

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

SEP 07 2016

S.C. SUPREME COURT

\_\_\_\_\_  
Appeal from Greenville County

Honorable Daniel D. Hall, Circuit Court Judge

\_\_\_\_\_  
DEVROSS MCCORFT SULLIVAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000620

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

KAREN RATIGAN  
Senior Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina,	)	TRANSCRIPT OF RECORD
	)	
Plaintiff,	)	Case No(s) .:2014GS2300021;
	)	2014GS2300023;
-VS-	)	2014GS2300024;
	)	2014GS2300019A;
Devross Sullivan,	)	
	)	
Defendant.	)	
<hr/>		
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .:2013GS2306318
	)	
-VS-	)	
	)	
Justin Moore,	)	
	)	
Defendant.	)	
<hr/>		
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .:2012GS2309078
	)	
-VS-	)	
	)	
Janice Strange,	)	
	)	
Defendant.	)	
<hr/>		
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .:2013GS2307229
	)	
-VS-	)	
	)	
Britney Hester,	)	
	)	
Defendant.	)	
<hr/>		
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .:2014GS2304223
	)	
-VS-	)	
	)	
Michael Davis,	)	
	)	
Defendant.	)	
<hr/>		

May 15, 2014  
Greenville, South Carolina

B E F O R E:

**HONORABLE LETITIA H. VERDIN**, Judge.

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

**JOYCE L. MONTS**, Esquire  
**JEFFREY WESTON**, Esquire  
Assistant Solicitor

**JAMES BREHM**, Esquire  
Attorney for the Defendant Sullivan

**Teresa B. Johnson, CVR-M**  
Certified Court Reporter

I N D E XDIRECT    CROSS    REDIRECT    RECROSS

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>
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**PLAINTIFF EXHIBITS**

(No exhibits offered.)

**DEFENSE EXHIBITS**

(No exhibits offered.)

**COURT EXHIBITS**

(No exhibits offered.)

P R O C E E D I N G S

1  
2           **THE CLERK:**     Your Honor, this is 2014-GS-  
3           23-21, Devross Sullivan indicted for Possession  
4           of a Controlled Substance with the Intent to  
5           Distribute, pleading to Possession with the  
6           Intent to Distribute third offense, and it is a  
7           true bill.

8           2014-GS-23-23 indicted for tracking --  
9           Trafficking Heroin and Possession of a Weapon  
10          during the Commission of a Violent Crime,  
11          pleading to Possession of a Weapon During a  
12          Violent Crime and Trafficking in Heroin more  
13          than four grams, and it is a true bill.

14          2014-GS-23-24 indicted for Possession of a  
15          Cocaine Base with Intent to Distribute,  
16          pleading to Possession with Intent to  
17          Distribute Cocaine Base third offense, and it  
18          is a true bill.

19          2014-GS-23-19A indicted for Trafficking  
20          Cocaine, pleading to Trafficking Cocaine second  
21          offense, and it is a true bill.

22          2013-GS-23-6318, Justin Moore indicted for  
23          Felony DUI Resulting in Great Bodily Injury,  
24          pleading to DUI, and it is a waiver.

25          2012-GS-23-9078, Janice Strange indicted

1 for Possession of Cocaine Base, pleading to the  
2 same. It is a true bill and there is an order  
3 to recall bench warrant.

4 2013-GS-23-7229, Britney Hester indicted  
5 for Possession of Cocaine, pleading to  
6 Possession of Cocaine first offense. It is a  
7 true bill.

8 2014-GS-23-4223, Michael Davis indicted for  
9 Grand Larceny, pleading to the same, and it is  
10 a waiver. 2014-GS-23-4224 indicted for Burglary  
11 second degree, pleading to Burglary second  
12 nonviolent, and it is a waiver.

13 Raise your right hand.

14 **(WHEREUPON, each defendant is first duly sworn.)**

15 **THE CLERK:** Thank you.

16 **THE COURT:** All right. Mr. Sullivan, you  
17 are here today to plead to Trafficking in  
18 Cocaine greater than 10 grams but less than 28  
19 that carries 5 to 30 years; Possession with  
20 Intent to Distribute Crack Cocaine third  
21 offense that carries 10 to 30; Possession of a  
22 Weapon During the Commission of a Violent Crime  
23 that carries five; Trafficking in Heroin more  
24 than four grams that carries seven to 25 years;  
25 and Possession with Intent to Distribute

1           Methylone that carries -- third offense that  
2           carries 5 to 20 years. Is that your  
3           understanding?

4           **MR. SULLIVAN:**     Yes, ma'am.

5           **THE COURT:**     Sir, are you Mr. Moore?

6           **MR. MOORE:**     Yes, ma'am.

7           **THE COURT:**     Okay. You are pleading to DUI  
8           with BAC of .10 to .15. What does that carry?

9           **MR. WESTON:**     30 days to two years, Your  
10          Honor, and a 2500 to \$5500 fine.

11          **THE COURT:**     I can not suspend that fine  
12          lower than \$1100. Is that your understanding?

13          **MR. MOORE:**     Yes, ma'am.

14          **THE COURT:**     Okay. Ma'am, who are you?  
15          Ms. Strange?

16          **MS. STRANGE:**     Janice Strange.

17          **THE COURT:**     Strange. Okay. You are here  
18          today to plead to Possession of Methamphetamine  
19          first offense that carries up to three years.  
20          Is that your understanding? Ms. Strange?

21          **MS. STRANGE:**     Yes, ma'am.

22          **THE COURT:**     Okay. Uh, are you Ms. Hester?

23          **MS. HESTER:**     Yes.

24          **THE COURT:**     You are here today to plead  
25          to Possession of Cocaine first offense that

1 carries up to three years. Is that your  
2 understanding?

3 **MS. HESTER:** Yes, ma'am.

4 **THE COURT:** And Mr. Davis, you are here  
5 today to plead to Burglary second degree  
6 nonviolent that carries up to 10 years and  
7 Grand Larceny that carries up to five. Is that  
8 your understanding?

9 **MR. DAVIS:** Yes, ma'am.

10 **THE COURT:** Have you discussed these  
11 charges with your lawyer, Mr. Sullivan?

12 **MR. SULLIVAN:** Yes, ma'am.

13 **THE COURT:** Mr. Moore?

14 **MR. MOORE:** Yes, ma'am.

15 **THE COURT:** Ms. Strange?

16 **MS. STRANGE:** Yes.

17 **THE COURT:** Ms. Hester?

18 **MS. HESTER:** I don't have a lawyer, but I  
19 don't want one.

20 **THE COURT:** You don't think you need a  
21 lawyer to represent you?

22 **MS. HESTER:** No, ma'am.

23 **THE COURT:** Okay. And, uh, Mr. Davis,  
24 have you discussed these charges with your  
25 lawyer?

1           **MR. DAVIS:**       Yes, ma'am.

2           **THE COURT:**     Uh, are you happy with what  
3 your lawyer's done for you, Mr. Sullivan?

4           **MR. SULLIVAN:**    Yes, ma'am.

5           **THE COURT:**     Mr. Moore?

6           **MR. MOORE:**       Yes, ma'am.

7           **THE COURT:**     Ms. Strange?

8           **MS. STRANGE:**       (No response.)

9           **THE COURT:**     Are you happy with what your  
10 lawyer's done for you?

11          **MS. STRANGE:**    Yes, ma'am.

12          **THE COURT:**     And Mr. Davis?

13          **MR. DAVIS:**       Yes, ma'am.

14          **THE COURT:**     Are you under the influence  
15 of drugs or alcohol here today, Mr. Sullivan?

16          **MR. SULLIVAN:**    No, ma'am.

17          **THE COURT:**     Mr. Moore?

18          **MR. MOORE:**       No, ma'am.

19          **THE COURT:**     Ms. Strange?

20          **MS. STRANGE:**    No, ma'am.

21          **THE COURT:**     Ms. Hester?

22          **MS. HESTER:**     No, ma'am.

23          **THE COURT:**     Mr. Davis?

24          **MR. DAVIS:**       No, ma'am.

25          **THE COURT:**     Anybody forced you to plead

1 guilty or promised you anything to get you to  
2 plead guilty, Mr. Sullivan?

3 **MR. SULLIVAN:** No, ma'am.

4 **THE COURT:** Mr. Moore?

5 **MR. MOORE:** No, ma'am.

6 **THE COURT:** Ms. Strange?

7 **MS. STRANGE:** No.

8 **THE COURT:** Ms. Hester?

9 **MS. HESTER:** No, ma'am.

10 **THE COURT:** Mr. Davis?

11 **MR. DAVIS:** No, ma'am.

12 **THE COURT:** When you plead guilty, you  
13 give up certain constitutional rights. One is  
14 your right to remain silent about these  
15 charges. Do you know that, uh, Mr. Sullivan?

16 **MR. SULLIVAN:** Yes, ma'am.

17 **THE COURT:** Mr. Moore?

18 **MR. MOORE:** Yes, ma'am.

19 **THE COURT:** Ms. Strange?

20 **MS. STRANGE:** Yes, ma'am.

21 **THE COURT:** Ms. Hester?

22 **MS. HESTER:** Yes, ma'am.

23 **THE COURT:** Mr. Davis?

24 **MR. DAVIS:** Yes, ma'am.

25 **THE COURT:** You also give up your right

1 to a jury trial. At that trial, your attorney  
2 could call witnesses for you and cross-examine  
3 witnesses against you. But when you plead  
4 guilty, you give up your right to a jury trial.  
5 You know that, Mr. Sullivan?

6 **MR. SULLIVAN:** Yes, ma'am.

7 **THE COURT:** Mr. Moore?

8 **MR. MOORE:** Yes, ma'am.

9 **THE COURT:** Ms. Strange?

10 **MS. STRANGE:** Yes, ma'am.

11 **THE COURT:** Ms. Hester?

12 **MS. HESTER:** Yes, ma'am.

13 **THE COURT:** Mr. Davis?

14 **MR. DAVIS:** Yes, ma'am.

15 **THE COURT:** Mr. Moore and Mr. Davis, you  
16 have charges that have not yet been indicted by  
17 the Greenville County Grand Jury. You want to  
18 give up that right and plead guilty today  
19 anyway, Mr. Moore?

20 **MR. MOORE:** Yes.

21 **THE COURT:** Okay. And Mr. Davis?

22 **MR. DAVIS:** Yes, ma'am.

23 **THE COURT:** How do you plead, guilty or  
24 not guilty, today, Mr. Sullivan?

25 **MR. SULLIVAN:** Uh, guilty.

1           **THE COURT:**     Mr. Moore?

2           **MR. MOORE:**     Guilty.

3           **THE COURT:**     Ms. Strange?

4           **MS. STRANGE:**     Guilty.

5           **THE COURT:**     Ms. Hester?

6           **MS. HESTER:**     Guilty.

7           **THE COURT:**     And Mr. Davis?

8           **MR. DAVIS:**     Guilty.

9           **THE COURT:**     You have 10 days from today's

10           date to appeal this plea if you so choose, but

11           you must do so in writing to this court.

12                 Yes, ma'am.

13           **MS. MONTS:**     May it please the Court, Your

14           Honor, regarding Mr. Sullivan. This occurred on

15           July 18th of 2013. Deputies with the Greenville

16           County Sheriff's Office were conducting a drug

17           operation. They did observe the defendant,

18           driving a Hyundai rental vehicle, pull into the

19           Home Depot on South Pleasantburg Drive in

20           Greenville county. A K-9 had been called to the

21           location.

22                 The defendant went into the store, came out

23           twice to see what the officers were doing and

24           went back in. The officer went inside to

25           confront the defendant. The K-9 officer

1 followed in shortly and told the first officer  
2 that the K-9 had alerted on the vehicle. The  
3 defendant was in possession of the keys to that  
4 car. The officer told the defendant that he saw  
5 him driving that car although the defendant  
6 told him he had walked to the store.

7 The defendant then shoved the officer and  
8 took off running. The K-9 officer told him to  
9 stop to be placed under arrest. He was chased  
10 by several officers and the K-9. He was  
11 subdued. There was an employee who did observe  
12 the entire incident.

13 The car was searched. There was found under  
14 the passenger seat inside a bag a loaded 40  
15 caliber handgun with the magazine and  
16 ammunition also \$711 under the vehicle --  
17 excuse me. In another bag in the car was four  
18 bags of heroin totaling 112.16 grams, 57.50  
19 grams of cocaine, 8.66 grams of cocaine base  
20 and 70.64 grams of Methylone. Your Honor, the  
21 defendant does have at least two prior drug  
22 convictions. This is a negotiated sentence.

23 **THE COURT:** Okay. What is the sentence?

24 **MS. MONTS:** Your Honor, an active 18  
25 years, all charges to run concurrent.

1           **THE COURT:**     Is that the negotiations?

2           **MS. MONTS:**    Yes, ma'am. It is, Your  
3 Honor. He's a also on probation.

4           **PROBATION AGENT:**    Your Honor sentenced  
5 him on June 21st, 2012 for PWID cocaine. He had  
6 eight years suspended on 90 days HIP and then  
7 three years probation. This would be a  
8 violation and we can handle it today.

9           **THE COURT:**    All right. I'll go along with  
10 the negotiations, uh, and, uh, give him 18  
11 years and, uh, give him, uh, eight years  
12 concurrent on the probation violation.

13          **MR. BREHM:**     Judge, can I just point out  
14 one thing?

15          **THE COURT:**    Sure.

16          **MR. BREHM:**     He has been either  
17 incarcerated or on electronic monitoring since  
18 the date of arrest, which was July 19th. That  
19 was the only thing I was going to ask for is  
20 just to be given credit for the incarceration  
21 and home incarceration.

22          **THE COURT:**    The State have a position on  
23 that?

24          **MS. MONTS:**    Your Honor, we believe it's  
25 in your discretion. We would object to that.

1           The defendant has, uh, -- has been, uh, -- I  
2           beli -- I want to make sure I say this  
3           correctly. He's had several HIP violation  
4           hearings and we believe he has not followed  
5           through with what he was supposed to have done  
6           on HIP and that he should not be given credit  
7           for that --

8           **MR. BREHM:**       Judge --

9           **THE COURT:**     They are disputing that he  
10          has not done that. But I will tell you this, I  
11          mean, Mr. Sullivan, I took a big chance on you  
12          before evidently based on that sentence and,  
13          you know, here we are. I'm not going to give  
14          you credit for it, but I will go along with the  
15          negotiations.

16          Accept the plea as being freely and  
17          voluntarily made with the advice of very  
18          competent counsel with whom you are well  
19          satisfied and the plea has a substantial  
20          factual basis. Uh, and, uh, --

21          **MR. BREHM:**     Judge, just can I put on the  
22          record?

23          **THE COURT:**     Sure.

24          **MR. BREHM:**     I know of no HIP -- that's  
25          the first I've ever heard of it.

1           **THE COURT:**     Okay.  And I will tell you my  
2           decision didn't take into account anything  
3           about any HIP violations because I don't know  
4           anything about it.  18 years all concurrent on  
5           it, except on the weapons charge, it's five.  
6           All concurrent with your probation violation.  
7           Good luck to you.

8  
9           **(WHEREUPON,**   the proceeding regarding Devross  
10          Sullivan is concluded.)

11  
12  
13  
14

CERTIFICATE

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 13th day of September, 2015.

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

*Teresa B. Johnson*

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
County of Greenville )

IN THE COURT OF COMMON PLEAS

Devross McCorft Sullivan ) #319615  
Full name and prison number (if any) of Applicant )

2015-CP-23-02632

v. )

APPLICATION FOR

State of South Carolina )  
 )  
 )  
 )  
 )

POST-CONVICTION RELIEF

FILED-CLERK OF COURT  
GREENVILLE, S.C.  
PAUL B. MICHELSMEIER  
2015 APR 20 4 11

**INSTRUCTIONS B 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 Broadriver Correctional Institution, 4460  
Broadriver Rd., Columbia S.C. 29210
2. Name and location of Court which imposed sentence General Sessions Court  
Greenville, South Carolina
3. Name(s) of co-defendant(s) (if any) None!
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2014-GS-23-00021; Poss. W/I to Distribute Methylone 3rd.

- (b) N/A
- (c) N/A

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

- (a) May 15, 2014 Eighteen Years.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty XX
- (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?

Requested appeal but counsel failed to file notice.

8. If you answered Ayes@ to (7), list:

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

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

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

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

(c) the date of each such result:

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

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

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

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) "Counsel filed a motion for consideration, but failed to file a appeal as requested, from the denial".

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance of counsel for failing to file and perfect appeal. See Attached Sheets.
- (b) "Involuntary Plea Not Knowing, Unintelligent Choice"
- (c) Grounds Petitioner would have brought on PCR, See Attached Sheets.

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

- (a) See Attached Sheets.
- (b) See Attached Sheets.
- (c) See Attached Sheets.

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

- (a) any petition in a State Court under South Carolina Law? Yes.
- (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 Ayes@ to any part of (12), list with respect to each petition, motion or application: Only a motion for reconsideration at sentencing.

- (a) the specific nature thereof:
  - i. Motion for reconsideration.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. Court of General Sessions, Greenville, South Carolina.
  - ii. N/A
  - iii. N/A

iv. N/A

(c) the disposition thereof:

i. Denied.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. May 28, 2014

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. Copy of denial enclosed.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

No.

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

- (a) This is a request for an "Austin Appeal".
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Mr. James Brehm, 522 N. Church St. Greenville, S.C. 29701. (864) 370-9777
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. The above listed.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Vacate conviction and sentence under Austin, to afford  
Petitioner his Constitutional rights to the appellate pro-  
cess.

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

No.

Revised 3/2003

STATE OF SOUTH CAROLINA )  
 )  
County of Greenville )

VERIFICATION

I, Devross McCroft Sullivan #319615, 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.

Devross M. Sullivan

SWORN to and subscribed before me this 16th  
day of January, 2015.

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

My Commission Expires: My Commission Expires  
March 5, 2018

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

I, Devross McCroft Sullivan #319615, 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.

Devross M. Sullivan  
Applicant

SWORN or affirmed to and subscribed before me this  
16th day of January, 2015.

Susan H. Dye  
Notary Public My Commission Expires  
March 5, 2018

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

Thirteenth Judicial Circuit  
Court of Common Pleas

Devross McCroft Sullivan, #319615

Petitioner,

Vs.

Case No.: \_\_\_\_\_

State of South Carolina,

\_\_\_\_\_  
Respodent. /

ATTACHED SHEETS SUPPORTING PCR & AUSTIN APPEAL.

This matter is being brought to the attention of this Honorable Court by way of a pro-se Petitioner, under the liberal notation outlined in Haines v. Kerner, 404 U.S. 519 (1972), in order, and inter alia, to reinstate his statutory and Constitutional right to appeal his sentence of 18 years imprisonment. See Austin v. State, 409 S.E.2d 395 (1985).

BACKGROUND SUPPORTING APPLICATION

On or about July 18, 2013, while shopping at the "Home Depot". The Petitioner was confronted by Greenville Narcotics Policeman

where "their attack dog" was deployed based on Petitioner's refusal to undergo an "illegal search and seizure". Where he had committed no crime inside the store, or at the exit, where he was confronted. The dog attack produced severe injuries that will remain with Petitioner for the rest of his life.

Petitioner was subsequently charged with drug offenses based on "what was discovered in his vehicle", after an unlawful search and seizure, in violation of Petitioner's Fourth Amendment rights.

On January 7, 2014, Petitioner was allegedly indicted for (See 2014-GS-23-00021) "Possession of a controlled substance with intent to distribute". Also see copy of indictment enclosed.

Based on counsel's advice, Petitioner on or about May 15, 2014, appeared before the Honorable Judge Verdin, of Greenville County, South Carolina. And submitted a guilty plea against his colloquy between counsel and himself, involving the potential Fourth Amendment claim, Petitioner felt was meritorious.

In addition, "the State" during sentencing, conveyed "false and misleading information to the court", in order to enhance the potential sentence Petitioner would receive as a result of the plea. And on May 21, 2014, through counsel, Petitioner timely filed a Motion to Reconsider the 18 years imposed by the court. Where he was certainly prejudiced by the state's false reference about Petitioner's prior bad acts while on home detention. Which never happened.

By May 28, 2014, the court came back and denied the motion for reconsideration. Citing [it] did not consider whether or not Defendant previously violated any terms of home detention when deciding what sentence it would impose.

However, such is implausible when confronted with the province and duty of a court when considering the sentence it will impose after guilt is established by either a guilty plea, or as the result of a jury's verdict. A court will follow the statutory guides for determining a sentence at either the higher statutory or lower statutory range. Based on several key factors, that includes a defendant's behavior when released on bail. Thus, counsel should have appeal the sentence of 18 years premised on this fact, where it was unreasonable to conclude otherwise, which was the bases of the court's denial.

#### LEGAL ANALYSIS

In Wilson v. State, 348 S.C. 215 (2002), the Supreme Court determined "every defendant has a right to file a direct appeal and one PCR" application. See also Knight v. State, 248 S.C. 139 (1985) However, as here, a Petitioner may file a PCR under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), in order to determine whether his right to appeal was arbitrarily denied, where counsel failed to file the appeal. In such a case as where the instant concerns are vividly clear. The Court should find that counsel was ineffective under Petitioner's Sixth Amendment right to counsel. Satisfying a "statutory requirements" under §17-27-20. See also Mickens

v. Taylor, 535 U.S. 162, 166 (2002)(prejudice presumed when assistance of counsel denied entirely during a critical stage of the proceeding); see also Campusano v. U.S., 442 F.3d 770, 775 (2nd Cir. 2006)(prejudice presumed if counsel failed to file "notice of appeal" after being instructed to do so by client, despite waiver of right to appeal in plea agreement because defendant who executes a waiver may sign away the right to appeal, [but not] the right to the effective assistance of counsel). United State v. Poindexter, 482 F3d 263 (4th Cir. 2007), and Cronic v. United States, 466 U.S. 648 (1984).

B. Next, petitioner contends that counsel was ineffective for advising him to plead guilty without placing the State's case against him to "any meaningful adversarial test". Here, counsel should have been aware of misconduct committed by officers for the State involving Petitioner's personal privacy rights under the Fourth Amendment.

Under the Fourth Amendment, "every search and seizure by a government agent must be reasonable". See U.S. Const. IV, and S.C. Const. Art. I §10. When officers confronted Petitioner exiting the "Home Depot", on the night he was arrested. No probable cause existed to arrest him. Neither for that matter, "to seize him while slicing a trained attack dog on him". In which Petitioner suffered permanent injuries as a result of this unlawful confrontation.

The bases of the confrontation at the Home Depot, was to gain entry into the vehicle Petitioner was driving, in which police on this particular night, wanted to search without a warrant. Yet no bases had been established to support that criminal activity would

be found in the vehicle, as a result of a warrantless search. See Terry v. Ohio, 392 U.S. 21; and see United States v. Reeves, 512 F3d. 123, 127 (4th Cir. 2008); and U.S. v. Martinez, 486 F3d. 855 (5th Cir. 2007). Petitioner had sold no drugs from the vehicle, and officers could not have reasonably known drugs would be found in the vehicle. Rendering the mere confrontation (i.e. Terry stop) unconstitutional.

C. Third, coupled with the above Fourth Amendment violation. Is where Petitioner contends the State had engaged in misconduct. And counsel failed "to move to dismiss the indictment" premised on intentionally tampering with and concealing pertinent video evidence of the confrontation in the Home Depot parking lot, on the night in question.

Had counsel investigated into this matter further, prior to advising him to plead guilty. He would have discovered (according to employed personnel), that police had ordered "destruction" of the video footage for the night of July 18, 2013. Where the night prior to and afterwards, were recoverable. Exposing the clear fact, "the State had something to hide".

D. Fourth, Petitioner contends that counsel was ineffective for his failure to move to dismiss the indictment prior to advising him to plead guilty. Where the indictment was anything but a clear and concise charge of a punishable offense under South Carolina Controlled Substance Statute (i.e. §44-53-110). In other words, on July 18, 2013. The Petitioner was taken into custody for trafficking in ice, crank or crack, in the amount of 28 grams or more.

Yet in case number 2014-GS-23-00021, Petitioner was allegedly indicted during a January term of General Sessions Court, for possessing with intent to distribute "a quantity" of a schedule I (d) controlled substance, METHYLONE, in violation of §44-53-370.

Petitioner's sentencing sheet exposes "he was sentenced based on the above (unlocatable ) controlled substance, as a third offender". A enhancement for which went unchallenged by counsel. But referring back to the rub of the issue here. "The indictment" is or was suppose to place the accused on notice of what he must be prepared to defend against at trial".

Allegations sufficient for indictment §17-19-20.

Every indictment shall be deemed and judged sufficient and good in law which, in addition to the allegations as to time and place, as required be law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime "so plainly" that the nature of the charge may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

For emphasis, METHYLONE is not located anywhere "plainly understood", as required by the statute cited above. For placing the defendant on sufficient notice under the Indictment Clause of the Fifth and Fourteenth Amendments. It is allegedly found under §44-53-110, as a schedule I controlled substance. However, as of the date of indictment. Such was not the case. Under Schedule I(d), as cited within the charging instrument. Methylone is not a recorded substance. Thereby rendering the indictment "fatally defective", and counsel should have so advised his client of this fact, prior

to "advising him to plead guilty". Which would have placed the State's case to a meaningful adversarial test. See Cronic.

Finally, Petitioner contends that counsel was "ineffective for failing to challenge the sentence after advising the plea of guilty premised on the State seeking to enhance him premised on prior convictions". As beforementioned, Petitioner had never heard of this alleged controlled substance "METHYLONE". And therefore, could not have possessed it two previous times with intent to distribute it. Moreover, it would normally take "a specified quantity to trigger intent to distribute, or the way it was packaged", to constitute "possession with intent to distribute".

Yet, the indictment is insufficient on this bases, "as to what it relied on to trigger intent to distribute, the alleged methy-lone". When mere possession of a controlled substance can be a misdemeanor, as opposed to a felony, under §44-53-370. As well as vacant on the relied upon facts to constitute a third offense.

For these reasons, cited above. Counsel provided ineffective assistance of counsel. And but for counsel's deficient performance, Petitioner would not have plead guilty, but insisted on going to trial, in order to prove his innocence to the allegations.

Wherefore, Petitioner prays that this court grant relief, as it is clear he has established statutory and constitutional bases for relief to be granted.

Respectfully Sumbmitted,

/s/ \_\_\_\_\_  
Devross McCorft Sullivan  
Broadriver Corr. Institution

Devross M. Sullivan 319615  
B.R.C.I Murray 238B  
4460 Broadriver Rd.  
Columbia, SC, 29210

MURRAY



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**RECEIVED**  
MAR 27 2015  
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NATION

Clerk of Court / P/c  
Mr. Paul B. Wickensimer  
Greenville County Courthouse  
305 East North Street  
Greenville, S.C. 29601

2015-CP-23-02632

LEGAL MAIL

STATE OF SOUTH CAROLINA )  
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 COUNTY OF GREENVILLE )  
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 Devross McCorft Sullivan, )  
 S.C.D.C. No. 319615, )  
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 Applicant, )  
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 v. )  
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 State of South Carolina, )  
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 Respondent. )  
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IN THE COURT OF COMMON PLEAS  
 C.A. No. 2015-CP-23-2632

**RETURN**

In response to the post-conviction relief application filed April 20, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the January 2014 term of General Sessions for trafficking cocaine (2014-GS-23-0019A), possession with intent to distribute (PWID) a controlled substance (2014-GS-23-0021), trafficking heroin (2014-GS-23-0023, count 1), possession of a weapon during commission of a violent crime (2014-GS-23-0023, count 2), and PWID cocaine base (2014-GS-23-0024). James F. Brehm, Esquire represented the Applicant.

On May 15, 2014, the Applicant pled guilty.<sup>1</sup> The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of 18 years for trafficking cocaine (10-28 grams), second offense, 18 years for PWID controlled substance, third offense, 18 years for trafficking heroin (4

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<sup>1</sup> On the same date, the Applicant's probation for PWID cocaine (2012-GS-23-2450) was revoked and he was sentenced to 7 years and 9 months incarceration.

or more grams), 5 years for possession of a weapon during commission of a violent crime, and 18 years for PWID cocaine base, third offense. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

## II.

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

1. Ineffective assistance of counsel.
  - a. Failed to file a notice of appeal.
  - b. Advised the Applicant to plead guilty "without placing the State's case against him to 'any meaningful adversarial test.'"
  - c. Failed to move to dismiss the indictment "premised on intentionally tampering with and concealing pertinent video evidence of the confrontation in the Home Depot parking lot, on the night in question."
  - d. Failed to move to dismiss the indictment because the Applicant was indicted for possession of methyldone when that substance is not "located anywhere 'plainly understood,' as required by the statute."
  - e. Failed to challenge the sentence.
2. Involuntary guilty plea.

## III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits 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. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

#### IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant

entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant’s plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

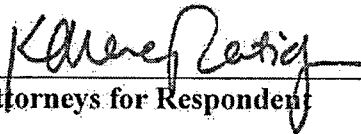
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:   
Attorneys for Respondent

September 15, 2015.

STATE OF SOUTH CAROLINA )  
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 COUNTY OF GREENVILLE )  
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 DEVROSS MCCORFT SULLIVAN, 319615 )  
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 Applicant, )  
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 vs )  
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 STATE OF SOUTH CAROLINA, )  
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 Respondent. )  
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IN THE COURT OF COMMON PLEAS

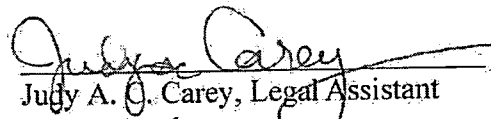
2015-CP-23-2632

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:

**Devross McCorft Sullivan, 319615**  
**Broad River Correctional Institution**  
**4460 Broad River Road**  
**Columbia SC 29210**

DATED this 15th day of September, 2015.

  
 Judy A. Carey, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2015-CP-23-2632
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
DEVROSS M. SULLIVAN,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	
_____	)	

February 16, 2016  
Greenville, South Carolina

B E F O R E:

THE HONORABLE DANIEL DEWITT HALL, JUDGE

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

BRIAN P. JOHNSON, ESQ.  
Attorney for the Plaintiff

KAREN C. RATIGAN, ESQ.  
Attorney for the Defendant

CHERYL A. SMITH  
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

1  
2 MS. RATIGAN: May it please the Court.

3 THE COURT: Ms. Ratigan.

4 MS. RATIGAN: This is the case of Devross Sullivan vs.  
5 The State of South Carolina. The docket number is  
6 2015-CP-23-2632.

7 Mr. Sullivan was indicted for trafficking cocaine,  
8 possession with intent to distribute a controlled  
9 substance, trafficking heroine, possession of a weapon  
10 during the commission of a violent crime, and possession  
11 with intent to distribute cocaine base. He was represented  
12 on these charges by Mr. Brehm.

13 On May 15th of 2014, Mr. Sullivan pled guilty. It was  
14 actually pursuant to a negotiated 18-year sentence, Your  
15 Honor. Judge Verdin accepted the negotiation and levied  
16 concurrent terms of 18 years for trafficking cocaine second  
17 offense, 18 years for PWID controlled substance third  
18 offense, 18 years for trafficking heroine, 5 years for the  
19 weapons charge, and then 18 years for PWID cocaine base  
20 third offense. Mr. Sullivan did not file an appeal, and  
21 the State's ready to proceed.

22 THE COURT: All right. Thank you.

23 Mr. Johnson, are you ready?

24 MR. JOHNSON: Yes, sir, Your Honor.

25 THE COURT: All right. Call your first witness.

1 MR. JOHNSON: I'm going to call Mr. Sullivan to the  
2 stand, Your Honor.

3 WHEREUPON,

4 DEVROSS M. SULLIVAN

5 After having been duly sworn, testified as follows:

6 THE CLERK: Please state your full name for the  
7 record.

8 THE WITNESS: Devross Sullivan.

9 THE CLERK: Thank you. You may be seated.

10 DIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q Mr. Sullivan, you were just here when Ms. Ratigan, the  
13 attorney general, just recited the facts with regards to  
14 your guilty plea. Were those facts correct?

15 A Yes, sir.

16 Q All right. I don't know if they can hear you. Speak  
17 into the microphone.

18 A Yes, sir.

19 Q Okay. I think I can hear you well enough.

20 In any case, so you're currently serving an 18-year  
21 sentence?

22 A Yes, sir.

23 Q And that was from a guilty plea where James -- or we  
24 call him Jimmy Brehm represented you?

25 A Yes, sir.

1 Q Okay. With regards to that plea, you've now filed an  
2 application for postconviction relief; is that correct?

3 A Yes, sir. I did.

4 Q Okay. Now, would you please recite to the Court your  
5 allegations for ineffective assistance of counsel.

6 A Yes, sir. First, I want to say that Jimmy didn't  
7 suppress my evidence as far as it goes with the probation  
8 one. When I got caught, when the probation -- he said that  
9 -- that the probation officer -- by me going through what  
10 I'm going through was because of the probation, and that --  
11 that they was allowed to search my car, you know,  
12 willingly. And I feel that them not suppressing my -- by  
13 him not suppressing my evidence as far as the video cam,  
14 you know, the videotapes and the evidence in the car, I  
15 feel like it wasn't -- it wasn't right to my cases.

16 Q So let's be clear for the record. The people may not  
17 know anything about your case, okay?

18 A Yes, sir.

19 Q So you were -- go briefly with regard to what happened  
20 with your stop.

21 A What happened. Okay. On July 18th, I was riding  
22 through the neighborhood, known as  
23 , and I was driving through. Police was coming down.  
24 And when I was passing him and I -- and I kept on going  
25 forward, he said that I alluded him, and I don't feel like

1 I alluded. I never was -- I never was pulled over, and I  
2 never -- I never was -- I -- had a traffic stop.

3 So when I was coming down, I pulled into Home Depot.  
4 When I got in Home Depot, I went in there to shop. When I  
5 was shopping, I looked out the window. There was two  
6 police officers outside behind my car. Currently when the  
7 police officer is behind my car, I went back out to pick up  
8 some money to buy, you know, an item that I had got. When  
9 I bought the item and when I went out to get the money, I  
10 seen a police officer walking up.

11 So when I went back in the store, I never -- they came  
12 on in the store, and they told me to come outside. So when  
13 I came outside, he told me, you know, was I driving that  
14 car. I told him "no." So when he asked me to put my hands  
15 behind my back and he was going in my pocket, I resisted.  
16 And I -- and I told him, you know, "I don't know what I'm  
17 arrested for. I don't know what's the problem, you know.  
18 I don't know why -- why -- why am I even under arrest, you  
19 know. I don't know what's going on." So therefore, that's  
20 when -- that's when I fled, and that's when the dog  
21 attacked me.

22 From that point on when we was there, I asked Jimmy,  
23 you know, are -- those cameras was the only evidence that  
24 was going to help me, because the simple fact then, at that  
25 moment in time, you know, the -- I told him and I asked him

1        why -- why was -- there was no probable cause. They showed  
2        me a tape as far as they was saying that I was walking  
3        around the car or they seen when I fled, but they didn't  
4        show the tape that's expressing what -- you know, that's  
5        showing exactly why they picked me out to go and deal with  
6        my car, you know, to -- to -- to have the dog search my  
7        car. Me out of all people, why would you search my car.  
8        So there was no probable cause, you know.

9                And I want to, you know, understand that when it comes  
10        to -- to the appeal system, I wanted to file a direct  
11        appeal so I could file an amendment for the Fourth  
12        Amendment, illegal search and seizure, you know. And I --  
13        and I feel like -- I feel that's what I -- I just feel  
14        like, you know, it was ---

15        Q        Now, when you talked about potentially having a  
16        suppression hearing with Jimmy, what did he tell you?

17        A        He said that because I was on probation, that they was  
18        allowed to do that, you know. They was allowed to do that,  
19        and that I still have rights. They're not allowed -- as  
20        far as my probation officer, he did not -- he did not  
21        advise them to do that. I wasn't in no trouble -- any kind  
22        of trouble with my probation officer. I wasn't in any kind  
23        of violation with my probation officer. I was in -- I was  
24        in good standing for my probation officer. He didn't know  
25        what was going on, so therefore, you know, he didn't

1 understand why the fact that the -- that the police officer  
2 was bothering me.

3 Q So it basically is your contention that if you hadn't  
4 been advised that they can search you because you're on  
5 probation, you would have wanted a suppression hearing, a  
6 potential ---

7 A Yes, sir. I would have, yes, sir.

8 Q Okay. But instead, you pled guilty; is that correct?

9 A Yes, sir.

10 MR. JOHNSON: All right. Please answer any questions  
11 that Ms. Ratigan has.

12 CROSS EXAMINATION

13 BY MS. RATIGAN:

14 Q How many times do you say you would have met with  
15 Mr. Brehm before you went to court?

16 A Maybe four or five times.

17 Q And when you met with him, did you review the State's  
18 evidence against you?

19 A Okay. We didn't never go in front of the judge. I  
20 didn't never see the tape until -- no. It really wasn't  
21 evidence shown to him.

22 Q Now, you did eventually see that tape?

23 A What tape? It wasn't a tape. All it showed was me  
24 walking around the car and me fleeing. It wasn't -- I seen  
25 that one tape, but it's 12 cameras at Home Depot.

1 Q Okay. Well, the tape we're talking about, is it a  
2 camera from Home Depot or is it from one of the officer's  
3 cars?

4 A I didn't see no tape from the officer's car.

5 Q Okay. So then it was a tape from Home Depot that you  
6 saw?

7 A Yes, ma'am.

8 Q Okay. And when did you see that? Was it right before  
9 you pled guilty? Was it a couple of months before then?  
10 Do you remember?

11 A It was probably a week, maybe a couple weeks before.

12 Q And you told Mr. Brehm your version of what had  
13 happened that day?

14 A Yes, sir -- yes, ma'am.

15 Q And did you ask him to get any other tapes from Home  
16 Depot?

17 A Yes, ma'am.

18 Q And when you asked him to get those other tapes, what  
19 did he say?

20 A He said that they -- that the Sheriff's Office only  
21 asked for that one tape, and it was going to be hard to get  
22 those tapes.

23 Q So you wanted Mr. Brehm to file a motion to suppress  
24 to basically argue the cops had no probable cause to search  
25 your car?

1 A Yeah.

2 Q If you wanted him to do that, why did you decide to go  
3 ahead and plead guilty instead of trying to get the  
4 evidence suppressed?

5 A Right at that moment in time, I didn't -- I didn't  
6 exactly know what was going on. I didn't -- I didn't know  
7 exactly the process of everything. And -- and I just can't  
8 -- I didn't know, you know. So therefore, I just went with  
9 the plea, not -- you know, just thinking that it was in my  
10 best interest, and it -- and it wasn't.

11 Q Now, when you're talking about not knowing the  
12 process, what do you mean by that?

13 A I mean I don't -- exactly at that moment in time, I  
14 didn't know too much about the law at that moment in time.

15 Q But you had some prior drug offenses, didn't you?

16 A I had -- I had two.

17 Q But you didn't understand much about the legal  
18 process?

19 A Yes, ma'am.

20 MS. RATIGAN: That's all I have, Your Honor.

21 THE COURT: Thank you.

22 Anything further, Mr. Johnson?

23 MR. JOHNSON: Nothing, Your Honor. Thank you.

24 THE COURT: Thank you, Mr. Sullivan. You may step  
25 down.

1 MR. JOHNSON: Your Honor, the applicant has no further  
2 witnesses.

3 THE COURT: All right.

4 Ms. Ratigan?

5 MS. RATIGAN: Thank you, Your Honor. We call  
6 Mr. Brehm.

7 WHEREUPON,

8 JAMES BREHM

9 After having been duly sworn, testified as follows:

10 THE CLERK: Please state your full name for the  
11 record.

12 THE WITNESS: James Francis Brehm.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MS. RATIGAN:

16 Q Mr. Brehm, do you recall representing Mr. Sullivan on  
17 these charges?

18 A I do.

19 Q And were you appointed or were you retained?

20 A Retained.

21 Q And did you file the usual discovery motions?

22 A I did.

23 Q Did you receive discovery from the State?

24 A Yes.

25 Q Did you receive it all at once or was it one of those

1 things where it was just kind of rolling discovery?

2 A I received an initial batch of discovery soon after I  
3 filed my motion, and then I would have gotten a videotape  
4 probably several months later. And that's that Home Depot  
5 tape that Mr. Sullivan referenced.

6 Q And where was Mr. Sullivan during your representation?  
7 Was he at the detention center? Was he on bond?

8 A He was out on bond on home incarceration.

9 Q And were you able to have meetings with him to prepare  
10 the case?

11 A Yes. Many.

12 Q Did you review the discovery materials with him?

13 A I did.

14 Q Did you review the charges he was facing, including  
15 the elements and the range of sentences?

16 A I did.

17 Q Did he tell you his version of what had happened that  
18 day?

19 A He did.

20 Q And how many videotapes did you receive in discovery?

21 A I believe I just received one.

22 Q Do you recall Mr. Sullivan asking you to check into  
23 whether or not there are any more videotapes?

24 A Mr. Sullivan came to me soon after his arrest. And at  
25 the time, I quoted him a fee and told him it was paramount

1 that he hire me sooner as opposed to later because of the  
2 videotape situation.

3 After I met with him initially, I had gone out to the  
4 Home Depot and actually canvassed -- not canvassed, but I  
5 looked around the outer skin of the Home Depot to look for  
6 video cameras. And that place has five or six video  
7 cameras on the outside. And I knew the area where the  
8 conversation had occurred between Mr. Sullivan and law  
9 enforcement, and there was a camera literally right above  
10 where they would have been.

11 So I got in touch -- knowing that, I got in touch with  
12 Mr. Sullivan, said, "Hey, you need to get in touch -- or  
13 you need to hire me really quick," because my experience  
14 with retailers, they have a videotaping system, but it only  
15 lasts for so long. It kind of tapes over itself. So I told  
16 Mr. Sullivan that.

17 There was a delay in him hiring me. And then after he  
18 did hire me and I got the initial discovery, I made the  
19 request from Ms. Monts, I said, "Look, this discovery is  
20 fine and good" -- and at the time, I think she was wanting  
21 him to go to jail for either 25 or 30 years. I can't  
22 remember exactly what it was, but it was a significant  
23 sentence.

24 I said, "That's fine and dandy, but I need the  
25 videotapes."

1           And she asked me what tapes was I talking about, and I  
2 explained it to her. And that's when I would get the one  
3 videotape.

4           I subsequently got in touch with Home Depot, the  
5 manager at the Home Depot to find out about the other  
6 videotapes and was informed, at that time, that, yes, they  
7 do have a number of cameras, they're all in working order,  
8 but that the other videotapes had been, I guess, taped  
9 over. And the only one that was preserved was the one that  
10 was preserved at the request of law enforcement.

11       Q     And did you explain to Mr. Sullivan that you had taken  
12 these steps to contact Home Depot and it was unavailable?

13       A     Oh, yes.

14       Q     What was the State's version of events as to why they  
15 were following or had pulled over Mr. Sullivan; do you  
16 recall?

17       A     The deputy indicated that he was traveling -- as  
18 Mr. Sullivan indicated, they're in                    which is  
19 kind of over there off of Pleasantburg and Mauldin Road.  
20 The police officer's version was that he was traveling one  
21 way, and he observed Mr. Sullivan driving in a suspicious  
22 manner going the other way, and he made an attempt to pull  
23 him over, but that Mr. Sullivan had taken off. That  
24 occurred much earlier in the day.

25           The law-enforcement officer said that he happened to

1 see Mr. Sullivan's vehicle again later in the day, at which  
2 time he turned around on the vehicle and tried to make a  
3 stop. But Mr. Sullivan had accelerated and had pulled into  
4 the Home Depot parking lot, the Home Depot being the Home  
5 Depot over there at Pleasantburg, and that Mr. Sullivan had  
6 hopped out and ran and had gone into the store and then  
7 stayed there for a while, then came out, looked around,  
8 then went back into the store and kept -- they could see  
9 him looking at them outside. And I guess he had -- the  
10 police officer had asked for backup, and there were a  
11 number of police officers that were there. I think the K-9  
12 was called.

13 The K-9, they just did kind of a run through with the  
14 parking lot of all the cars that were in that line, and the  
15 K-9 apparently hit on the car.

16 They then went -- the police officer and another  
17 police officer went inside the Home Depot to get  
18 Mr. Sullivan. They brought him out, like he said, right  
19 outside where the -- you have the lawn mowers and the  
20 grills and stuff and had the initial conversation with  
21 Mr. Sullivan.

22 While they were doing that, they asked Mr. Sullivan if  
23 he had any weapons. They patted him down. When they  
24 patted his pocket, they noticed, you know, like a clump of  
25 something. It ended up being his keys.

1           But they had asked Mr. Sullivan how he had gotten to  
2 the Home Depot. He had indicated that he had walked from  
3 his house to the Home Depot. They pulled his keys out of  
4 his pocket and had the remote, I guess, and hit the unlock  
5 on the remote, and it went off on the car that was in the  
6 parking lot.

7           And about that time, their version was that they were  
8 going to put him under arrest for false information to a  
9 police officer. They went to try to put his hands behind  
10 his back or asked Mr. Sullivan to put his hands behind his  
11 back. And their version, Mr. Sullivan's version was pretty  
12 much identical up to the point where the police officer  
13 says that Mr. Sullivan struck him. He kind of elbowed him  
14 and took off running. Mr. Sullivan said, "That never  
15 happened, and I was cooperative and everything was fine and  
16 I was never placed under arrest."

17           And that was kind of the whole reason why we really  
18 wanted to -- or I really wanted to have that videotape  
19 because it would have shown the police officer getting  
20 struck or not struck. Because the police officer would  
21 later say that that was the reason why he had searched --  
22 cause to search the car was because of the -- Mr. Sullivan  
23 was placed under arrest for assault on him.

24           Q     And Mr. Sullivan, was he on probation at the time?

25           A     He was.

1 Q And did the State ever say that the reason they used  
2 -- the justification they had to search the car was because  
3 he was on probation?

4 A No.

5 Q Was that never -- okay.

6 A No. That was just part of my analysis with  
7 Mr. Sullivan.

8 I initially looked at the case as if Mr. Sullivan was  
9 not on probation and whether or not he had a chance of  
10 prevailing at a suppression hearing. And we discussed  
11 that. But it was a -- if you have a suppression hearing,  
12 it was -- Ms. Monts would have come up with it. And if she  
13 wouldn't have, then I was relatively certain that the judge  
14 would have realized it when the probation officer stood up  
15 and said, "Yeah, he's on probation."

16 Q Did you discuss with Mr. Sullivan whether or not you  
17 believe the suppression hearing would be successful?

18 A I did on a number of occasions.

19 Q And was it your opinion it would not be successful?

20 A It was.

21 Q And eventually, you and Ms. Monts came to an 18-year  
22 negotiation; is that correct?

23 A Largely in part because of that videotape issue. I  
24 think that's why she dropped it down to 18. And then we  
25 had it he was going to get 18. It was a negotiated plea.

1           And then Mr. Sullivan had indicated that -- this was  
2 about the time the Legislature enacted the law where  
3 somebody could go, provide substantial assistance to the  
4 government, and based on the State's motion, they could  
5 petition the Court for a time cut. And I had gotten in  
6 touch with Betty Strom, who is the deputy solicitor here  
7 who's in charge of that and had that in place. I had  
8 discussed the substantial assistance with the gentleman  
9 that Mr. Sullivan had mentioned and was relatively -- well,  
10 I was hopeful that that would have taken place.  
11 Unfortunately, that got kind of dropped off the face of the  
12 planet.

13       Q     So you were just left with that 18-year negotiated ---

14       A     Right, right.

15       Q     And did you explain to Mr. Sullivan that was kind of a  
16 take-it-or-leave-it situation, either the judge would  
17 accept it or they would not?

18       A     I did.

19       Q     And when did he decide to go forward with the plea?  
20 Would you say it was like a week beforehand? a month  
21 beforehand? morning of? Did you have time to think about  
22 it?

23       A     It was -- it was something in the -- he would not have  
24 done it but for the fact that he believed that his relative  
25 would have provided that substantial assistance.

1 Mr. Sullivan and I -- well, he's the one that said, "Hey,  
2 look, I'm willing to do 10. If you can get it down to 10  
3 or, you know, below, that would be palatable for me." And  
4 that was the way to -- I got Joyce down to 18. I talked to  
5 Betty Strom about getting a time cut with his relative  
6 providing the substantial assistance.

7 Q Had that relative vanished prior to the plea or was  
8 that after?

9 A That was after.

10 Q Okay.

11 A That was after.

12 Q Did you file any kind of a posttrial motion after the  
13 plea to reduce his sentence?

14 A I did. At the plea, as is typical, when I have  
15 somebody that's on home incarceration, I typically call  
16 down to the Sentinel people that handle the home  
17 incarceration and talk to the agent, figure out how my  
18 client has done. My experience has been at the time of  
19 sentencing, if they have not screwed up too bad or they've  
20 done perfectly and they've paid their fees, that the judge  
21 will give them credit for that time while they're on the  
22 home incarceration program.

23 So I had called down and spoke to his agent. She was  
24 very complimentary, told me that Devross was one of the  
25 best home incarceration clients that she had ever had and

1       wished that everybody was like that. And so at the plea,  
2       all I really asked Judge Verdin to do was to consider  
3       giving him credit because he'd been on home incarceration  
4       for maybe two years, so if you don't mind, would you just  
5       give him credit for that. He's done well on the HIP  
6       program.

7               Judge Verdin asked Ms. Monts her thoughts, and all of  
8       a sudden Ms. Monts starts talking about numerous violations  
9       that my client has had. Mr. Sullivan and I were very  
10      deeply stunned, and we discussed at that time about an  
11      appeal. And I told Mr. Sullivan that really an appeal  
12      wasn't the proper route to take, that I'd file a motion to  
13      reconsider the sentence. And if that didn't work out, I  
14      would do whatever else I could do to get Mr. Sullivan that  
15      credit.

16             I filed the motion to reconsider. It was summarily  
17      rejected by Judge Verdin.

18             I then went to Betty Strom. I had gotten an affidavit  
19      from the agent. After the plea, I called down back to the  
20      same agent and said, "Were we talking about the same  
21      person? Because at court Ms. Monts said there were a lot  
22      of problems that Mr. Sullivan had."

23             And at the time, the agent said, "Well, that's funny,  
24      because I spoke with Ms. Monts, and I told her the exact  
25      same thing that I'd told you."



1       it in terms of him as a client that wasn't on probation and  
2       that it was -- he was saying one story and that the police  
3       officer was basically saying, "Hey, the reason why we  
4       searched the car was incident to arrest." And the fact  
5       that we didn't have that videotape now was troubling for me  
6       for my ability to defend it.

7               And I told him that the chance or the likelihood of  
8       success was not very good. And it was compounded by the  
9       fact that, at some point, if we file a motion to suppress,  
10      either the prosecutor and/or the judge is going to find out  
11      that you're on probation, and that's going to hurt you,  
12      too, because as a probationer, you're subject to search at  
13      any given point without justification. And I explained  
14      that to him.

15             MR. JOHNSON: No further questions, Your Honor.

16             THE COURT: All right. Thank you.

17             Anything else, Ms. Ratigan?

18             MS. RATIGAN: No, Your Honor. No further questions.

19             And the State would rest at this time.

20             THE COURT: All right. Mr. Brehm, you can step down.

21             THE WITNESS: Thank you, Your Honor.

22             THE COURT: Thank you.

23             All right. Anything further? I believe the State  
24             indicated that you had rested.

25             MR. JOHNSON: That's correct, Your Honor.

1 Mr. Sullivan is asking if you take his testimony under  
2 consideration and issue a ruling now.

3 THE COURT: All right. Well, I have read the file,  
4 read the transcript of the plea, I've heard testimony  
5 today. And I find that the defendant has not met his  
6 burden, and I'm going to deny the defendant's application  
7 for postconviction relief. Thank you.

8 And, Ms. Ratigan, if you'll prepare an order.

9 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
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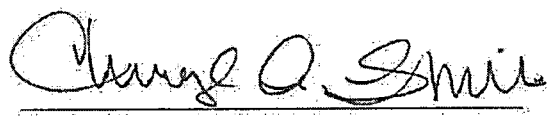
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )  
COUNTY OF GREENVILLE        )

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 16th day of February, 2016.

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

April 7, 2016



Cheryl A. Smith, CVR-M  
Court Reporter

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2015-CP-23-2632

Devross McCorft Sullivan,  
S.C.D.C. No. 319615,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WILKINSON  
2016 MAR 15 PM 3 08

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 20, 2015. The Respondent made its return on September 15, 2015. An evidentiary hearing was held on February 16, 2016 at the Greenville County Courthouse. The Applicant was present and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, James F. Brehm, Esquire. The Court had before it the guilty plea transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the return.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant at the January 2014 term of General Sessions for trafficking cocaine (2014-GS-23-0019A), possession with intent to distribute (PWID) a controlled substance (2014-GS-23-0021), trafficking heroin (2014-GS-23-0023, count 1), possession of a weapon

during commission of a violent crime (2014-GS-23-0023, count 2), and PWID cocaine base (2014-GS-23-0024). James F. Brehm, Esquire represented the Applicant.

On May 15, 2014, the Applicant pled guilty.<sup>1</sup> The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of 18 years for trafficking cocaine (10-28 grams), second offense, 18 years for PWID controlled substance, third offense, 18 years for trafficking heroin (4 or more grams), 5 years for possession of a weapon during commission of a violent crime, and 18 years for PWID cocaine base, third offense. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. Failed to file a notice of appeal.
  - b. Advised the Applicant to plead guilty "without placing the State's case against him to 'any meaningful adversarial test.'"
  - c. Failed to move to dismiss the indictment "premised on intentionally tampering with and concealing pertinent video evidence of the confrontation in the Home Depot parking lot, on the night in question."
  - d. Failed to move to dismiss the indictment because the Applicant was indicted for possession of methylene when that substance is not "located anywhere 'plainly understood,' as required by the statute."
  - e. Failed to challenge the sentence.
2. Involuntary guilty plea.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

<sup>1</sup> On the same date, the Applicant's probation for PWID cocaine (2012-GS-23-2450) was revoked and he was sentenced to 7 years and 9 months incarceration.

credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**Ineffective Assistance of Counsel/Involuntary Guilty Plea**

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C.

131, 318 S.E.2d 360 (1984)).

The Applicant stated plea counsel should have attempted to have the evidence from his vehicle suppressed. The Applicant stated he told plea counsel that there were cameras in the Home Depot parking lot that would support his case. The Applicant admitted there was one tape from Home Depot but that he had asked plea counsel to obtain numerous other tapes. The Applicant stated he wanted an appeal in order to argue there was an illegal search and seizure in his case.

Plea counsel testified he and the Applicant reviewed the charges and sentence ranges, the discovery materials, and the Applicant's version of events. Plea counsel testified he received an "initial batch" of the discovery materials from the State and then he received one Home Depot videotape several months later. Plea counsel testified that, when the Applicant originally approached him about hiring him, he advised the Applicant that time was of the essence regarding obtaining several videotapes from the Home Depot. Plea counsel testified there was a delay in the Applicant hiring him and that, by the time he was retained, neither the State nor the Home Depot had any additional videotapes. Plea counsel testified he discussed the idea of a suppression hearing with the Applicant and that he had told the Applicant he did not believe such would be successful. Plea counsel testified he was successful - after the Applicant was sentenced - in having his house arrest credit applied to his sentence. Plea counsel testified he told the Applicant there was no merit to an appeal.

This Court finds the Applicant has failed to meet his burden of proving his guilty pleas were involuntary. At the plea hearing, the Applicant did not dispute that the facts recited by the solicitor were true. The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way.

(Plea transcript, pp.6-10). This Court finds the Applicant was well aware that he was pleading guilty in exchange for a negotiated 18-year sentence. (Plea transcript, p.13). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that his plea was involuntary; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel erred in not moving to suppress the evidence seized from his vehicle. Plea counsel testified that, based upon the videotape and the facts and circumstances surrounding the case (including that the Applicant was on probation at the time of his arrest on these charges), he did not believe a motion to suppress would have been successful. This Court agrees and finds it was a valid strategic decision to instead focus upon plea negotiations with the State. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, this Court finds that, given the facts recited by the State at the plea hearing and expanded upon by plea counsel at the PCR hearing, the Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

This Court finds the Applicant failed to meet his burden of proving plea counsel erred in

not filing an appeal. As such, this Court finds the Applicant failed to demonstrate he is entitled to a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). This Court finds the Applicant did not meet his burden of proof, under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), that plea counsel was deficient in this matter. Plea counsel testified he told the Applicant there were no appealable issues from his guilty plea hearing, and the Applicant has failed to demonstrate that any cognizable issues existed that could have resulted in a successful appeal.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### 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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

**CONCLUSION**

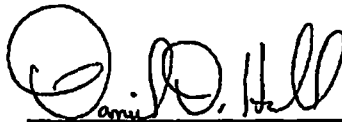
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4<sup>th</sup> day of March, 2016.



Daniel D. Hall  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2015CP2302632

Devross McCroft Sullivan vs. South Carolina State Of

FILED-CLERK OF COURT  
GREENVILLE, SC  
PAUL B. WICKENSIMER  
2015 PMR 15 PM 3 08

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:  
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Daniel D Hall

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

Brian P. Johnson 522 North Church Street  
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
POSSESSION OF COCAINE BASE WITH INTENT TO  
DISTRIBUTE

At a Court of General Sessions, convened on JAN 07 2014 the Grand Jurors of Greenville

County present upon their oath:

That DEVROSS MCCORFT SULLIVAN did in Greenville County, on or about the 18th day of July 2013, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

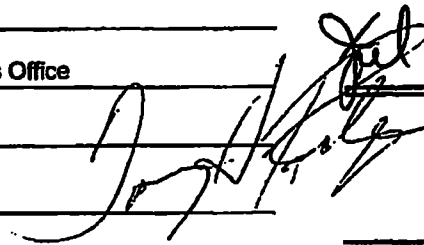
  
SOLICITOR

**WITNESSES**

Chad Ayers

Greenville County Sheriffs Office

7/18/2013



DOCKET NO. <sup>2014</sup>2013 GS-23-<sub>JLK</sub> 000024

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS  
January

TERM 2013 <sup>2014</sup>

**ARREST WARRANT NUMBER**  
2013A2330205995

THE STATE

vs.

DEVROSS MCCORFT SULLIVAN

ACTION OF GRAND JURY  
**TRUE BILL**



FORFMAN GRAND JURY

*Foreperson of Grand Jury*

VERDICT

Indictment for

3014  
3039

POSSESSION OF COCAINE BASE WITH INTENT  
TO DISTRIBUTE

VIOLATION § 44-53-0375

*Foreperson of Petit Jury*

*Date:*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
TRAFFICKING HEROIN and POSSESSION OF A WEAPON  
DURING THE COMMISSION OF A VIOLENT CRIME

JAN 07 2014

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

COUNT I

That DEVROSS MCCORFT SULLIVAN did in Greenville County, on or about the 18th day of July 2013, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Heroin. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That DEVROSS MCCORFT SULLIVAN did in Greenville County, on or about the 18th day of July 2013, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: TRAFFICKING HEROIN. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

*Joye Maito*  
\_\_\_\_\_  
SOLICITOR

**WITNESSES**

Chad Ayers

Greenville County Sheriffs Office

7/18/2013

*Doyle*

DOCKET NO. <sup>2014</sup>~~2013~~-GS-23-<sub>JLK</sub> 000023

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January

TERM 2013

<sup>2014</sup>

THE STATE

vs.

DEVROSS MCCORFT SULLIVAN

ARREST WARRANT NUMBER

COUNT I - 2013A2330205994 ✓

COUNT II - 2013A2330205996 ✓

ACTION OF GRAND JURY

**TRUE BILL**

*Ridgely T. Neal*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for  
0149 and 0549 ✓

*2361*  
TRAFFICKING HEROIN and POSSESSION OF A  
WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME

VIOLATION § 44-53-0370 and § 16-23-0490

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT  
TO DISTRIBUTE

JAN 07 2014

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That DEVROSS MCCORFT SULLIVAN did in Greenville County, on or about the 18th day of July 2013, possess with intent to distribute or aid, abet, conspire to possess with the intent to distribute a quantity of a schedule I (d) controlled substance, METHYLONE, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

*Juan Monte*  
\_\_\_\_\_  
SOLICITOR

WITNESSES

Chad Ayers

Greenville County Sheriffs Office

7/18/2013

*[Handwritten signature]*

ARREST WARRANT NUMBER  
2013A2330205993

ACTION OF GRAND JURY  
**TRUE BILL**  
*Ridgely T. Neal*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. <sup>2014</sup> 2013-GS-23-<sub>JLK</sub> 000021

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS  
January <sup>2014</sup>  
TERM ~~2013~~

THE STATE

vs.

DEVROSS MCCORFT SULLIVAN

*Proben*

Indictment for  
<sup>0185</sup>  
~~180~~  
POSSESSION OF A CONTROLLED  
SUBSTANCE WITH INTENT TO DISTRIBUTE  
VIOLATION § 44-53-0370

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )

INDICTMENT FOR  
 TRAFFICKING COCAINE

At a Court of General Sessions, convened on

JAN 07 2014

the Grand Jurors of Greenville

County present upon their oath:

That DEVROSS MCCORFT SULLIVAN did in Greenville County, on or about the 18th day of July 2013, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

*Joe Motta*  
 \_\_\_\_\_  
 SOLICITOR

**WITNESSES**

Chad Ayers

Greenville County Sheriffs Office

7/18/2013

*Joseph's*

DOCKET NO. 2014-GS-23-  
JLK

000019A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January TERM 2014

THE STATE

vs.

DEVROSS MCCORFT SULLIVAN

ARREST WARRANT NUMBER

DOB: [REDACTED] B/M SSN: [REDACTED]

DIRECT PRESENTMENT

ACTION OF GRAND JURY

**TRUE BILL**

*Ricky T. Neal*

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

VERDICT

*Foreperson of Petit Jury*

Date:

Indictment for

*✓*  
*0278*  
*387*

TRAFFICKING COCAINE

VIOLATION §44-53-0370