

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Maite Murphy, Circuit Court Judge

RECEIVED

AUG 12 2016

SC SUPREME COURT

ALVIN L. CLARK ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002659

A P P E N D I X

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ATTORNEYS FOR RESPONDENT

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INDICTMENT57

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2013-GS-38-01071

Alvin L. Clark,)	
)	
Plaintiff,)	
)	
v.)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	
)	

August 25, 2013
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Ted Lupton, Esquire
Attorney for the State

Doug Mellard, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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I N D E X

WITNESS/DESCRIPTION

PAGE NO.

Hearing - plea

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 14

Clark v. State 8/26/13

3

1 8/26/13

2 THE COURT: Wait a minute, we'll take one more plea
3 before lunch break.

4 MR. LUPTON: Alvin Clark.

5 And, Your Honor, all we're doing is qualifying this
6 plea, so it should be really short.

7 MR. LUPTON: Your Honor, may it please the Court.

8 THE COURT: Yes, sir.

9 MR. LUPTON: Your Honor, before you for guilty plea is
10 Alvin Clark. He is represented by Doug Mellard. He is
11 waiving presentment on 2013-GS-38-1071, indictment for
12 trafficking cocaine, taking it as a second offense, 10 to 28
13 grams and on Thursday he will report for sentencing, at
14 which point we're recommending five years.

15 THE COURT: Okay. What's the maximum sentence on this?

16 MR. LUPTON: Goes up to 30, Your Honor.

17 THE COURT: Okay.

18 THE CLERK: Please raise your right hand.

19 (WHEREUPON, Alvin Clark was sworn
20 to tell the truth.)

21 THE CLERK: Thank you.

22 THE COURT: All right. Mr. Clark, how old are you?

23 MR. CLARK: 33, sir.

24 THE COURT: All right. Mr. Clark, what do you do for a
25 living?

1 MR. CLARK: I work at the clothing store, Micky's
2 Fashion. It's a little clothing store.

3 THE COURT: Okay. How long have you been there?

4 MR. CLARK: Like a year.

5 THE COURT: How's the job going?

6 MR. CLARK: It's all right.

7 THE COURT: Mr. Clark, how far did you go in school?

8 MR. CLARK: 10.

9 THE COURT: Where were you going?

10 MR. CLARK: Orangeburg Wilkerson High.

11 THE COURT: Why'd you stop?

12 MR. CLARK: I had kids, trying to take care of my kids.

13 THE COURT: Have you gotten your GED?

14 MR. CLARK: No, sir.

15 THE COURT: And I know you working in a clothing store
16 now, any other type of job skills you have?

17 MR. CLARK: Yes, sir. Like a little mechanic work.

18 THE COURT: All right. Mr. Clark, have you ever been
19 treated for any mental health conditions?

20 MR. CLARK: No, sir.

21 THE COURT: Okay. Are you taking any kind of
22 medication?

23 MR. CLARK: No, sir.

24 THE COURT: Are you under the influence of any alcohol
25 or any illegal drugs?

Clark v. State 8/26/13

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1 MR. CLARK: No, sir.

2 THE COURT: So you are thinking clearly here today?

3 MR. CLARK: Yes, sir.

4 THE COURT: You know exactly what you're doing?

5 MR. CLARK: Yes, sir.

6 THE COURT: Okay. Mr. Clark, I'm told you're here to
7 plead guilty to trafficking cocaine base, second offense, 10
8 to 28 grams; is that correct?

9 MR. CLARK: Yes, sir.

10 THE COURT: Okay. You know you're facing up to 30 years
11 in jail?

12 MR. CLARK: Yes, sir.

13 THE COURT: Now, State's recommending a five year
14 sentence?

15 MR. CLARK: Yes, sir.

16 THE COURT: Other than that recommendation has anybody
17 promised you anything, threatened you or forced you to get
18 you to plead guilty here today?

19 MR. CLARK: No, sir.

20 THE COURT: Okay. Now, you have met with your attorney
21 and he's gone over the facts that led to your arrest?

22 MR. CLARK: Yes, sir.

23 THE COURT: And he's advised you of the law, possible
24 sentences and your constitutional rights?

25 MR. CLARK: Yes, sir.

1 THE COURT: It's my understanding that this trafficking
2 charge counts as both a violent and a serious offense; is
3 that your understanding?

4 MR. CLARK: Yes, sir.

5 THE COURT: You understand that counts as a strike
6 against you?

7 MR. CLARK: Yes, sir.

8 THE COURT: And that's been explained to you?

9 MR. CLARK: Yes, sir.

10 THE COURT: You got any questions about that?

11 MR. CLARK: No, sir.

12 THE COURT: Okay. You understand you have the right to
13 remain silent?

14 MR. CLARK: Yes, sir.

15 THE COURT: That don't mean you're silent now. You've
16 got to answer.

17 MR. CLARK: Yes, sir.

18 THE COURT: Okay. You understand you've got the right to
19 remain silent, but you give up that right if you plead
20 guilty; you understand that?

21 MR. CLARK: Yes, sir.

22 THE COURT: That's because you've to admit you're guilty
23 of this to me?

24 MR. CLARK: Yes, sir.

25 THE COURT: You also have the right to have a jury

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7

1 trial?

2 MR. CLARK: Yes, sir.

3 THE COURT: Do you want a jury trial on this charge?

4 MR. CLARK: No, sir.

5 THE COURT: Okay. You want to plead guilty?

6 MR. CLARK: Yes, sir.

7 THE COURT: Okay. You've understood everything Mr.

8 Mellard has told you?

9 MR. CLARK: Yes, sir.

10 THE COURT: Are you satisfied with his services as your
11 attorney?

12 MR. CLARK: Yes, sir.

13 THE COURT: Do you need any more time to talk with him?

14 MR. CLARK: No, sir.

15 THE COURT: Do you want a jury trial on this charge?

16 MR. CLARK: No, sir.

17 THE COURT: Do you want to go forward with your guilty
18 plea?

19 MR. CLARK: Yes, sir.

20 THE COURT: Okay.

21 All right. Mr. Lupton.

22 MR. LUPTON: Your Honor, this occurred here in
23 Orangeburg County on June 23, 2013. Officers were serving a
24 search warrant, County Sheriff's department served a search
25 warrant. They found him outside on the front porch. He was

1 detained, advised of his rights. They went in and found
2 drugs. He claimed all the drugs. He went around and showed
3 them where some drugs were and gave a statement that he was
4 selling, because he was having trouble finding a job, he
5 needed the money. He identified the type and amount. It
6 was trafficking level. He's got a prior from 2001 as well
7 as a prior from 2007. So this is a second or subsequent.

8 THE COURT: Okay. All right.

9 All right. Mr. Clark, they've indicated you've got two
10 prior charges; is that correct?

11 MR. CLARK: Yes, sir.

12 THE COURT: All right, sir. And you heard what he told
13 me about the circumstances that led to your arrest; do you
14 agree with that?

15 MR. CLARK: Yes, sir.

16 THE COURT: Okay. All right.

17 The indictment that I have, 2013-GS-38-1071, has not
18 been presented to the grand jury, but I see you waived
19 presentment; is that correct?

20 MR. CLARK: Yes, sir.

21 THE COURT: Okay. All right, sir. The indictment
22 alleges that you did in Orangeburg County on June 28, 2013,
23 knowingly sell, manufacture, cultivate, or was in knowing or
24 actual constructive of approximately 37 grams of cocaine
25 base in violation of the laws of this state.

Clark v. State 8/26/13

9

1 That's what the indictment says. They're allowing you
2 to plead to between 10 and 28 grams; is that correct?

3 MR. CLARK: Yes, sir.

4 THE COURT: How do you plead to the charge of
5 trafficking cocaine base, second?

6 MR. CLARK: Second.

7 THE COURT: Okay. Mr. Clark, do you understand if I
8 accept your guilty plea it will show up as a conviction on
9 your record?

10 MR. CLARK: Yes, sir.

11 THE COURT: You understand it is a violent and a serious
12 offense?

13 MR. CLARK: Yes, sir.

14 THE COURT: It counts as a strike?

15 MR. CLARK: Yes, sir.

16 THE COURT: Okay. All right, sir. You understand if I
17 go along with the recommendation you will have a five year
18 sentence. You are aware of that?

19 MR. CLARK: Yes, sir.

20 THE COURT: You're facing up to 30 years in jail?

21 MR. CLARK: Yes, sir.

22 THE COURT: Okay. And you understand that you've got 10
23 days from the date of sentencing to appeal my decision?

24 MR. CLARK: Yes, sir.

25 THE COURT: Okay. Do you want me to accept your guilty

1 plea?

2 MR. CLARK: Yes, sir.

3 THE COURT: All right. Mr. Clark, I find your decision
4 to plead guilty is freely, voluntarily and intelligently
5 made. I find that you've had the advice of counsel, a
6 competent attorney. I find that you are satisfied with the
7 services of your attorney. I find there is a factual basis
8 for you to please guilty to this charge. I am going to
9 accept your guilty plea.

10 It's my understanding you're coming back Thursday for
11 me to decide on the sentence?

12 MR. CLARK: Yes, sir.

13 THE COURT: Thursday at 9:00?

14 MR. LUPTON: Yes, sir.

15 MR. MELLARD: Yes, Your Honor.

16 THE COURT: All right. Mr. Clark, I will see you at
17 9:00.

18 MR. CLARK: Thank you, sir.

19 MR. MELLARD: Thank Your Honor.

20 (This plea is in recess until Thursday 8/29/13 for
21 sentencing)

22 (Court in session for the sentencing of the plea from
23 8/26/13.)

24 (8/29/13)

25 MR. LUPTON: This is the sentencing from Monday.

Clark v. State 8/26/13

11

1 THE COURT: All right. We're back on the record with
2 Alvin Clark, Indictment Number 2013-GS-38-1071, I believe.
3 Is that correct, Mr. Lupton?

4 MR. LUPTON: I believe it is, Your Honor. Yes.

5 THE COURT: Okay. All right. When we were last here I
6 had accepted his plea. This where I normally turn to Mr.
7 Mellard and say, let me hear from you, please, sir.

8 MR. MELLARD: Yes, sir.

9 Mr. Clark is 33 years old. When he was here before you
10 he said he'd been through the 10 grade and he had stopped to
11 take care of his children. I'll tell the Court that he has
12 three children right now that live with him.

13 THE COURT: Uh-huh. (Affirmative response.)

14 MR. MELLARD: His wife is here with him. They've been
15 together for 17 years. He's currently working at a clothing
16 store. I think it's Micky's Fashion. He also does
17 mechanics work. Your Honor, he spent a week in jail
18 previous. I believe his wife would want to address the
19 Court.

20 THE COURT: All right.

21 Your name, please, ma'am?

22 MS. CLARK: Shante Stevenson.

23 THE COURT: Shante Stevenson. Ms. Stevenson, what would
24 you like to tell me, please, ma'am.

25 MS. STEVENSON: Just wanted you to know that, you know,

1 he's a good person. He made mistakes, you know. We talk.
2 It's going to be a big change to say good-bye to his kids.
3 It's going to be a big change for me, you know. They're
4 used to having their daddy. I have three boys. This is
5 going to be kind of hard for me to raise them without him,
6 because they look up to him. He chose, he choose the wrong
7 friends and I tried to tell him that. The only friends you
8 have are the ones behind you; his wife, his sister, his
9 cousin. None of his friends are here, none of them. I hope
10 this is an eye-opener for him. Like I told him, it's not
11 only him that's getting locked up, it's me and the kids.

12 THE COURT: Yeah.

13 MS. STEVENSON: I don't want my kids to see me cry.
14 I'm going to be strong for them. I know it's a long time.
15 By the time he gets home his baby be 16. He won't even see
16 his baby take his first steps, his first birthday.

17 THE COURT: Okay.

18 MS. STEVENSON: I've been with him since I was 17.

19 THE COURT: Okay. Well, you know, I'm glad y'all have
20 been together 17 years. I'm sorry that there's going to be
21 a separation caused by his actions.

22 MS. STEVENSON: Yes, sir.

23 THE COURT: But he's old enough now to learn maybe not
24 to get involved when he comes back.

25 MR. MELLARD: Your Honor, I think this is an eye-opener.

Clark v. State 8/26/13

13

1 I do think that he has good family support and I don't think
2 he will be in any more trouble once he gets back.

3 THE COURT: Okay. Anything else?

4 MR. MELLARD: No, sir.

5 THE COURT: And a week in jail, seven days?

6 MR. MELLARD: Yes, sir. That's what he told me.

7 THE COURT: Okay. Well, I'll just give him credit.

8 All right, Mr. Clark, the sentence of this Court is you
9 are committed to the State Department of Corrections for a
10 period of five years. I'll give you credit for time served.

11 Good luck to you.

12 MR. CLARK: Yes, sir.

13 MR. LUPTON: Thank Your Honor.

14 (This proceeding was concluded.)

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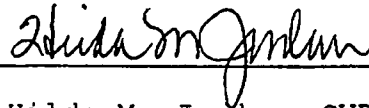
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 26 DAY OF AUGUST, 2013

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

June 7, 2014

Clark v. State

8/26/13

15

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FORM 5

STATE OF SOUTH CAROLINA)
County of Orangeburg)
Alvin L. Clark # 285179)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2014-CP-3800308

v.)
State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2014 APR 21
aw

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Trenton Corr. Inst 2A-65 84 Green House Road, Trenton, S.C. 29849
Walden Corr. Inst. 4340 Broad River
Rd. Columbia S.C. 29210
2. Name and location of Court which imposed sentence Orangeburg County Court House
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Trafficking Cocaine based 2nd 2013-GS-38-1674
 - (b) _____

RECEIVED

APR 03 2014
Referred to Herrigan/dm

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 8/29/13 sentence terms 5 yrs Violent

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

None

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result: NA

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See Attachment
- (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) _____
- (c) _____

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

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

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

- (a) the specific nature thereof: NA
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed: NA
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof: *NA*

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

(d) the date of each such disposition: *NA*

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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. Douglas Mallard _____
 - _____
 - ii. _____
 - _____
 - iii. _____
 - _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea, Sentencing _____
 - _____
 - ii. _____
 - _____
 - iii. _____
 - _____

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

relief from ~~conviction~~ Conviction

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

NO

STATE OF SOUTH CAROLINA)
County of Orangeburg)

VERIFICATION

I, Alvin L Clark, 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.

Alvin Clark

SWORN to and subscribed before me this 14th day of March, 2014.

Elaine M. Freeman (L.S.)
Notary Public

My Commission Expires: June 22, 2021.

FILED
MAR 21 10 57 AM '14
CLARK

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

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

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

Alvin Clark
Applicant

SWORN or affirmed to and subscribed before me this
27th day of March, 2014.

Elaine M. Freeman
Notary Public

My Commission Expires: June 22, 2021

FILED
MAR 21 11 12 AM '14
CLERK OF SUPERIOR COURT
JULIA M. HARRIS
2014 MAR 21 11 12 AM '14

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
)
 Alvin L. Clark, #285179)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-0308

RETURN

Respondent, making its Return to the application for post-conviction relief filed March 31, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was represented by R. Douglas Mellard, Esquire. On August 29, 2013, Applicant appeared before the Honorable Brooks P. Goldsmith, where he waived presentment to the Orangeburg County Grand Jury and pled guilty to Trafficking in Cocaine Base - Second Offense (10-28 grams) (2013-GS-38-01071). Pursuant to negotiations with the State and Applicant, Judge Goldsmith sentenced Applicant to five years imprisonment. Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction and Applicant's records from the South Carolina Department of Corrections. The transcript of Applicant's guilty plea proceeding has been ordered and will be forwarded upon receipt for incorporation. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to challenge the chain of custody,
 - ii. Counsel failed to file any pre-trial motions,
 - iii. Counsel failed to properly advise defendant of plea,
 - iv. Counsel failed to pursue [sic] defense available to defendant,
 - v. Counsel inadequate case preparation jeopardize [sic] the applicant [sic] right to effective Assistance [sic],
- b. Violation of due process;
- c. Lack of subject matter jurisdiction;

III.

In his Application, Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Applicant further alleges that he was denied due process of law and states "suppression of evidence." However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing

will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing, Respondent would submit that these allegations should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedure Act. The allegations are so vague that it is impossible for the State to respond.

V.

Respondent interprets Applicant's third ground for relief to be one that the trial court lacked subject matter jurisdiction. Respondent submits that Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, Applicant waived indictment by the Orangeburg County Grand Jury. The said indictments contain all the necessary elements of each offense and further cite the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g.*, Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant cannot show any irregularity, because the indictments in question are sufficient on their face.

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by* Gentry, 610 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 610 S.E.2d 494; *See also* S.C. Const.

Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, Respondent would move for summary judgment on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 9, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 ALVIN L. CLARK, #285179)
)
 Applicant,)
))
 vs)
))
 STATE OF SOUTH CAROLINA,)
))
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2013-CP-38-0308

AFFIDAVIT OF SERVICE BY MAIL

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

Jonathan Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street
Suite 104
Columbia, South Carolina 29201

DATED this 9th day of June, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

2013-CP-38-00308

ALVIN L. CLARK

) TRANSCRIPT OF RECORD

VS.

STATE OF SOUTH CAROLINA

)
)
)
) MAY 20, 2015
) ST. GEORGE, SC

B E F O R E:

THE HONORABLE MAITÉ MURPHY

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

JONATHAN D. WALLER, ESQUIRE
Attorney for the Applicant

J. CLAYTON MITCHELL, ESQUIRE
Attorney for the State of South Carolina

Ruth L. Mott, RPR, CRR
Certified Court Reporter

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 ALVIN CLARK

MR. WALLER

3

12

5 MR. MITCHELL

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6 ROBERT DOUGLAS MELLARD

MR. MITCHELL

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7 MR. WALLER

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8 CERTIFICATE OF REPORTER 19

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11 E X H I B I T S

12 NO. DESCRIPTION ID EVD

13 (NONE MARKED)

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1 MR. MITCHELL: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. MITCHELL: This is Alvin Clark versus the State of
4 South Carolina, Case No. 2013-CP-38-0308. Mr. Clark was
5 indicted by the Orangeburg County Clerk of Court. He was
6 represented on these charges by Mr. Doug Mellard. He plead
7 guilty August 29, 2013, before the Honorable Brooks
8 Goldsmith, where he waived presentment on a trafficking in
9 cocaine base second offense, 10 to 28 grams, pursuant to
10 negotiations with the State. Judge Goldsmith sentenced him
11 to five years imprisonment. No direct appeal was taken on
12 that case. Mr. Clark filed this application for
13 post-conviction relief March 31, 2014.

14 Mr. Clark is present and represented by Mr. Jonathan
15 Waller, and I believe they have a motion before the Court.

16 THE COURT: Okay, Mr. Waller.

17 MR. WALLER: Your Honor, we actually do not have a
18 motion before the Court.

19 THE COURT: Okay.

20 MR. WALLER: I would call Alvin Clark.

21 THE COURT: All right, Mr. Clark, if you'd please come
22 to the witness stand.

23 ALVIN CLARK,
24 being first duly sworn, testified as follows:
25 DIRECT EXAMINATION BY MR. WALLER:

1 Q. Good afternoon, Mr. Clark.

2 A. Good afternoon.

3 Q. Mr. Clark, how did Mr. Mellard come to be your attorney?

4 A. He was assigned to me by Orangeburg County Courthouse.

5 Q. And when you were first arrested, what were you first
6 arrested for?

7 A. Trafficking.

8 Q. Okay. Were you arrested -- when was that?

9 A. 6 -- 6/29/13.

10 Q. Okay. So in June?

11 A. Yes, sir.

12 Q. Did you in February of the next year pick up an
13 additional charge?

14 A. Yes, sir.

15 Q. Okay. Who was your attorney on that charge?

16 A. Mr. Mellard.

17 Q. Okay. When you were arrested back in June, did you
18 have -- you had more than one charge; is that right?

19 A. Yes, sir.

20 Q. Okay. How many did you have, do you remember?

21 A. In June?

22 Q. Yes, sir.

23 A. I know it was just charge of trafficking when they
24 raided the house.

25 Q. Okay. Do you recall also being charged with

1 distribution of cocaine base?

2 A. Yes, sir.

3 Q. Okay. Do you also remember being charged with
4 distribution of marijuana?

5 A. Yes, sir.

6 Q. Did you also have three proximity to school or church
7 charges also?

8 A. Yes, sir.

9 Q. Did Mr. Mellard represent you on all of those charges?

10 A. Yes, sir.

11 Q. Okay. Now, you said the house was raided; is that
12 right?

13 A. Yes, sir.

14 Q. What have you learned about why your house was raided?

15 A. Under the investigation.

16 Q. Your house was under investigation?

17 A. Yes, sir.

18 Q. Was it raided pursuant to a search warrant?

19 A. Yes, sir.

20 Q. In your conversations with Mr. Mellard did you all talk
21 about the search warrant?

22 A. I never talked to him until the day I went to court.

23 Q. Okay. How long from when you were -- he was first
24 appointed as your attorney until you plead guilty?

25 A. You said what now?

1 Q. How long from when he was first appointed to represent
2 you was there until you actually plead guilty?

3 A. Like three months.

4 Q. Okay. And you said, you testified that you did not meet
5 with him until the day you went to court.

6 A. Yes, sir.

7 Q. When you went to court and met with him, what did you
8 all talk about?

9 A. Either I plead guilty today or he gone put me on the
10 trial docket.

11 Q. Okay. Trial docket for when?

12 A. He never did say. He just say I got to plead to five
13 years, 85 -- he said either I take the plea or he gone put me
14 on the trial list.

15 Q. Okay.

16 A. That's all we talked about.

17 Q. Okay. When your house was searched back in June, do you
18 have some issue with the amount of drugs that was found in
19 your house?

20 A. Yes, sir.

21 Q. What are those issues?

22 A. Issue was that they found 1.6 grams of crack cocaine in
23 one spot and then the other spot they found 36 grams of which
24 they thought was cocaine, but it wasn't cocaine, it was cut;
25 that when I asked Mr. Mellard to get my analysis on the drugs

1 so he will see that, what was what and they wouldn't charge
2 with trafficking, they would charge with PWID or
3 distribution. But him not doing the job, doing investigation
4 on the drugs, he just came at me with the plea charged me
5 with trafficking.

6 Q. Did you ever see any of the drug analysis from any of
7 your charges?

8 A. No, never -- he sent me a motion for the, the charge
9 back in February, but them charges was dismissed against me
10 because the person drugs was on, he told them I'm on the
11 scene that whatever he find in the car is his. When they
12 came on the scene, Calvin Kennedy said that whatever you all
13 found in the car is mines; so when they found the drugs in
14 the car, they still locked everybody up for constructive,
15 whatever they call it, constructive justice.

16 Q. Okay. Was that the February charges?

17 A. Yes, that was February.

18 Q. So from the June charges, though, you had three drug
19 charges; is that right?

20 A. Yes.

21 Q. Okay. Did you ever see any of the drug analysis for
22 those three charges?

23 A. No. And I was asking them for the analysis for them
24 charges because that's what I'm doing the time for, but every
25 time I ask for the motion he send me the motion from February

1 which they charged me with this against me; so I wrote him
2 telling him send me the motion for the charge that I'm
3 incarcerated for, but he never sent it to me.

4 Q. From your June charges -- and that's how I'm going to
5 refer to them, June and February -- from your June charges
6 did you ever receive any of your discovery?

7 A. No, sir.

8 Q. Did you request it?

9 A. Like four times.

10 Q. Okay. When you and Mr. Mellard met, how long were you
11 all able to speak?

12 A. Only words I got from him was either you plead today or
13 be put on the trial list because that was like about a minute
14 or two.

15 Q. Okay. Your testimony is here that you had some issues
16 with the amount of drugs; is that right?

17 A. Yes, sir.

18 Q. What did you and Mr. Mellard talk about that got you to
19 plead guilty?

20 A. He said either plead today or be put on the trial list,
21 and I got prior drug convictions, and so I wanted to -- I was
22 telling him if he'd go ahead and get my drug analysis, he
23 will see that I won't have -- that I won't be charged with
24 trafficking because it wasn't enough drugs to be charged with
25 trafficking, but he wasn't trying to hear that. He was

1 saying, either we plea today, or I'm gone put you on the
2 trial list, so basically I was co-enhanced to plea that day
3 so I won't be put on the trial list.

4 Q. Did you all ever discuss the search warrant at all?

5 A. We never discussed nothing besides either you plea today
6 or be put on the trial list.

7 Q. Okay. Mr. Clark, I've asked you all the questions that
8 I have. Is there anything else you think I've left out or
9 that you think the Court needs to be aware of about Mr.
10 Mellard's representation of you?

11 A. No, sir.

12 MR. WALLER: Okay. Please answer any questions
13 Mr. Mitchell has.

14 THE COURT: Yes, sir, cross-examination.

15 CROSS-EXAMINATION BY MR. MITCHELL:

16 Q. Good afternoon, Mr. Clark.

17 A. Good afternoon.

18 Q. So you plead guilty before Judge Dickson; is that
19 correct?

20 A. Yes, sir, there's no -- I don't know the name.

21 Q. Okay. That was in Orangeburg County, though, correct?

22 A. Yes, sir.

23 Q. All right. And the Judge, he went over with you the
24 rights you were giving up to plead guilty; is that right?

25 A. Yes, sir.

1 Q. He went over that you were waiving rights to a trial by
2 pleading guilty; is that right?

3 A. Yes, sir.

4 Q. And that by pleading guilty you'd waive any defenses; is
5 that right?

6 A. Yes, sir.

7 Q. Do you remember when the solicitor went over the facts
8 of what happened?

9 A. He went over the facts?

10 Q. Do you remember when the solicitor told the Judge the
11 facts of what they thought they could prove?

12 A. I can't recall.

13 Q. Okay. Do you remember the solicitor speaking about, you
14 know, the incident that led up to your arrest?

15 A. Yes, sir.

16 Q. How they came into the house, right?

17 A. Yes, sir.

18 Q. Okay. And you were cooperative with the investigators,
19 weren't you?

20 A. Yes, sir.

21 Q. And you gave a statement that you were selling drugs
22 because you needed money; is that right?

23 A. Yes, sir, take care my family.

24 Q. And you were cooperative to where you identified what
25 drugs were in the house; is that right?

1 A. Yes, sir.

2 Q. And the amounts that were found, it was 37 grams; is
3 that right?

4 A. That was, yes, sir.

5 Q. It was 37 grams found, but they let you plead to between
6 10 and 28 grams; is that right?

7 A. Yes, sir.

8 Q. And that was in exchange for your guilty plea, right?

9 A. Yes, sir.

10 Q. And your cooperation?

11 A. Yes, sir.

12 Q. Okay. So you never met with Mr. Mellard before the day
13 of the plea; is that right?

14 A. I met with him the day that he wanted me to sign the
15 sentencing sheet for the five years and the day that I was
16 being -- that I had to turn myself in to go do the five
17 years.

18 Q. So you weren't incarcerated the whole time after you
19 were arrested, were you?

20 A. No, sir.

21 Q. You had only done like a week in jail maybe?

22 A. Yes.

23 Q. Something along those lines?

24 A. Yes.

25 Q. The Judge advised that you were facing 30 years; is that

1 correct?

2 A. Yes, sir.

3 Q. And you received a sentence of five years?

4 A. Yes, sir.

5 Q. And that was -- the State recommended that sentence,
6 correct?

7 A. Yes, sir.

8 Q. Did Mr. Mellard go over the charges with you?

9 A. Like I said, I never even got a chance to talk to him.

10 MR. MITCHELL: Okay. I have no further questions.

11 Thank you.

12 THE COURT: Anything further?

13 MR. WALLER: Just briefly, Your Honor.

14 REDIRECT EXAMINATION BY MR. WALLER:

15 Q. Mr. Clark, the 37 grams that was mentioned, is that what
16 you were referring to earlier?

17 A. Yes, sir. It was 1.6 grams of crack cocaine and like 35
18 maybe 35 point something grams of cut.

19 Q. When you say cut, what do you mean by cut?

20 A. Like anything to cut the coke, like a white -- it was a
21 white substance, but it wasn't no controlled substance. It
22 was just something mixed with cocaine, but it wasn't never
23 mixed with cocaine, it was just sitting there.

24 Q. Okay. To the best of your knowledge were there any
25 drugs in that pile?

1 A. No, wasn't no drugs in that pile.

2 MR. WALLER: No further questions.

3 THE COURT: You may step down, Mr. Clark. Thank you.

4 Any other witnesses?

5 MR. WALLER: No further witnesses, Your Honor.

6 THE COURT: Anything from the State?

7 MR. MITCHELL: Your Honor, the State calls Mr. Doug
8 Mellard.

9 ROBERT DOUGLAS MELLARD,
10 being first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. MITCHELL:

12 Q. Good afternoon, Mr. Mellard.

13 A. Good afternoon.

14 Q. Thanks for being here today. How long have you been
15 practicing law?

16 A. Since '97.

17 Q. Where are you currently employed?

18 A. Orangeburg Public Defender's Office.

19 Q. How long have you been employed there?

20 A. Since 2005.

21 Q. Have you had the opportunity to handle drug cases?

22 A. Quite a few of them.

23 Q. Trafficking cases in particular?

24 A. Quite a few of them.

25 Q. How did you become involved in representing Mr. Clark?

1 A. We had actually two cases on Mr. Clark, one I think was
2 from a June date and one I think was from a February date.
3 I'll tell you we have tried to find the June file. We cannot
4 find the June file. So he is correct when he says that he's
5 asked for the discovery, and the discovery we sent him I
6 believe was the February file. We've looked all over the
7 place. We can't find the June file. But generally what
8 happens is either I'm appointed by a Judge or the clerk of
9 court appoints me.

10 Q. Were you able to meet with Mr. Clark before the guilty
11 plea?

12 A. Yes, I did. Like I said, the only file I have in front
13 of me is the February one; but it shows I met with him on
14 July the 10th, July the 15th, and then a couple times on
15 August 26th. And however many times I met with him on the
16 other case I can't tell you.

17 Q. I think the 26th would have been the plea date.

18 A. The plea date, correct.

19 Q. Did you file a Rule 5 discovery motion in this case?

20 A. We do that in all the cases.

21 Q. Did you review that discovery with Mr. Clark?

22 A. If I got it, we would have reviewed it.

23 Q. Okay.

24 A. Now, I'll tell you, he was what we would call a street
25 person; he's not in jail. So what we do is we try to set up

1 appointments for people to come in. Sometimes they come in;
2 sometimes they don't. That's why I can't tell you if he came
3 in for his appointment or not. It's easier to track people
4 in the jail because you know you can meet with them, so like
5 I said, I can't tell you how many times he came in.

6 Q. In your meetings did you review the charges and
7 allegations?

8 A. We would have talked about -- what I talk with people
9 about is the charges, how much time the charges carry, talk
10 about the elements, generally, and then we talk about the
11 discovery, what their -- the allegations against them are.

12 Q. And he agreed to most of the -- or virtually all the
13 allegations against him; is that correct?

14 A. Yes. My notes indicate here that on the 26th, when I
15 was talking with the solicitor, that what we agreed to have
16 him plead to was one of the charges that he actually said he
17 was guilty of.

18 Q. So he had multiple charges pending at that time?

19 A. Correct. I think there were -- I have all the ones
20 where they were nolle-pros'ed, and there's quite a few of
21 them.

22 Q. So in the plea negotiations the solicitor allowed him to
23 plead guilty to this 10 to 28 and then nolle-pros about four
24 charges, is that --

25 A. Let's see, I've got seven nolle-pros sheets.

1 Q. So did the solicitor come to you with this deal because
2 he was cooperative, or how did that come about?

3 A. I spoke -- when I met with him on the -- not the
4 solicitor, but when I met with Mr. Clark on the 7/10, he said
5 that Calvin Kennedy was going to come in and take the drugs,
6 so that's something we were kind of hoping that would occur.
7 At the August 26th appearance I spoke to the solicitor about
8 that. The solicitor said that Mr. Clark was putting pressure
9 on the other person to flip their story basically is how he
10 put it, I think, and that he's not changing anything. If he
11 wants to take this deal, he can take it; but if not, he was
12 going to put it on the trial list. So it didn't pan out that
13 Calvin Kennedy was going to take the drugs.

14 Q. And that's kind of -- that's somewhat consistent with
15 his testimony previously where he said that he was either
16 going to plead that day or be put on the trial docket.

17 A. Correct, yes, that's from the solicitor.

18 Q. It looks like sentencing was deferred. Was there a
19 reason for that?

20 A. Yes, I was looking on my plea checklist. Oh, he wanted
21 to have time with his children before he was sentenced; so I
22 think we got a couple of days where he could maybe see his
23 kids.

24 Q. So he would have been able to leave after he pled and
25 then come back and get sentenced and start his time?

1 A. I believe so. I can't tell you 100 percent, but I
2 believe so.

3 MR. MITCHELL: I have no further questions. Thank you.

4 THE COURT: Cross-examination?

5 MR. WALLER: Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. WALLER:

7 Q. Mr. Mellard, when he was first arrested in June, is it
8 your recollection that was from a search warrant?

9 A. I believe so. I believe that -- yes, I believe they did
10 a search warrant on a house I think he was in.

11 Q. Do you recall speaking with him and going over the
12 search warrant?

13 A. I can't tell you because I don't have that file. Like I
14 said, we lost that file; but if he came in, we would have
15 reviewed the discovery, and if the search warrant was in the
16 discovery, we would have talked about it.

17 Q. Okay. Do you recall him raising any issues about being
18 charged with trafficking weight?

19 A. I don't recall that.

20 Q. There's been testimony that 37 grams was the amount of
21 drugs that was found; is that your understanding?

22 A. That's what he testified to, yes.

23 Q. Did he ever raise to you any question that that all
24 wasn't drugs, that part of it was another substance?

25 A. I don't recall him doing that.

1 MR. WALLER: Beg the Court's indulgence.

2 (Brief pause.)

3 MR. WALLER: No further questions.

4 THE COURT: You may step down, sir. Thank you. Any
5 other witnesses?

6 MR. MITCHELL: No further witnesses from the state, Your
7 Honor.

8 MR. WALLER: Nothing further.

9 THE COURT: The Court will review the record and notify
10 you of a ruling.

11 MR. WALLER: Thank you, Your Honor.

12 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF ORANGEBURG

4
5 I, the undersigned Ruth L. Mott, Certified Court
6 Reporter for the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate and complete
8 transcript of record of all the proceedings had and evidence
9 introduced in the matter of the above-captioned case,
10 relative to appeal, in the 1st Judicial Circuit Court for
11 Orangeburg County, South Carolina, on the 20th of May, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 March 14, 2016

16
17 *Ruth L. Mott*

18 Certified Court Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Alvin L. Clark, #285179,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-38-0308

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIFA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2015 AUG 26 1 A 12: 02

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 31, 2014. Respondent made its Return on June 10, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire was appointed by the Orangeburg County Clerk of Court. An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, R. Douglas Mellard, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was represented by R. Douglas Mellard, Esquire. On August 29, 2013, Applicant appeared before the Honorable Edgar W. Dickson, where he waived presentment to the Orangeburg County Grand Jury and pled guilty to Trafficking in Cocaine Base - Second Offense (10-28 grams) (2013-GS-38-01071).

Page 1 of 8

ATTEST: TRUE COPY

Winnifia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

Pursuant to negotiations with the State and Applicant, Judge Dickson sentenced Applicant to five (5) years' imprisonment. Applicant did not appeal his convictions or sentences.

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

1. Ineffective assistance of counsel in failing to investigate the weight of the drugs.
2. Involuntary and unintelligent plea.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he was charged with multiple charges including distribution of cocaine. The incident he pleaded guilty to revolves around a June 2013 arrest. He also had pending charges from February 2013. He explained that his house was raided and the drugs were found in his house. He testified he did not talk to Counsel until he went to court to plead guilty. He testified he never met with Counsel before. He alleged that Counsel should have challenged the weight of the drugs because he did not believe the amount met the threshold to be convicted of trafficking cocaine between 10-28 grams. He testified that he cooperated with investigators and that Calvin Kennedy claimed that the drugs stemming from the February charges were his and not Applicant's. He testified he never saw a drug analysis report and never received discovery. He also testified that he believed there to be around one (1) gram of cocaine which was "cut" with another non-narcotic substance. He explained that is how law enforcement came to conclude there was 36 grams of cocaine.

Counsel R. Douglas Mellard's Testimony

Counsel Mellard testified he has been with the Orangeburg County Public Defender's Office since 2005. He testified he represented Applicant on both the February and June charges.

ATTEST: TRUE
Winnifia B. Clout
CLERK OF COURT
ORANGEBURG

He testified he reviewed the charges, elements, potential sentencing ranges, and the discovery materials provided by the solicitor's office on all charges. He testified he met with Applicant on July 10, 2013, where he said Calvin Kennedy was going to claim that all of the drugs stemming from the February charges were his and not Applicant's. He testified he talked to the prosecuting solicitor on August 26, 2013, in an attempt to work out a deal. Counsel noted that seven (7) other charges were *nolle prossed* in exchange for his guilty plea. He testified he did not recall any issues with the weight of the drugs.

III. APPLICABLE LAW

In a post-conviction relief action, 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 under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any

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 Winniya B. Clark
 CLERK OF COURT
 ORANGE COUNTY

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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea 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 counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failure to Investigate/Challenge Drug Weight

Applicant alleges Counsel was ineffective for failing to challenge the weight of the drugs seized from his home. Specifically, he alleges that there was only around one (1) gram of cocaine mixed, or "cut," with a non-narcotic substance. This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to

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investigate Applicant's claim that the amount seized was less than the requisite amount to support a conviction of trafficking between 10-28 grams.

"Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). Essentially, Applicant argues that only the pure form of the drug should be considered when weighing the drugs. This is contrary to this State's law. See State v. Kerr, 299 S.C. 108, 109, 382 S.E.2d 895, 896 (1989) ("The Statute, by its clear and unambiguous terms, applies to the aggregate weight of any *mixture* containing cocaine, not merely the weight of cocaine in its pure form."). This Court finds Applicant does not dispute the aggregate weight of the drugs, just that the non-narcotic substances used to "cut" or mix the pure form of the drug should not be included in the calculation. This Court finds Counsel acted reasonably in not pursuing any challenge the weight of the drugs as it is clear that the 36 grams of a cocaine mixture meet the requisite quantity for a trafficking between 10-28 grams conviction.

Regardless, the allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to produce any evidence to support his claim that the drug weight was not accurate.

Additionally, the record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing

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Winniford B. Clark
CLERK OF COURT

SPRINGFIELD

State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held “[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process.” Id (citations omitted). “When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Thus, this allegation is readily denied and dismissed.

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. This Court finds otherwise and concludes that Applicant’s guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should

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 ORANGE COUNTY

be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he did not have a full understanding of the nature and consequences of pleading guilty. This Court finds this contention meritless. This Court finds the record reflects Applicant was fully advised that he was pleading guilty and waived all challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case. The record reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

All Other Allegations

As to any and all allegations that were raised in the application 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 counsel's performance was 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.

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 ORANGE COUNTY, FLORIDA

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 18 day of Aug., 2015.

St. George, South Carolina

Maité Murphy
 MAITÉ MURPHY
 Presiding Judge

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Winnifred B. Clark
 CLERK OF COURT
 ORANGE

DOCKET NO. 2013GS38-1071

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

August 12, 2013 TERM

THE STATE
vs.

Alvin Leonard Clark

Indictment for

TRAFFICKING IN METH. OR COCAINE
BASE - 28 G OR MORE, BUT LESS
THAN 499ST OFFENSE
ATTEST: TRUE COPY

Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 44-53-375(C)

WITNESSES

Rashad Moore

Orangeburg County Sheriff

2013005708

ARREST WARRANT NUMBER
2013A3810200219

Arrested: June 29, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: August 7, 2013

VERDICT

Foreperson of Petit Jury

Date:

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

Alvin Clark
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 ORANGEBURG)

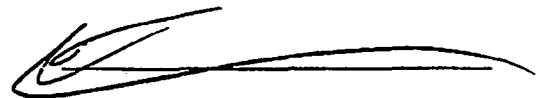
INDICTMENT
 2013GS38-1071

At a Court of General Sessions, convened on August 12, 2013 the Grand Jurors of Orangeburg County present upon their oath:

**TRAFFICKING IN METH. OR COCAINE BASE - 28 G OR MORE, BUT LESS
 THAN 100 G - 1ST OFFENSE**

That in Orangeburg County, South Carolina, on or about June 28, 2013, the Defendant, Alvin Leonard Clark, did knowingly sell, manufacture, cultivate, 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 approximately 37 grams of cocaine base. This offense in violation of Section 44-53-375 of the South Carolina Code of Laws, as amended.

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



Ted Lupton, Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
STATE VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013 -GS- 38-1071
AW#: 2013 A381020 0219
Date of Offense: 6-28-13
S.C. Code §: 44-53-375
CDR Code #: 0349

Alvin Clark
AKA:
Race: B Sex: M Age: 33
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]

SENTENCE SHEET

DL# SID#
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Trafficking Cocaine base 2nd 10-28 grams CONVICTED OF or PLEADS

In violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0451
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

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

ATTEST: [Signature] 9517 SC Bar # [Signature] Defendant [Signature] Attorney for Defendant 13521 SC Bar #
Theodore N. Lupton, Asst Solicitor

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$;
plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to
South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment
Payment Terms: Obtain GED
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp.

Recipient:
Fine: \$
14-1-206 (Assessments 107.5%) \$
14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
14-1-211 (A)(2)(DUI Surcharge) \$100 \$
16-5-2995 (DUI Assessment) \$12 \$
16-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
4-1-212 (Law Enforce. Funding) \$25 \$ 25.00
4-1-213 (Drug Court Surcharge) \$150 \$ 150.00
3-21-114 (BUI Breath Test Fee) \$50 \$
3-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
14-53-450(C) (Conditional Discharge) \$350 \$
to County (if paid in installments) \$ 8.40
TOTAL \$ 288.40

Clerk of Court/Deputy Clerk V. Glenn
Court Reporter: Holly Jordan
S:AV217 (06/2010)

May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other:
 Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation

Presiding Judge [Signature]
Judge Code: 2153
Sentence Date 8/29/13
Plea date: 8/26/13