing up for trial. Applicant testified that when his trial was called, he was in Georgia because Mr. Morton gave him time to get his house and affairs together. Applicant testified that he told Mr. Morton that he would plead guilty to trafficking if it would be considered a second offense. Applicant testified that he discussed possible defenses with his attorney including search and seizure issues. He testified that he also told Mr. Morton which witnesses would be helpful to his case. Applicant testified that he was never told pre-trial by any judge that he would be tried in his absence if he failed to show when his case was called. He testified that in February 2009 he was incarcerated in federal prison on a federal drug charge. He that when he was in federal prison he attempted to reach out to Mr. Morton with no response and hired Mrs. Burris in 2009. Applicant testified that neither attorney obtained his trial transcript and he did not make any effort to obtain the transcript himself.

On cross-examination, Applicant testified that the court never gave him notice of when he had to be in court. He was shown his bond form from February 28, 2004, and acknowledged his signature on the form. He acknowledged that Section 2(b) on the first page of the form states that the judge informed him of "[h]is right and obligation to be present at trial and that trial will

proceed in his absence if he fails to attend." Applicant further acknowledged the he initialed a box on the second page of the bond form ordering him to appear at the term of general sessions in York County at 9:00AM on April 19, 2004, and appear and remain throughout each succeeding term of court until a final disposition is made of his case.

Kelly McClure's Testimony

Ms. McClure testified that she is Applicant's fiancé and was aware of his trial in absentia. She testified that she hired Mrs. Burris in 2009 and later learned from Mrs. Burris that the trial transcript was unavailable.

Michael Whitlock's Testimony

Michael Whitlock testified that he is Applicant's brother and helped retain Mrs. Burris around 2009. He testified that he met with her in 2009 and that she did not help with Applicant's case.

Counsel Jim Morton's Testimony

Mr. Morton testified that he does not recall his meetings with Applicant prior to trial and does not recall much about the trial. He testified that on March 1, 2005, he went to the address given to him by Applicant to inform him of the trial date. He testified that he did not see Applicant that day but told Applicant's mother to inform Applicant that he needed to be in court the following day. Mr. Morton testified that he has represented defendants in many trials *in absentia* before. He further testified that he did not have any reason to request the transcript after the trial and that appellate attorneys would typically request it for their appeals.

Mr. Morton testified on cross-examination that he met with Applicant for the first time on February 6, 2005. He again testified that he does not remember much from the 2005 trial but

assumes that he made the proper suppression motion. He testified that he did pursue witnesses to call but testified that either he could not find them or they turned out not to be helpful.

Counsel Twana Burris's Testimony

Mrs. Burris testified that she was contacted by Applicant's fiancé and cousin in late 2009 but was not retained for several weeks. She testified that there was a lot of confusion regarding exactly who she was representing because of an inmate with the same last name as Applicant. Mrs. Burris testified that she was retained specifically to open the sealed sentence and represent Applicant in his sentencing hearing. She further testified that she received the relevant information from the State regarding Applicant's case. She testified that she diligently made efforts to obtain the transcript but that it had already been purged since it had been longer than five years after Applicant's trial. Mrs. Burris testified that she contacted Mr. Morton and the Solicitor's Office in preparation for Applicant's sentencing hearing. She testified that she made efforts to get Applicant back in York County so that the sentence could be unsealed.

Assistant Solicitor Misti Shelton's Testimony

Ms. Shelton testified that she was the assistant solicitor who prosecuted Applicant's case in 2004. She testified that she discussed a plea offer with Mr. Morton on February 7, 2005, and informed him that if he did not take the plea then the case would go forward on the February 28, 2005 docket. She further testified that she spoke to Applicant's bondsman who said that Applicant was absconding and informed Mr. Morton of this fact. Ms. Shelton testified that a bench warrant was issued and the case was tried on March 2, 2005.

Ms. Shelton testified that she remembers the case well and that Applicant was not excused from trial. She testified that Applicant's suppression motion was denied, a motion

pursuant to Jackson v. Denno¹ was denied, and no witnesses were called on defense. Ms. Shelton further testified that the issue of trying Applicant *in absentia* was brought before Judge Alford. She testified that the State informed Judge Alford that they believed Applicant to be absconding and that Mr. Morton informed the Judge Alford that Applicant had notice of the trial. Ms. Shelton testified that she received permission from Judge Alford to proceed with a trial *in absentia* after the court found it to be appropriate. Further, Ms. Shelton testified that the Sixteenth Circuit Solicitor's Office contacted the appropriate federal authorities in 2009 in an attempt to have Applicant returned to York County, however their attempts were unsuccessful.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the 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, 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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness

¹ See Jackson v. Denno, 378 U.S. 368 (1964).

under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds the testimony of Applicant's trial counsel and sentencing counsel to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Applicant failed to meet his burden of proving that his trial counsel was ineffective. This Court finds that Mr. Morton made diligent efforts to notify Applicant of the impending trial by going to the address Applicant provided, however Applicant was not home. This Court further finds that Judge Alford made the finding prior to proceeding with a trial *in absentia* that Applicant had been properly notified of his trial by Mr. Morton and the language on the signed bond form. Regarding Applicant's allegation that his trial counsel failed to obtain

the trial transcript, this Court finds that Mr. Morton was under no duty to order the transcript, especially in light of the fact that he had no communication with Applicant while Applicant absconded.

This Court finds that Applicant has also failed to meet his burden of proving that his sentencing counsel was ineffective. This Court finds that Mrs. Burris had not been officially retained by Applicant for weeks or months after her initial discussions with Applicant's family. This Court also finds that Mrs. Burris made reasonable efforts to find her client in the federal system so that she would be able to diligently represent him at the sentencing hearing. This Court further finds that Mrs. Burris made reasonable efforts to obtain the trial transcript but was unsuccessful because over five years had elapsed since the trial and the transcript was purged. Regardless, this Court finds that Mrs. Burris was under no duty to order the trial transcript.

Accordingly, this Court finds that neither Applicant's trial counsel nor his sentencing counsel were ineffective. This Court further finds that Applicant has failed to prove prejudice. The record shows that Judge Alford made the correct inquiry of both parties before proceeding with Applicant's trial *in absentia*. The fact that Applicant was tried in his absence is of his own making, as Applicant had a duty to appear before the Court as instructed and a duty to communicate with his counsel. Instead, Applicant absconded from York County and was arrested on federal charges four years later. Additionally, Applicant cannot show prejudice by his counsels' failure to obtain the trial transcript because Applicant's absconding and federal arrest contributed to the unavailability of the trial transcript. See State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (the right to appeal may be lost when a defendant's willful decision to abscond led to the destruction of the trial transcript pursuant to Rule 607).

Thus, Applicant's allegation of ineffective assistance of counsel is readily denied and dismissed as Applicant has failed to meet his burden in proving deficiency and resulting prejudice.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this _____ day of 9/11, 2015.

ROGER M. YOUNG, SR.
Presiding Judge
Sixteenth Judicial Circuit

**JUDGE ROGER YOUNG
CIRCUIT COURT
OF SC #2134**

For Children, South Carolina

WITNESSES

DEU\Gibson

ss

ARREST WARRANT NUMBER

G-363666

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

3/2/05

DOCKET NO. 2004-GS-46-1845

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

June 17, Term 2004

THE STATE

vs.

ARTEASA MAURICE WHITLOCK

Indictment for

POSSESSION OF CRACK COCAINE WITH
INTENT TO DISTRIBUTE WITHIN
PROXIMITY OF A PUBLIC PARKSC Code: § 44-53-445
CDR Code: 108After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 17, 2004, the Grand Jurors of York County present upon their oath:

**POSSESSION OF CRACK COCAINE WITH INTENT
TO DISTRIBUTE WITHIN PROXIMITY OF A PUBLIC PARK**

That on or about February 27, 2004, in York County, South Carolina, the Defendant, Arteasa Maurice Whitlock, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a controlled substance, to wit: crack cocaine, within a one-half mile radius of the grounds of Glencairn Park, a public park, located in the city of Rock Hill, South Carolina, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended.

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


ASSISTANT SOLICITOR

125

WITNESSES

DEU/Gibson

SS

ARREST WARRANT NUMBER

G-363667

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

3/2/05

DOCKET NO. 2004-GS-46-1846

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

June 17, Term 2004

THE STATE

vs.

ARTEASA MAURICE WHITLOCK

Indictment for

TRAFFICKING CRACK COCAINE

SC Code: §44-53-375
CDR Code: 452

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

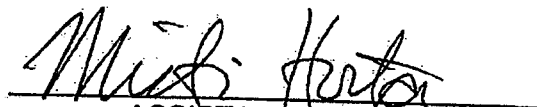
INDICTMENT

At a Court of General Sessions, convened on June 17, 2004, the Grand Jurors of York County present upon their oath:

TRAFFICKING CRACK COCAINE

That on or about February 27, 2004, in York County, South Carolina, the Defendant, Arteasa Maurice Whitlock, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of 10 grams or more of crack cocaine, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976) as amended.

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


ASSISTANT SOLICITOR