

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Edgefield County

Honorable D. Craig Brown, Circuit Court Judge

---

**RECEIVED**

SEP 12 2016

S.C. SUPREME COURT

TOMMIE L. PIXLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000243

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APPENDIX

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KATHRINE H. HUDGINS  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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State of South Carolina )  
County of Edgefield )

In the Court  
Of General Sessions

Indictment No.: 2013-GS-19-0591

State of South Carolina, )  
Plaintiff. )

vs.

Transcript of Record

Tommie Leon Pixley, )  
Defendant. )

February 9, 2015  
Saluda, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge.

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

Ervin Maye, Assistant Solicitor  
Attorney for the State

Andrew Farley, Esquire  
Attorney for the Defendant

Brenda J. Sigwald, Circuit Court Reporter  
To The Honorable R. Knox McMahon  
P.O. Box 206, Jackson, South Carolina 29831

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E X H I B I T S

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(REPORTER'S NOTE: There were no exhibits entered during this hearing.)

1 MR. MAYE: Your Honor?

2 THE COURT: All right. Yes, Solicitor?

3 MR. MAYE: Mr. Tommy Leon Pixley is before you on  
4 Indictment 2013-GS-19-591. He informs us that he wishes to  
5 enter a guilty plea to distribution of crack second offense  
6 for a negotiated 5 year sentence. Mr. Pixley actually came  
7 before you over in Edgefield County. You appointed Mr.  
8 Farley at that point in time. He was relieved -- his 608  
9 counsel over in Edgefield County. Mr. Farley has spoken  
10 with me, and Mr. Pixley indicates willingness to enter a  
11 guilty plea. He indicates he wishes to waive any issues  
12 involving venue, and I'll use the word that I got from  
13 Judge Keesley, an attestation by the Clerk of Court for  
14 Saluda County, or Edgefield County, agrees to have the  
15 Clerk of Court here in Saluda County attest to his  
16 signature and carry out whatever is necessary for us to  
17 accept his plea here.

18 We would ask, if it pleases the Court, that you  
19 would accept Mr. Pixley's plea here on this Edgefield  
20 County charge here in Saluda.

21 THE COURT: Thank you. Thank you, very much.

22 Ms. Clerk, would you place Mr. Pixley under oath.

23 TOMMIE L. PIXLEY,

24 having been duly sworn, testified as follows:

25 THE COURT: Mr. Farley, do you represent Tommy Leon

1 Pixley?

2 MR. FARLEY: That's correct, Your Honor.

3 THE COURT: Have you explained to him the charges  
4 and possible punishments and his rights, including his  
5 right to a jury trial?

6 MR. FARLEY: I have, Your Honor.

7 THE COURT: In your opinion, does he understand  
8 these things?

9 MR. FARLEY: Yes, he does, Your Honor.

10 THE COURT: How does he indicate he intends to plea  
11 to the distribution of crack cocaine second offense?

12 MR. FARLEY: Guilty, Your Honor.

13 THE COURT: Are you Tommy Leon Pixley?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Good afternoon, Mr. Pixley.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: Before I can accept a plea of guilty,  
18 it's necessary for me to determine if your plea is being  
19 given freely and voluntarily. Therefore, I need to ask you  
20 some questions. If you do not understand my questions,  
21 please let me know. I'll try to explain them to you. If  
22 at any time you wish to talk with your attorney, just let  
23 me know. I will allow you to do so. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How old are you, Mr. Pixley?

1 THE DEFENDANT: 33.

2 THE COURT: How much education do you have?

3 THE DEFENDANT: My high school diploma.

4 THE COURT: What type of work you do?

5 THE DEFENDANT: I work over at Coastalina.

6 MR. FARLEY: Your Honor, that's the agricultural --

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

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you aware of any physical,  
11 emotional, or nervous problem that would keep you from  
12 understanding what you're doing today?

13 THE DEFENDANT: No, sir.

14 THE COURT: You heard your lawyer tell me he  
15 explained to you the charge and possible punishment and  
16 your rights and that you understand these things. Is that  
17 correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I've been handed up a Edgefield County  
20 Indictment 2013-GS-19-591. It basically reads that you  
21 did, on or about May 2nd, 2013, knowingly and intentionally  
22 distribute to a confidential informant working with the  
23 Edgefield County Sheriff's Department a quantity of crack  
24 cocaine, a controlled substance in violation of our drug  
25 law; and it being a second offense, you can receive a

1 sentence of 5 to 30?

2 MR. MAYE: Yes, sir, Your Honor.

3 THE COURT: Five -- not less than 5 and no more  
4 than 30 years; is that correct?

5 MR. FARLEY: Yes, Your Honor.

6 THE COURT: Do you understand that charge and that  
7 potential punishment?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And of course, you obviously have a  
10 prior drug conviction, and this will be your second drug  
11 conviction. If you plead to an offense such as this, or if  
12 you're ever found guilty of or plead guilty to the same or  
13 similar offense in the future, the penalty could be higher  
14 next time because you'd have two prior convictions -- drug  
15 convictions. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Also, this is an Edgefield County case.  
18 We're in Saluda County today. You have the absolute right  
19 to have this case heard in Edgefield County. However, you  
20 can waive that right and proceed today in Saluda County.  
21 Do you waive your right to have your case heard in  
22 Edgefield County?

23 THE DEFENDANT: Yes.

24 THE COURT: And you're fine with going forward with  
25 this proceeding today in Saluda County?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: When you plead guilty, you give up  
3 certain very important constitutional rights. You give up  
4 your right to remain silent. You give up your right to  
5 have a jury trial, and you give up your right to confront  
6 and be confronted by the witnesses against you. Do you  
7 understand these rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that you waive them  
10 and you give up these very important constitutional rights?

11 THE DEFENDANT: Yes, sir.

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

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand you will not get a  
15 jury trial if you plead guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Understanding then the nature of the  
18 charge of distribution of crack cocaine second, and the  
19 potential punishment of not less than 5 and no more than 30  
20 years, how do you plead today? Guilty? Or not guilty?

21 THE DEFENDANT: Guilty.

22 THE COURT: Are you guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you commit the crime of  
25 distributing crack cocaine on May 2nd, 2013, in Edgefield

1 County?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The plea negotiation, Solicitor, is a 5  
4 year sentence.

5 MR. MAYE: Yes, sir, Your Honor.

6 THE COURT: Is that the full and complete plea  
7 negotiation as you understand them, Mr. --

8 MR. MAYE: Resolves all outstanding charges that he  
9 has in Edgefield County. This wraps him up. That --  
10 anything else -- I'm not sure that he has anything else  
11 pending, but this takes care of all his charges.

12 MR. FARLEY: And yes, Your Honor. That is how I  
13 understand it.

14 THE COURT: Thank you, Mr. Farley.

15 Is that how you understand it, Mr. Pixley?

16 THE DEFENDANT: Yes, sir.

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

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has anyone promised you anything or  
20 held out any type of reward to get you plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone threatened you or used force  
23 to get you to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anyone used any pressure or

1 intimidation to cause you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you had enough time to make up  
4 your mind?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you pleading guilty of your own  
7 free will and accord?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you satisfied with the manner in  
10 which your lawyer has advised you and represented you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you talked with your lawyer as  
13 often and for as long as you feel necessary for him to  
14 properly represent you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you need any more time to talk with  
17 your lawyer?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you understood your talks with  
20 your lawyer?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has your lawyer done everything you  
23 feel like he could have done or should have done?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you totally and completely

1 satisfied with your lawyer's services?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any complaints you want to  
4 make about your lawyer, the solicitor, or any officers  
5 involved in your case?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you understood my questions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Anything you'd like to ask me about  
10 what we've just been over?

11 THE DEFENDANT: No, sir.

12 THE COURT: You understand you have a right to  
13 appeal your guilty plea and the sentence of the Court and  
14 that you or your lawyer must do so within 10 days?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Thank you. Mr. Solicitor?

17 MR. MAYE: May it please the Court, Your Honor. On  
18 the dates and times indicated in the indictment, the  
19 defendant in this case distributed a quantity of crack  
20 cocaine to an undercover operative working under the  
21 control of the Edgefield County Sheriff's Office Narcotics  
22 Division. It did test positive to be crack cocaine. It  
23 occurred over in Edgefield County. He does have a prior  
24 offense that would meet the statutory qualifications in  
25 order for this to be a second drug offense, Your Honor.

1 THE COURT: Thank you. I find there is a  
2 substantial factual basis for the guilty plea. The  
3 defendant's decision to plead guilty is freely, voluntary,  
4 knowing and intelligently made. He's had the advice and  
5 counsel of a very competent and experienced attorney with  
6 whom he says he is well and totally satisfied. His plea to  
7 distribution of crack cocaine second offense is therefore  
8 accepted.

9 Mr. Farley?

10 MR. FARLEY: Thank you, Your Honor. May it please  
11 the Court? Your Honor, as you've heard, Mr. Pixley is 33  
12 years old. He's single. He's been doing agricultural farm  
13 work for employment. He's completed a high school  
14 equivalent and currently has no children. We certainly  
15 would just ask if you would accept the negotiated plea that  
16 we have on behalf of the Solicitor.

17 I would point out to the Court that it's my  
18 understanding -- and this is subject to the verification by  
19 the Solicitor's Office -- I believe he's been incarcerated  
20 for 18 months, 575 days. I think that's my understanding,  
21 so we certainly would ask for you to take that into account  
22 as time served. Thank you, Your Honor.

23 THE COURT: Do you agree with that statement,  
24 Solicitor?

25 MR. MAYE: I don't have any reason to dispute that

1 figure. It sounds correct to me.

2 THE COURT: Is there anything you'd like to say,  
3 Mr. Pixley?

4 THE DEFENDANT: No, sir.

5 THE COURT: 2013-GS-19-591 Tommie Leon Pixley  
6 distribution of crack cocaine second offense, the defendant  
7 is committed to the State Department of Corrections for the  
8 determinate term of 5 years. The defendant is to be given  
9 credit for time served of 575 days.

10 Good luck to you, Mr. Pixley.

11 THE DEFENDANT: Thank you, sir.

12 \* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

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

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6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official  
7 Court Reporter for the Eleventh Judicial Circuit of the  
8 State of South Carolina, do hereby certify that I reported  
9 the proceedings in the captioned case in the Court of  
10 General Sessions in and for the State of South Carolina on  
11 the 9th day of February, 2015.

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

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

17 IN WITNESS WHEREOF, I have hereunto set my hand and  
18 seal at Aiken County, this 20th day of June, 2015.

19

20

21

22

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24

25

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

WITNESSES

ECSO

MILLER

ARREST WARRANT NUMBER

2013A1910100357

ACTION OF GRAND JURY

WIF RI

Foreperson of Grand Jury

Date:

OCT 30 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-19- 591

**The State of South Carolina**

**County of EDGEFIELD**

**COURT OF GENERAL SESSIONS**

**NOVEMBER TERM 2013**

**THE STATE**

**vs.**

**TOMMIE LEON PIXLEY**

CDR#3015

**Indictment for**

**DISTRIBUTION OF CRACK COCAINE**

**DONALD V. MYERS, SOLICITOR**

THE ABOVE IS A TRUE COPY OF THE ORIGINAL  
FILED IN THE OFFICE OF THE CLERK OF COURT  
CLERK OF COURT OF EDGEFIELD COUNTY, SC

*Shirley S. ...*

SHIRLEY S. ... CLERK OF COURT  
OF ...  
COMMON PLEAS, E.C.S.C.

2/5/16  
DATED

STATE OF SOUTH CAROLINA )  
COUNTY OF EDGEFIELD )

INDICTMENT FOR  
DISTRIBUTION OF CRACK COCAINE

At a Court of General Sessions, convened on October 30, 2013 the Grand Jurors of Edgefield County present upon their oath:

That TOMMIE LEON PIXLEY, did in Edgefield County on or about May 2, 2013, knowingly and intentionally, distribute to a confidential informant working with Edgefield County Sheriff's Department, a quantity of Crack Cocaine, a controlled substance, in violation of §44-53-375(B), South Carolina Code of Laws, 1976, as amended, such distribution not having been authorized by law, with penalties provided for in §44-53-375(B)(2), 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

STATE OF SOUTH CAROLINA )

COUNTY OF Edgefield )  
STATE VS. )  
Tommie Leon Pixley )  
AKA: )  
Race: Sex: M Age: 31 )  
DOB: SS#: )  
Address: )  
City, State, Zip: Johnston, SC 29832-1563 )  
DL#: SID#: )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-65-19-591  
A/W#: 2013A1910100357  
Date of Offense: 4/2/2013  
S.C. Code § : 44-53-0375(B)(2)  
CDR Code #: 3015

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: DISTRIBUTION OF CRACK 2ND

in violation of § 94-53-375 of the S.C. Code of Laws, bearing CDR Code #

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

Attorney for Plaintiff: [Signature] SC Bar# [Blank]  
Attorney for Defendant: Tommie Leon Pixley SC Bar# 75281

WHEREFORE the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_ years  
and/or to pay a fine of \$ \_\_\_; provided that upon the service of \_\_\_ days/months/years and/or payment  
of \$ \_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 575 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP  
Total: \$ \_\_\_ plus 20% fee: \$ \_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

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

\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk: [Signature]  
Court Reporter: Brenda Sigward  
SCCA/217 (03/2011)  
Presiding Judge: [Signature]  
Judge Code: 2145  
Sentence Date: 9 Feb 15

FORM 5

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

County of Edgefield 2015 APR - 1 ) PM 3: 06

Tomnie Leon Pixley 285026  
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2015-CP-19-103

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Reception and Evaluation Center

---

2. Name and location of Court which imposed sentence Edgefield County

---

3. Name(s) of co-defendant(s) (if any) NA

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2013-65-19-591
  - (b) NA

18

(c) NA

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

(a) February 9, 2015

(b) 5 years Non-Violent

(c) NA

6. Check whether a finding of guilty was made:

(a)  after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

Yes

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

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

i. Edgefield County General Sessions Court

ii. NA

iii. NA

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

i. I pled guilty on 2-9-15 and appealed on 2-12-15

ii. and was told by the Clerk that she forwarded the

iii. letter to my attorney concerning my appeal

(c) the date of each such result:

i. February 16, 2015

ii. NA

iii. NA

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

i. NA

ii. NA

iii. NA

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

(a) NA

(b) NA

(c) NA

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

(a) I was told I was pleading to 4 years

(b) The date of offense I pled guilty to is 5-2-13

(c) The Counsel was ineffective

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

(a) My plea turn out to be 5 years

(b) The evidence shows the offense occurred on 4-2-13

(c) I only saw him one time and I went to Court 4 days after

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

(a) any petition in a State Court under South Carolina Law? NA

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA

(d) any other petitions, motions or applications in this or any other Court? yes

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

(a) the specific nature thereof:

i. NA

ii. NA

iii. NA

iv. Sentencing, ?fication

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

i. NA

ii. NA

iii. NA

iv. Edgefield County Court House

(c) the disposition thereof:

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. NA
- 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. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

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

NA

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? \_\_\_\_\_
- (c) your sentencing? \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

- (a) the name and address of each attorney who represented you:
  - i. Andrew Farley
  - ii. NA
  - iii. NA
- (b) the proceedings at which each such attorney represented you:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

NA

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

I seek to go back to court for a lesser sentence  
because my attorney let me plead guilty to a offense the indictment state  
occurred on 5-2-13 but evidence shows offense occurred on 4-2-13.

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

No

STATE OF SOUTH CAROLINA )

County of Edgefield )

VERIFICATION

I, Tommie Leon Piley <sup>TH</sup> Tommie Leon Piley <sup>TH</sup>, 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.

Tommie Leon Piley <sup>TH</sup>

SWORN to and subscribed before me this 25th  
day of March, 2015.

[Signature] (L.S.)  
Notary Public

My Commission Expires: April 23, 2023

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

I, Jimmie Leon Pivley, 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.

Jimmie Leon Pivley  
Applicant

SWORN or affirmed to and subscribed before me this

20th day of MARCH, 2015.

[Signature]  
Notary Public

My Commission Expires: April 23, 2023

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES T. BROOKS, III

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF EDGEFIELD ) 2015 DEC 11 PM 12:25  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Tommie Leon Pixley  
S.C.D.C. No. 285026

C.A. No. 2015-CP-19-0103

Applicant,

v.

RETURN<sup>1</sup>

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief filed April 1, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. In November 2013, the Edgefield County Grand Jury indicted Applicant for distribution of crack cocaine – second offense (2013-GS-19-0591). Andrew Farley, Esq. represented Applicant. On February 9, 2015, Applicant pled guilty as indicted. The Honorable R. Knox McMahon sentenced Applicant to a term of five (5) years imprisonment. Applicant did not appeal his plea or sentence.<sup>2</sup>

II.

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

- 1. "I was told I was pleading to 4 years"

<sup>1</sup> Respondent has been informed by letter dated May 27, 2015, that Charles T. Brooks, III, Esq. has substituted for Kristy Goldberg as counsel.

<sup>2</sup> Applicant claims to have at least attempted an appeal on 2/12/15; however, Respondent can find no record of an appeal. Respondent notes that Applicant filed a motion to modify his sentence on 4/1/2015,

- a. "my plea turn out to be 5 years"
2. "The date of offense I pled guilty to is 5-2-13"
  - a. "the evidence shows the offense occurred on 4-2-13"
3. "The Counsel was ineffective"
  - a. "I only saw him on time and I went to court 4 days after"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Edgefield County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

### III.

Respondent interprets Applicant's first two allegations as claims that his guilty plea was involuntary. Respondent submits these allegations are without merit. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342

S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

#### IV.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is also without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

WALT WHITMIRE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

December 7, 2015

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES S. WOOD

STATE OF SOUTH CAROLINA )

COUNTY OF EDGEFIELD )

2015 DEC 11

PM 12:25

THE COURT OF COMMON PLEAS

2015-CP-19-0103

TOMMIE L. PIXLEY, #285026 )

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

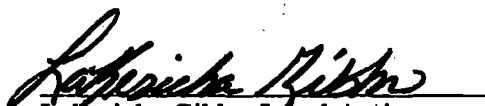
STATE OF SOUTH CAROLINA, )

Respondent. )

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

**Mrs. Kristy Grafton Goldberg, Esquire**  
**Law Office Of Kristy Goldberg**  
**1720 Main Street, Suite 301**  
**Columbia, SC 29201**

DATED this 7th day of December, 2015.

  
 Lakesicha Gibbs, Legal Assistant  
 For Respondent

CHARLES L. REEL  
Edgefield Clerk of Court & Rec  
P.O. Box 34  
Edgefield, SC 29824

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. REEL  
2015 MAY 20 AM 9:25

# 2014 Tommie lean Pixley  
WRCI/Dorm 4-B-B-47  
P.O. Box 189  
Rembert SC 29128

Case# 2015-CP-19-103

POST Conviction (Amendment)  
(Extrinsic Fraud) Pursuant to Rule 60(B)(2)(3)(4)

The applicant Tommie lean Pixley moves this Court Pursuant to Post Conviction Application for Post-conviction relief, Case# 2015-CP-19-103 which was clock stamped and filed Edgefield County Clerk of Court Charles L. Reel 2015 April 1, 3:06 P.m.

Introduction of Issue

The applicant Tommie lean Pixley Pled Guilty on February 9, 2015 and Appealed on February 12, 2015. Applicant Pled Guilty to the Indictment for Distribution of Crack Cocaine. Alleging that Tommie lean Pixley did in edgefield County on or about May 02, 2013, knowingly and intentionally distribute to a confidential informant working with the edgefield County Sheriff's Department, a quantity of crack Cocaine, a controlled substance in violation of § 44-53-375(B) South Carolina Code of laws, 1976 as Amended, such Distribution not having been authorized by law, with Penalties provided in Section § 44-53-375 B(2), South Carolina Code of laws as Amended.

The time of crime is of the essence and gist of offense the date is a material fact which must be established because the indictment alleges "Different date than Date of Charged offense" which would establish a chain of custody that would be in conflict and leave to conjecture to who had the substance and what was done with it between the taking and the analysis. The officer "Warren Miller" clearly signed off on documentation "stating The 'Confidential Informant' was researched and there was negative results. This is clearly a 'Criminal Informant' who officers has used as a 'snitch' to just throw names. The 'Criminal Informant' in this matter admitted that the transaction never took place by 'stating' he was searched and negative results was the end product of the investigation. There is no proof that a 'Controlled buy' was ever conducted. An edgefield County Sheriff's office expenditure form was done and submitted by officer 'Warren Miller and officer Roosevelt Young never signed that he had custody or witnessed a distribution of crack cocaine, or that he witnessed a controlled buy" only that he submitted the alleged drugs to be analyzed on April 5, 2013. Stating "Items were received in B233021 from Inv. Roosevelt Young of the edgefield County Sheriff's office. This chemical analyst was affirmed by Maribeth C. Coleman MAY 08, 2013. The indictment case# Number reads 2013-GS-19-591. Arrest warrant# 2013 A1910100357 alleges Date of offense April 02, 2013 and applicant pled guilty to crack cocaine and as indicted" Pursuant to Title Section code § 44-53-375 B(2). Applicant pled to 5 years non-violent on February 09,

2015 In which he was told by Counsel he would be Pleading to four years Non-violent, It is Clear Applicant Guilty Plea was Due to Advice of Counsel who knew the Statutory requirements to a Guilty Plea of Distribution of Cocaine base and offense Carried A minimum of five Years. Applicant asserts Although there is no Proof Indicated In the record of the Promise of four years sentence by Attorney Andrew Farley "The Sentencing Sheet is Indicative Proof that Applicant was Allegedly Indicted as Charged and the Sentence was a negotiated Sentence of five Years non-violent. Applicant Took a involuntary and unknowing Guilty Plea of five Years where he did not know All the elements of the formal Criminal Charge of Cocaine base and, Therefore having no understanding of the law in relation to the facts, It was Established in Johson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct 1619, 82 L.Ed. 1461 (1938)

Consequently, If a defendant's Guilty Plea is not equally Voluntary and knowing, it has been obtained in violation of Due Process and is therefore "void" moreover, Because a Guilty Plea is an admission of All the elements of formal Criminal Charge, it cannot be truly voluntary unless the defendant possesses and understanding of the law in relation to the facts. There is no evidence submitted that the Applicant "Leon Pixley" was convicted by Grand Jury Indictment Pursuant to § 44-53-375 B(a) which contains the necessary elements of the offense intended to be charged and sufficiently appraise the defendant of what he must be prepared to meet when the Dates of the alleged crime are in conflict with the submission of Evidence. and chain of custody to Charges Applicant Plead to In regards to his Trial and

LEGAL  
MAIL  
ONLY

285026 Guilty Plea. Furthermore "The officers who investigated the case against appellant are the same officers who came to the Edgely County Jail and picked applicant up and rode applicant around before taking applicant to Plea Court" this is also a conflict which counsel failed to bring to the table which fell below the objective standard of reasonableness of attorney representation. If it were not for counsel's unprofessional errors, result of proceeding would have been different. How professional would it be for an attorney to represent his client and advise him to take a plea under the duress of threat from investigating officers who investigated the alleged case and picked his client up to bring to court for him attorney Andrew Farley to represent and he not bring the issue of conflict of interest. It is clear applicant did not know what he was called upon to answer when the dates and evidence are in conflict and the elements of the crime charged don't exist the proceeding and error invalidated the guilty plea and the applicant is constitutionally entitled to be released for illegal incarceration due to extrinsic fraud upon the court. The indictment alleged against appellant and the evidence is "vague" in violation of rule 6(d) (2)(3)(4). The court lacked subject matter jurisdiction to accept applicant's involuntary guilty plea.

PROOF of Service

I Tommie Jean Pixley Swear Under the Penalty of Perjury that I have made available and served the Edgefield County Clerk of Court Charles L. Reel P.O. Box Edgefield, SC 29824 on May 12, 2015 and request copy of this Post Conviction Relief Argument of Issues be made available by copy to Attorney Kristy Gratton Goldberg LLC Attorney at Law 1720 Main Street, Suite 303 Columbia, South Carolina Attorney for Tommie Jean Pixley

2015 MAY 20 AM 10:32

RECEIVED

SWORN TO AND SUBSCRIBED BEFORE ME THIS  
13th DAY OF May 2015  
Kymberly D. Habel  
NOTARY PUBLIC FOR SOUTH CAROLINA  
COMMISSION EXPIRES: 3/31/2021

#20026 Tommie Jean Pixley  
Tommie Jean Pixley  
WRJI/Dorm 413-B-47  
P.O. Box 129  
Clemens, SC 29128

LEGAL MAIL ONLY

**Kristy Grafton Goldberg, LLC**ATTORNEY AT LAW

---

December 4, 2015

The Honorable Charles L. Reel  
Clerk of Court  
Post Office Box 34  
Edgefield, South Carolina 29824

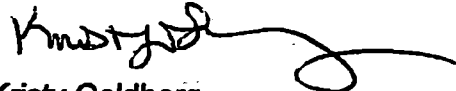
RE: Pixley v. State, Case No. 2014-CP-19-0103

Mr. Reel,

Please find enclosed two copies of an Amended Application for Post-Conviction Relief on behalf of Tommie Leon Pixley, SCDC # 285026 along with a Certificate of Service. Please file the document, stamp the copy, and return the copy to me in the enclosed, self-addressed stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you very much,



Kristy Goldberg

cc: Patrick Schmeckpeper  
Assistant Attorney General  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

Tommie Leon Pixley, SCDC # 285026  
Lower-Savannah Pre-Release  
361 Wire Road  
Aiken, South Carolina 29801

STATE OF SOUTH CAROLINA )  
 COUNTY OF EDGEFIELD )  
 )  
 TOMMIE LEON PIXLEY )  
 SCDC # 285026, )  
 Applicant, )  
 )  
 vs. )  
 )  
 )  
 STATE OF SOUTH CAROLINA, )  
 Defendant. )


IN THE COURT OF COMMON PLEAS  
 2015-CP-19-0103

AMENDED APPLICATION  
 FOR POST CONVICTION RELIEF

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of trial counsel – Trial counsel misadvised Applicant regarding the terms of the negotiated sentence and how that sentence is calculated within the Department of Corrections.
- (b) Applicant entered an involuntary guilty plea that was not intelligently made due to his reliance on incorrect advice from trial counsel and pressure from Investigators.
- (c) Ineffective assistance of trial counsel – Trial counsel allowed Applicant to plead guilty to an invalid indictment listing the incorrect offense date.
- (d) Trial counsel failed to file a Notice of Appeal upon request by the Applicant.



Kristy Goldberg  
 Attorney for Applicant

Kristy Goldberg  
 Law Office of Kristy Goldberg, LLC.  
 1720 Main Street, Suite 303  
 Columbia, SC 29201

803-667-6633  
803-799-4059 (fax)  
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 4<sup>th</sup> day of December, 2015

STATE OF SOUTH CAROLINA )  
COUNTY OF EDGEFIELD )

IN THE COURT OF COMMON PLEAS  
2015-CP-19-0103


TOMMIE LEON PIXLEY )  
SCDC # 285026, )  
Applicant, )

vs. )

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA, )  
Defendant. )

I certify that on this date I served the Second Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Applicant

Kristy Goldberg  
Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
803-667-6633  
803-799-4059 (fax)  
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 4th day of December, 2015

1 State of South Carolina  
2 County of Edgefield Court of Common Pleas  
3  
4 Tommie Leon Pixley, ) Transcript of Record  
5 Applicant, ) 2015-CP-19-0103  
6 vs. )  
7 The State of South Carolina, )

8  
9 December 9, 2015  
10 Lexington, South Carolina

11 B E F O R E:

12 The Honorable D. Craig Brown, Judge

13

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

15 Patrick Schmeckpeper, Assistant Attorney General  
16 Attorney for the State

17 Kristy G. Goldberg, Esquire  
18 Attorney for Defendant

19

20

21 Stacy S. Johnson, RPR  
22 Circuit Court Reporter

23

24

25

26

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Applicant's 1	Two letters	12	13

## P R O C E E D I N G S

(The following proceedings were held on December 9, 2015.)

**BAILIFF:** Court's again in session. Court will now come to order.

**THE COURT:** Thank you. Be seated, please.

All right. Ms. Goldberg, are you ready to proceed?

**MS. GOLDBERG:** Yes, Your Honor.

**THE COURT:** Mr. Schmeckpeper, are you ready to proceed?

**MR. SCHMECKPEPER:** Yes, Your Honor.

**THE COURT:** Call the case.

**MR. SCHMECKPEPER:** Tommie Leon Pixley versus State of South Carolina, 2015-CP-19-0103. Application for Post-Conviction Relief filed April 1, 2015. He's currently incarcerated in the South Carolina Department of Corrections. He pled guilty to distribution of crack cocaine, second offense, on February 9, 2015. He was represented by Andrew Farley. Judge McMahon sentenced him to five years of imprisonment and he did not appeal.

I'll turn it over to Ms. Goldberg.

**THE COURT:** Ms. Goldberg.

**MS. GOLDBERG:** Thank you, Your Honor. May it please the Court?

**THE COURT:** Uh-huh.



1 Q. Okay. Did you actually get to meet with him?

2 A. No.

3 Q. Okay. Who was appointed as your attorney next?

4 A. Ola Johnson.

5 Q. Did you meet with him?

6 A. Yes.

7 Q. How long did he represent you approximately?

8 A. Probably like -- it might be fifteen months or  
9 something. I don't know for sure.

10 Q. And what happened with his representation?

11 A. I relieved him from my case.

12 Q. Who represented you next?

13 A. Michael Chesser.

14 Q. And how long did he represent you?

15 A. About a couple of weeks.

16 Q. And what happened with that? How did that end?

17 A. He was -- he was the attorney for the informant.

18 Q. So he had a conflict?

19 A. Yeah, he relieved his self from the case.

20 Q. Did you ever meet with him?

21 A. Yes.

22 Q. Okay. And then who was appointed to represent you  
23 after that?

24 A. Mr. Andrew Farley.

25 Q. Okay. Did any of those attorneys ever provide you

1 with discovery in this case?

2 A. Mr. Johnson.

3 Q. Okay. So you knew generally what you were charged  
4 with and the facts and allegations?

5 A. Yes.

6 Q. Now when was Mr. Farley appointed to the best of your  
7 knowledge?

8 A. I think in January.

9 Q. January of what?

10 A. 2015.

11 Q. And when did you first meet Mr. Farley?

12 A. Like a couple of days before court.

13 Q. A couple of days before the plea?

14 A. Yes.

15 Q. Did he come to the jail?

16 A. Yes.

17 Q. And the plea was February of 2015, correct?

18 A. Yes.

19 Q. February 9th?

20 A. Yes.

21 Q. All right. So the week before he came to the jail to  
22 see you?

23 A. Yes.

24 Q. What happened in that conversation?

25 A. He told me that they was gonna be taking me to court

1 and I was gonna get five years nonviolent at 65 percent,  
2 but the investigator had told me it was gonna be four  
3 years.

4 Q. Now to back up a little bit, you knew the allegations  
5 against you. Did you want a trial or did you want to plea?

6 A. Yeah, I wanted a trial.

7 Q. Because how long did you stay in jail altogether?

8 A. Like eighteen months.

9 Q. So during that time you were kind of working yourself  
10 up for a trial?

11 A. Yes, I was already prepared until I talked to him.

12 Q. This -- this PCR case is not about the merits of what  
13 your trial would have been, but generally did you think you  
14 had some triable issues?

15 A. Yes.

16 Q. Just a real short description of what they were.

17 A. Like the statement and the affidavit and like some  
18 more stuff.

19 Q. The informant's statement?

20 A. Yeah, informant's statement.

21 Q. You thought you could challenge that?

22 A. Yes.

23 Q. Okay. Were there some other issues, chain of custody  
24 issues?

25 A. Yeah, chain of custody.

1 Q. Okay. So you knew that you had issues you thought you  
2 could go to trial on?

3 A. Yes.

4 Q. Why did you decide to plea?

5 A. Because I took his advice to plead guilty because it  
6 was -- you know, I had like twelve more months. I had  
7 been locked up eighteen months and he told me it was  
8 nonviolent, five years at 65 percent, so I asked him do  
9 you think you could get the plea lower than that and he  
10 said no because they're giving it to you as a nonviolent,  
11 65 percent.

12 Q. If you had known that his statement that it was  
13 calculated at 65 percent was wrong, would you have still  
14 pled guilty?

15 A. No.

16 Q. Were you relying on his legal advice?

17 A. Yes.

18 Q. Did anything else happen the day of your plea that  
19 factored into your decision to plead guilty?

20 A. The investigators took me to court.

21 Q. What investigators?

22 A. The two investigators on my case.

23 Q. And what does that matter?

24 A. Well, they lied to me, I wouldn't have pled guilty,  
25 and then they said some stuff, you know. They had

1 mentioned about my family and stuff, so I figured I wasn't  
2 gonna let them play with my mom's life or nobody else in  
3 my family, so I went on ahead and pled guilty. Because I  
4 took Mr. Farley's advice and he allowed them to come sign  
5 me out of jail and as my attorney I figured I wouldn't  
6 have a fair trial anyway. If you allow the main two people  
7 that's over my case to come sign me out of jail and take  
8 me to court, I figured it wouldn't -- I wouldn't have a  
9 fair trial.

10 Q. You were also -- or you are also concerned about your  
11 indictment. Is that right?

12 A. Yes.

13 Q. What's wrong with your indictment?

14 A. The charge they got me in here for said it happened  
15 on May 2nd.

16 Q. The indictment says May 2nd?

17 A. Yeah.

18 Q. Is that wrong?

19 A. Yeah, I assume it is because the warrants and the  
20 evidence that they said they have is on April 2nd.

21 Q. You don't think they should have been allowed to  
22 proceed to -- for a plea on that indictment?

23 A. No, because I didn't commit a crime on that date and  
24 that's what it's stating.

25 Q. After your guilty plea, did you ever talk with

1 Mr. Farley about your rights to appeal?

2 A. No, but I wrote him -- because I didn't have his  
3 address, so I wrote the Clerk of Court.

4 Q. Okay. Let me back up a little bit. The day of your  
5 guilty plea in court after your plea, did you ever ask  
6 Mr. Farley to appeal?

7 A. No, I did -- no, I did not because at that time I  
8 assumed everything was correct of what I pled guilty to,  
9 but --

10 Q. Okay. Go ahead. Go ahead.

11 A. When I got to Kirkland, then I realized everything was  
12 wrong, I knew I had ten days to appeal, so I wrote them and  
13 it was -- it was like on the -- I pled on the 9th, I wrote  
14 them on the 12th, so Ms. Shirley Newman she clock-stamped  
15 it on the 16th and forwarded it to him.

16 Q. You said that the only time you met with Mr. Farley  
17 prior to your plea was the week before?

18 A. Yes, about the week before.

19 Q. Did he ever give you a business card?

20 A. No.

21 Q. Did he ever write to you?

22 A. No.

23 Q. You didn't have anything with his letterhead or  
24 contact information?

25 A. No.

1 Q. Did he ever give you his address?

2 A. No.

3 Q. Okay. And you were in Kirkland Correctional, correct,  
4 at the time that you decided to a plea -- to appeal; is  
5 that right?

6 A. Yes.

7 Q. Did you have his contact information?

8 A. No.

9 Q. And you say you wrote to the court?

10 A. Yes.

11 **MS. GOLDBERG:** May I approach, Your Honor?

12 **THE COURT:** Yes.

13 (Applicant's Exhibit Number 1 was marked for  
14 identification.)

15 BY MS. GOLDBERG:

16 Q. I'm handing you a copy of Applicant's Exhibit  
17 Number 1, which is two pages. Mr. Pixley, tell me what  
18 those pages are. Look at both of them and tell me what  
19 they are.

20 A. A copy of the letter I sent the court.

21 Q. Okay. And what's it dated?

22 A. February 12, 2015.

23 Q. And what's the other page?

24 A. A copy that the clerk sent me back.

25 **MS. GOLDBERG:** All right. At this time I would ask

1 to introduce Exhibit Number 1 into evidence.

2 **MR. SCHMECKPEPER:** No objection, Your Honor.

3 **THE COURT:** So admitted.

4 **MS. GOLDBERG:** Thank you, Your Honor.

5 (Applicant's Exhibit Number 1, two letters, were  
6 admitted into evidence.)

7 BY MS. GOLDBERG:

8 Q. Mr. Pixley, you wrote to the court asking for them to  
9 tell Mr. Farley that you wanted him to file a notice of  
10 appeal?

11 A. Yes.

12 Q. Is there anything else you could have done that you  
13 can think of?

14 A. No.

15 Q. This was the only contact information you had?

16 A. Yes.

17 Q. Did you have telephone access at the time?

18 A. No.

19 Q. Not at Kirkland?

20 A. I had access to the phone, but at the time I didn't  
21 have a PIN number.

22 Q. You hadn't been given a PIN number yet?

23 A. Yeah, and I -- I didn't know the court's number or  
24 nothing like that.

25 Q. Okay. This was mailed to you -- by you within ten

1 days after your plea?

2 A. Yes.

3 Q. You did this to try and preserve your appellate  
4 rights?

5 A. Yes.

6 **MS. GOLDBERG:** No further questions.

7 **THE COURT:** Cross-examination?

8 **MR. SCHMECKPEPER:** Thank you, Your Honor. May it  
9 please the Court?

10 **THE COURT:** Yes.

11 CROSS-EXAMINATION

12 BY MR. SCHMECKPEPER:

13 Q. Good afternoon, Mr. Pixley.

14 A. Good afternoon.

15 Q. Do you remember pleading guilty to this charge?

16 A. Yes.

17 Q. Do you remember what the judge told you the potential  
18 sentences were?

19 A. Yes.

20 Q. And what were they?

21 A. I think five to thirty.

22 Q. And do you remember when the -- Solicitor Maye went  
23 over the negotiations? Do you remember when Solicitor Maye  
24 said this was a negotiated five-year sentence?

25 A. Yes, that what -- what he stated that I came to him

1 for a negotiated five years at 65 percent, but he didn't  
2 say the 65 percent. I never was offered a plea and they  
3 told me that was what I was gonna get and that's why I  
4 signed the negotiated sentence and on my sentencing sheet  
5 it states nonviolent and not nonviolent and serious was  
6 what made me aware of what I was pleading guilty to.

7 Q. Did anybody say 65 percent in the courtroom that day?

8 A. No.

9 Q. But you said that people had promised you 65 percent?

10 A. Yes, but they didn't say it once we got in front of  
11 Judge McMahon.

12 Q. Why didn't you go ask Judge McMahon when he asked --  
13 said did anybody promise you anything that you'd been  
14 promised 65 percent sentences?

15 A. Because I -- I figured it weren't really a promise,  
16 you know. I just took my lawyer's advise. Ain't nobody  
17 say like I promise you this, I promise you that.

18 Q. Do you remember the judge asking you if you needed any  
19 more time to speak with your attorney?

20 A. Yes.

21 Q. And what did you tell him?

22 A. I didn't. I figured I ain't -- I ain't need no more  
23 time to talk to him.

24 Q. And do you remember the judge saying that these were  
25 the complete negotiations and full negotiations?

1 A. Yes.

2 Q. And what was your response?

3 A. I probably agreed with him.

4 **MR. SCHMECKPEPER:** I beg the Court's indulgence. I  
5 have no further questions.

6 **MS. GOLDBERG:** Just briefly.

7 REDIRECT EXAMINATION

8 BY MS. GOLDBERG:

9 Q. Mr. Pixley, up until the very end of the plea did you  
10 still think you were getting what you thought you were  
11 getting?

12 A. Yes.

13 Q. A five-year sentence?

14 A. Yeah, at the 65 percent.

15 Q. You didn't have any reason to believe it wasn't  
16 65 percent?

17 A. No. If I -- if I knew it was not gonna be 65 percent,  
18 I would have never signed that plea.

19 Q. And you believed that based on the advice your lawyer  
20 had given you?

21 A. Yes.

22 Q. At what point did you realize that that advice was  
23 wrong?

24 A. When I got to Kirkland and they told me my max out  
25 date.



1 Q. And under what circumstances did you come to represent  
2 the Applicant?

3 A. I was contacted by the public defender's office and  
4 that Mr. Seigler, I think, had a conflict and had given  
5 it to Mr. Johnson. Mr. Johnson was relieved as counsel  
6 and the next contract attorney was Mr. Michael Chessser.  
7 Mr. Chessser also contacted me and said that he represented  
8 the confidential employment I think in another case, but in  
9 regards to this case and could not continue his reputation  
10 -- representation of Mr. Pixley.

11 Q. Now how long between meeting Mr. Pixley -- starting to  
12 represent Mr. Pixley and Mr. Pixley's guilty plea were you  
13 representing him?

14 A. Actually I think it was only twenty days that I  
15 actually represented Mr. Pixley.

16 Q. A pretty short time, right?

17 A. Incredibly short given the usual duration of -- of my  
18 representation of criminal clients.

19 Q. Did you have a chance to meet with him during that  
20 time prior to the plea?

21 A. We had one meeting and it sort of came together rather  
22 quickly. When I met with him, and I believe I met with  
23 him February the 4th at the Edgefield County jail, I had  
24 brought a copy of the discovery that I had received. It  
25 was my information that Mr. Johnson had already provided

1 him with discovery as well, so he had already -- he was  
2 already very familiar with the discovery.

3 Q. Did you review the facts and the nature of the  
4 allegations?

5 A. We had -- if I remember correctly, it was a couple of  
6 hours that we discussed the issues that he brought up and  
7 I certainly told him what I thought the issues with those  
8 problems would be. Certainly one of them was the -- I  
9 think it was the warrants or the indictment had a different  
10 date and I told him I didn't think a scrivener's error was  
11 going to be a fatal flaw. It said on or about and I think  
12 that was probably gonna cover it as a scrivener's error.  
13 I think there were some other issues he had with what he  
14 felt was a prefabricated confidential informant form, but  
15 it still had the -- laid out the correct facts that were  
16 pertinent to his case. Those were the two I remember him  
17 having the most issue with.

18 Q. So why was this such a short period between your  
19 representation of him and him pleading?

20 A. Well, during that meeting we discussed, you know, the  
21 potential of going to trial. You know, he -- he brought up  
22 those issues with the indictment and also with the form.  
23 You know, I told him that I didn't think that they would be  
24 fatal flaws that would -- that would cause an automatic  
25 dismissal. We discussed the testimony of the confidential

1 informant plus the substance that had been tested by SLED.  
2 I think given all that information, you know, Mr. Pixley at  
3 the end of our meeting decided that he felt that the plea  
4 would be the best course of action at that time.

5 I also advised him that I thought that the negotiated  
6 plea for five years was appropriate and in the very low  
7 range given the charge and he asked me if I could set the  
8 plea hearing up as -- as soon as possible. I -- upon  
9 leaving Edgefield county jail, I called the solicitor's  
10 office. The solicitor said that they could accommodate us  
11 if we wanted to waive jurisdiction and plea in Saluda if  
12 I'm --

13 Q. That's venue, correct? Waive venue?

14 A. I'm sorry, yes, waive venue and plead in Saluda, and  
15 I think that's what we did.

16 Q. And did you explain what that five years meant?

17 A. Yes, I did.

18 Q. Did you ever tell him he would only have to serve  
19 65 percent of that time?

20 A. I don't recall saying that to Mr. Pixley. I know  
21 that sometimes they can categorize people into those things  
22 when they get to SCDC; however, I know that's a creature of  
23 the prison system, we have no real control over that kind  
24 of thing. That's a classification that happens after they  
25 reach the prison system.

1 Q. Do you typically try and tell clients the exact number  
2 of days they'll spend in prison for any given sentence?

3 A. I never do because I never know what -- the exact  
4 amount of days and it's always been my understanding that  
5 once they're incarcerated in the prison system that they  
6 can have credits or apply for certain things or have sort  
7 of good time credits and so it seems to me very, very  
8 difficult for any trial counsel to try to guess with any  
9 accuracy how many days they'll actually serve.

10 Q. And just to reiterate, you called the solicitor's  
11 office and requested a plea at his request?

12 A. Mr. Pixley said that he wanted to get out of Edgefield  
13 County jail as soon as possible. He decided that the plea  
14 was gonna be the best course. I just simply called up and  
15 asked if they'd accommodate us. I know many times, and I  
16 can't say that this applies to Mr. Pixley in particular,  
17 but the impression I got was the same as I get from many  
18 people I represent, which is they don't wish to spend any  
19 more time than necessary in the county jails because it is  
20 jail and often they want to go ahead and be moved to -- if  
21 they can go ahead and take their plea offer, then they'll  
22 be moved on to the prison system, I guess, which can have  
23 certain benefits.

24 Q. Was this a rush to justice? Was this -- was that  
25 too quick or were you able to actually explain all of his

1 rights and did he understand all of his rights?

2 A. I mean, I thought Mr. Pixley certainly understood all  
3 of his rights. I spent plenty of time with him trying to  
4 explain the advantages and disadvantages of going to trial.  
5 You know, he certainly indicated to me that after being  
6 represented for so long by Mr. Johnson and -- and  
7 Mr. Johnson going over all the different things that he  
8 did with Mr. Pixley, and after I came in and kind of  
9 reiterated many of the same things, you know, he certainly  
10 indicated to me that what he wanted to do was a trial, he  
11 didn't want -- I mean, he wanted a plea, he did not want to  
12 go forward on trial. And I certainly didn't try to rush  
13 anything. We certainly could have waited until the next  
14 session of Edgefield. You know, Mr. Pixley said to me that  
15 he didn't want to wait until the next session of Edgefield,  
16 so if I could -- if they could accommodate us in Saluda,  
17 then, you know, we could go ahead and have it taken care  
18 of.

19 Q. Now after pleading guilty, did Mr. Pixley ever  
20 indicate that he wanted -- indicate to you that he wanted  
21 to file an appeal?

22 A. No, he didn't indicate to me that he wanted to file  
23 an appeal at the day of the plea hearing, so I thought he  
24 was very satisfied with the sentence, especially given  
25 that it's -- I think it's the minimum amount required for

1 the charge. So, again, I thought he was pretty satisfied  
2 with that sentence. It wasn't until later on that I had  
3 received correspondence from the clerk of court -- or via  
4 the clerk of court from Mr. Pixley saying he wanted to file  
5 an appeal, but I think at that time it was outside the time  
6 frame.

7 Q. Were there any -- were there appealable issues that  
8 you could spot from the guilty plea? Did you go over --

9 A. I really don't do any appellate work and so -- I mean  
10 -- I mean, I'm not really sure what appealable issues there  
11 might have been.

12 Q. Was there any reason that you thought you should  
13 appeal other than -- independent from Mr. Pixley saying you  
14 should have?

15 A. Not that I recall. I mean, I didn't really look into  
16 those issues. I mean, usually if any client asks me to  
17 appeal, then I'll file a notice of appeal and turn that  
18 over to the office of -- you know, the appellate division  
19 and let them do that kind of thing. I've never really done  
20 any appellate work.

21 Q. That brings me to what I hope is my final question.  
22 If he would have asked you to appeal, would you have  
23 appealed?

24 A. I would have certainly filed a notice of appeal.

25 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

1 Thank you, Mr. Farley. I have no further questions.

2 **THE COURT:** Ms. Goldberg?

3 **MS. GOLDBERG:** Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. GOLDBERG:

6 Q. All right. Mr. Farley, good afternoon again. It  
7 sounds like Mr. Pixley's -- it is correct that you just  
8 met with him that one time meeting before, correct?

9 A. That is correct.

10 Q. Do you remember if you ever wrote him any letters?

11 A. Well, I don't recall just because I was appointed  
12 and I think within a few days I went to see him in the  
13 Edgefield County jail, which, like I said, we had a pretty  
14 substantial meeting and that it was at the end of that  
15 meeting he certainly indicated he wanted to plea, so I  
16 didn't, you know, have time to really write him any  
17 letters.

18 Q. Do you recall if he would have any way to have your  
19 contact information?

20 A. You know, I was -- I'm fairly certain I left a  
21 business card, but I -- you know what, I really -- it was  
22 -- I can't say that a hundred percent. I usually do leave  
23 a business card. All I -- I can't remember exactly. I  
24 mean, I can't say that with a hundred percent certainty.  
25 I know that I always try to leave a business card and

1 that's usually my practice. I really can't say with a  
2 hundred percent certainty. I don't recall. I always try  
3 to do that.

4 Q. Okay. Is there any reason why you didn't ask the  
5 court to correct the indictment or that you didn't object  
6 to the indictment?

7 A. Well, I do understand what you're saying and, again,  
8 I thought it was a scrivener's error. I'm certain that  
9 they could have corrected the indictment. I didn't think  
10 that was a fatal flaw.

11 Q. Any reason --

12 A. I know Mr. --

13 Q. Go ahead. Go ahead.

14 A. I know Mr. Pixley had indicated that the -- he felt  
15 the offense had occurred, I think, April 2nd instead of  
16 May the 2nd or something of that nature. I think there  
17 was other documentation that had listed the correct date  
18 and I -- and I felt -- and I told him that I didn't think  
19 a scrivener's error would be a fatal flaw in this case.

20 Q. And did you testify that you and Mr. Pixley didn't  
21 address how long his sentence would be at all or that  
22 you told him you were uncertain? Explain how that  
23 conversation --

24 A. Well, I told him what the offer was that had been  
25 extended by the solicitor's office, which was the five

1 years negotiated plea. You know, I told him just like I  
2 tell anyone, you know, there's certain classifications  
3 within the prison system that once you get to wherever  
4 you're gonna be going, whether at Kirkland or Broad River  
5 or whatever, depending on certain things they can classify  
6 you into different areas that -- that can make you eligible  
7 for 65 percent or 85 percent. I never guarantee anybody  
8 what that is. I don't think we have any control over that  
9 as trial counsel or with the judges. That's usually a  
10 classification made by the -- by the prison system, but I  
11 did tell him that I thought a five-year negotiated plea  
12 given his charge was a good offer and that I didn't think  
13 we would do better than that offer and the alternative  
14 would be trial which would expose him to a much greater  
15 amount of time and he agreed and, again, asked for me to  
16 schedule a plea hearing and that -- you know, also asked  
17 that if we could go ahead and get that as quickly as we  
18 could get it just because he didn't want to spend any more  
19 time in Edgefield County jail.

20 Q. Do you remember if he asked -- specifically asked you  
21 and wanted to discuss the 65 percent issue or do you not  
22 remember?

23 A. No, I don't recall that as being a major issue. I  
24 mean, usually we -- we talked about the trial, potential  
25 defenses, what I thought would happen with the issues that

1 he raised, and he indicated to me after I explained what I  
2 thought would happen with those issues at trial that --  
3 that he decided he didn't want to go to trial and that he  
4 did want to go forward on the plea.

5 Q. So when you met with him at the jail, did you already  
6 know about the five-year negotiated plea offer?

7 A. The solicitor's office had extended that to me.

8 Q. So y'all discussed it at the jail as well as the day  
9 in court?

10 A. That's correct. If I recall correctly, I was given  
11 the appointment as a conflict. I usually try to get in  
12 touch with the solicitors prior to meeting with any client  
13 just to see if I could see if there were already any offers  
14 that had been extended. Sometimes that's not something  
15 you're able to do because if you're the first attorney  
16 maybe a Solicitor hasn't been assigned. I knew in this  
17 case Mr. Johnson and Mr. Chesser has been previous counsel  
18 and that it was a great likelihood that the solicitor's  
19 office had made or extended an offer and, indeed, they had  
20 and they had re-extended that offer to me and I, in turn,  
21 took that offer to Mr. Pixley. And whether -- I can't say,  
22 and I just have no knowledge of, whether that offer had  
23 been extended by Mr. Johnson or Mr. Chesser.

24 Q. Right.

25 **MS. GOLDBERG:** May I approach, Your Honor?

1           **THE COURT:** Yes.

2 BY MS. GOLDBERG:

3 Q. Mr. Farley, I'm gonna hand you what's already been  
4 admitted as Applicant's Exhibit Number 1. The second page  
5 is the letter written by Mr. Pixley. Did you ever see that  
6 letter from Mr. Pixley or that letter from the court?

7 A. I did.

8 Q. They did, in fact, forward that to you?

9 A. They did.

10 Q. Okay. Did you act upon it?

11 A. I did not receive this in enough time to file a notice  
12 of appeal and, you know, I believe I wrote a letter to  
13 Mr. Pixley explaining that; that I received it outside the  
14 time frame and unfortunately we -- we simply weren't in  
15 time to -- to get the appeal in.

16 Q. So no notice of appeal was filed?

17 A. That's correct.

18 **MS. GOLDBERG:** No further questions.

19 **THE COURT:** Anything further?

20 **MR. SCHMECKPEPER:** Nothing, Your Honor.

21 **THE COURT:** Sir, you may step down. Thank you.

22 (Witness excused.)

23 **THE COURT:** Anything by way of argument, Ms. Goldberg?

24 **MS. GOLDBERG:** Your Honor, simply that Mr. Pixley  
25 testified that the only reason he plead guilty was because

1 he was relying on counsel's advice -- legal advice  
2 regarding as to what the consequences the conviction or  
3 sentence would be. He would not have pled guilty  
4 otherwise.

5 **THE COURT:** Are you talking about the 85 percent?

6 **MS. GOLDBERG:** I am. And, therefore --

7 **THE COURT:** Do you have any case law that says that's  
8 a necessity?

9 **MS. GOLDBERG:** That what's a necessity?

10 **THE COURT:** To advise the client on 85 percent versus  
11 65 percent?

12 **MS. GOLDBERG:** No, sir.

13 **THE COURT:** Okay.

14 **MS. GOLDBERG:** But that is his argument; that it was  
15 a consequence and he was not -- and he relied upon it.  
16 Also the fact that Mr. Pixley did do the only thing he  
17 could do within ten days after his plea, which is to write  
18 the court and try to assert his appellate rights; that he  
19 didn't have contact information for Mr. Farley, he couldn't  
20 contact him otherwise. I think that that shows that he  
21 made the only attempt he could and so I would also ask  
22 that he be given that belated right to appeal since he did  
23 assert it in a timely manner even though not correctly.

24 **THE COURT:** All right. Mr. Schmeckpeper?

25 **MR. SCHMECKPEPER:** Thank you, Your Honor. May it

1 please the Court? As far as whether or not Mr. Pixley's  
2 entitled to a belated appeal, the standard here is still  
3 Strickland. It's still deficient performance and  
4 prejudice. There's been no showing of any deficient  
5 performance here by counsel's failure to file an appeal  
6 when he wasn't notified of the need to file an appeal until  
7 after the time period had expired.

8           Concerning the 65 percent versus 85 percent, there's  
9 no requirement that counsel inform clients of collateral  
10 consequences such as credits or parole eligibility. I  
11 don't have the exact case -- case cite here, but I can  
12 definitely provide that to Your Honor if necessary.

13           **MS. GOLDBERG:** Your Honor, just a brief reply. While  
14 the Attorney General may be able to provide a case that  
15 says there's no requirement for them to provide advice on  
16 those, my argument would be that if they do, in fact,  
17 provide legal advice on those that it should, in fact,  
18 be accurate. Mr. Pixley testified that Mr. Farley  
19 specifically told him it would be calculated at 65 percent  
20 and that was not, in fact, accurate.

21           **THE COURT:** Let me ask you this, Ms. Goldberg.

22           **MS. GOLDBERG:** Yes, sir.

23           **THE COURT:** One of the allegations in here is that he  
24 pled guilty because of incorrect advice under Subsection B.

25           **MS. GOLDBERG:** Right.

1           **THE COURT:** Incorrect advice of trial counsel and  
2 pressure from investigators.

3           **MS. GOLDBERG:** Correct. Mr. Pixley testified that  
4 investigators made several statements to him when they  
5 transported him to the courthouse that day, statements  
6 about his mother. He was not more specific into that.  
7 And I talked to Mr. Pixley about this. I think he wasn't  
8 more specific because he honestly doesn't remember more  
9 specifics, but they made several statements to him that day  
10 that made him uncomfortable, made him not trust -- not  
11 trust the system that also affected his plea, that was his  
12 -- affected his decision to plea. That was the testimony  
13 presented.

14           **MR. SCHMECKPEPER:** If I may respond quickly, Your  
15 Honor? There was a -- there's a time and a place for that  
16 to be addressed and it was at the plea hearing when the  
17 plea judge asked Mr. Pixley whether or not anybody had  
18 threatened him or used force to get him to plea or anyone  
19 had used pressure or intimidation to cause him to plead  
20 guilty and he said no to both of those on Page 8 and  
21 Page 9, Your Honor.

22           **THE COURT:** All right. Ms. Goldberg, let me ask you  
23 this. Under the law counsel -- defense counsel is not  
24 required -- it's my reading of the law defense counsel is  
25 not even required to advise a defendant at a guilty plea

1 they have any right to appeal unless -- unless there are  
2 issues -- appellate issues that may be there. Do you  
3 dispute that?

4 **MS. GOLDBERG:** I don't dispute that and, quite  
5 frankly, I don't think there was a lot of testimony as to  
6 any conversations they had about appeal, so he may not  
7 have advised him about his right to appeal, but the judge  
8 certainly did tell him he had a right to appeal within ten  
9 days and the argument is simply that Mr. Pixley did, in  
10 fact, try and take advantage of that and the only reason it  
11 wasn't done correctly is because he just didn't have that  
12 contact information. That is a White claim.

13 **THE COURT:** Well, let me --

14 **MS. GOLDBERG:** I don't think it goes so much to  
15 ineffective assistance of counsel as to just general  
16 unfairness or in the interest of justice. Because he did  
17 try to assert those rights timely, he should be allowed  
18 that right. That's all.

19 **THE COURT:** Okay. Anything else in that respect,  
20 Mr. Schmeckpeper?

21 **MR. SCHMECKPEPER:** Your Honor, we would just rest on  
22 Strickland.

23 **THE COURT:** And I'll look at that case again.

24 With regards to Allegations A, B and C, I am  
25 going to respectfully deny Applicant's Application for

1 Post-Conviction Relief. Defendant must show counsel's  
2 performance was deficient and the deficient performance  
3 prejudiced the defendant. In the context of a guilty plea,  
4 the deficiency prong inquiry turns on whether the plea  
5 was voluntarily, knowingly and intelligently entered into.  
6 The defendant or, excuse me, the Applicant testified that  
7 had he known that he had to do 85 percent as opposed to  
8 65 percent as he was allegedly advised by his plea  
9 attorney, that he would not have entered this plea. The  
10 plea attorney testified that he did not advise -- or that  
11 he did not recall advising Applicant of such and it was  
12 not his policy to advise defendants of the amount of time  
13 that they may end up doing as a result of a guilty plea.  
14 What that issue boils down to is a credibility issue and  
15 the Court believes the testimony as stated by plea counsel  
16 at the time. Furthermore, defendant has failed to prove  
17 that his plea was knowingly -- was not knowingly,  
18 intelligently and voluntarily entered into.

19 With regards to the indictment, an indictment is a  
20 notice document as to the charge to which the defendant  
21 must answer. The indictment has one date while the arrest  
22 warrant has a separate date, which is approximately one  
23 month apart. The indictment, as well as the warrant, says  
24 on or about such and such date. I do not believe that that  
25 is such a broad sweep -- it's a brush so to speak -- that

1 it would not adequately advise this defendant as to what  
2 he has to defend and I do not see or believe counsel was  
3 ineffective for not objecting to such.

4 Anything further from -- anything further,  
5 Ms. Goldberg?

6 **MS. GOLDBERG:** I beg the Court's indulgence.

7 **THE COURT:** Yes, ma'am.

8 **MS. GOLDBERG:** Nothing further, Your Honor.

9 **THE COURT:** Thank you, ma'am.

10 **MR. SCHMECKPEPER:** Nothing further, Your Honor. Just  
11 D is under advisement?

12 **THE COURT:** Yes. If you'll get my law clerk that cite  
13 on that case.

14 **MR. SCHMECKPEPER:** For Strickland?

15 **THE COURT:** What was the other case you cited? I  
16 thought you cited another case.

17 **MR. SCHMECKPEPER:** I don't know off the top of my  
18 head. I said we rest on Strickland for that.

19 **THE COURT:** I'm sorry.

20 **MS. GOLDBERG:** And I'm sorry. I know that you  
21 provided your rulings on all of those and I think regarding  
22 the appeal you said you were gonna go back and look at a  
23 case?

24 **THE COURT:** I'm gonna go back and look at that issue.

25 **MS. GOLDBERG:** Okay. So you'll just notify us --

1           **THE COURT:** Yes.

2           **MS. GOLDBERG:** -- as to that one and then -- okay.

3 Just making sure.

4           **THE COURT:** (Nods head.)

5           **MS. GOLDBERG:** All right. Thank you, Your Honor.

6           **THE COURT:** Thank you.

7           (Proceedings were concluded at 4:48 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 9th day of December, 2015.

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

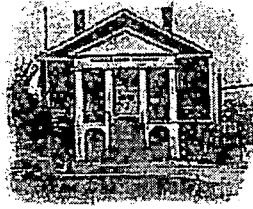
I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

April 15, 2016

*s/ Stacy S. Johnson*  
\_\_\_\_\_  
Stacy S. Johnson, RPR  
Circuit Court Reporter

# Edgefield County Clerk of Court Office

**Charles L. Reel**  
Clerk of Court



P. O. Box 34  
Edgefield, SC 29824  
Phone: (803) 637-4080  
Fax: (803) 637-4117

February 16, 2015

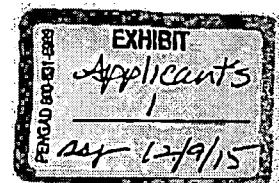
Tommie Leon Pixley #285026  
Kirkland Rec. and Eval. Center  
F1B-238  
4344 Broad River Road  
Columbia, SC 29210

Mr. Pixley,

I have forwarded a copy of your letter to your attorney. You will need to contact him concerning an appeal.

Sincerely,

Shirley F. Newby



'76

February 16, 2015

I would like to appeal my sentence because I  
plead guilty on February 9, 2015 and I was sentence  
to 5 years non violent but I feel that I should  
f gotten a better plea than the one I took, so I would  
like to come back to court because I'm not satisfied with  
the plea I took in Saluda County Court house. So could you  
please forward this letter to my lawyer Mr. Andrew Farley  
and the court of appeals or the Supreme court. Thank You

Sincerely, *Tommy Leon Pitley*

P.S. I would like a copy of this letter back please.

ESSEXFIELD COUNTY  
CLERK OF COURT  
SHIRLEY F. NEWBY

2015 FEB 16 AM 10:07

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

Tommie Leon Pixley,  
S.C.D.C. No. 285026

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) ELEVENTH JUDICIAL CIRCUIT

) C.A. No. 2015-CP-19-0103

**ORDER OF DISMISSAL  
(with prejudice)**

2016 FEB -5 AM 11:39

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. NEEL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 1, 2015. Respondent filed its Return on or about December 7, 2015. An evidentiary hearing into the matter was convened on December 9, 2015, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Kristy Goldberg, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. In November 2013, the Edgefield County Grand Jury indicted Applicant for distribution of crack cocaine – second offense (2013-GS-19-0591). Andrew Farley, Esq. represented Applicant. On February 9, 2015, Applicant pled guilty as indicted. The Honorable R. Knox McMahon sentenced Applicant to a term of five (5) years imprisonment. Applicant did not appeal his guilty plea or sentence.

### Allegations

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

1. "I was told I was pleading to 4 years";
  - a. "my plea turned out to be five years";
2. "The date of the offense I pled guilty to is 5-2-13";
  - a. The evidence shows the offense occurred on 4-2-13";
3. The Counsel was ineffective";
  - a. I only saw him one time and I went to court 4 days after."

On May 12, 2015, Applicant amended his application through counsel to include the following allegations:

1. Ineffective assistance of trial counsel – Trial counsel misadvised Applicant regarding the terms of the negotiated sentence and how that sentence is calculated within the Department of Corrections;
2. Applicant entered an involuntary guilty plea that was not intelligently made due to his reliance on incorrect advice from trial counsel and pressure from Investigators;
3. Ineffective assistance of trial counsel – trial counsel allowed Applicant to plead guilty to an invalid indictment listing the incorrect offense date;
4. Trial counsel failed to file a Notice of Appeal upon request by the Applicant.

### SUMMARY OF TESTIMONY

Applicant testified that counsel was not the first attorney to represent him in this criminal matter. Applicant's earlier attorneys were either relieved or conflicted out, until Andrew Farley, his plea counsel, was appointed. Applicant said that he met with plea counsel a couple of days before the plea. He further stated counsel told him he would get a five (5) year sentence, and only serve sixty-five (65) percent of that time in prison. Applicant said he would not have pled guilty otherwise.

Applicant said that he was taken from jail to court by investigators, who lied to him and said things about his family. He said counsel should not have allowed them<sup>1</sup> to sign Applicant

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<sup>1</sup> Applicant seems to be referring to police officers taking him to court from the jail.

out and take him to court. Applicant testified that the indictment says the offense occurred on May 7, but that the warrant said April 7.

Following the guilty plea, Applicant said that he wrote to counsel about his right to appeal. He said he did not ask counsel for a direct appeal the day of his guilty plea because he did not find out that he was required to serve eighty-five (85) percent of his sentence until he got to Kirkland.<sup>2</sup> He said as soon as he got to Kirkland, he wrote to the clerk of court in an attempt to get in touch with his attorney to file an appeal. He said he did not reach out directly to counsel because he did not have his contact information. He said he did not make a phone call because SCDC had not yet issued him a pin number to access the phones. Applicant said that if he knew he was not going to get a sixty-five (65) percent sentence, he would not have signed onto the plea deal.

On cross-examination, Applicant acknowledged that the judge told him the offense he was pleading to carried a range of five (5) to thirty (30) years imprisonment. He also said he understood that the Solicitor said it was a negotiated five (5) year sentence. He said that no one said, in court, that part of his negotiations were that he would only serve sixty-five (65) percent of his sentence. He said he did not tell the judge that these were among his expectations.

Counsel testified that he represented Applicant for a very short period of time. He said that they met once for a number of hours, reviewed discovery, and went over any issues Applicant brought up. Counsel said Applicant was concerned about an issue with the indictment,<sup>3</sup> but counsel believed it was merely a scrivener's error that would have no impact on his case. He also discussed the confidential informant and the potential of proceeding to trial. Counsel said following these discussions, Applicant informed him that he wanted to plead guilty.

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<sup>2</sup> Kirkland Correctional Institution.

<sup>3</sup> Applicant has alleged that counsel's failure to raise the indictment issue constitutes ineffective assistance in violation of his Sixth Amendment right to counsel.

Counsel stated he agreed with Applicant's decision, and called the solicitor to ask for a plea deal at Applicant's request.

Concerning sentencing, counsel testified that he explained to Applicant that the negotiations were for five years. He said he did not recall telling Applicant that he would only serve sixty-five percent. Counsel testified that he does not tell clients the exact amount of time or number of days they will be required to serve on any given sentence because such calculations are made by the Department of Corrections. Counsel said he thought Applicant understood everything, and that he did not try to rush the Applicant into a guilty plea. Counsel testified that Applicant did not say anything to him about an appeal at his guilty plea hearing. He stated that by the time he got Applicant's message from the clerk of court, the time period for filing an appeal had passed. Counsel said he would have filed an appeal had Applicant asked him to do so.

On cross-examination, counsel said he did not recall writing Applicant any letters following his guilty plea. He testified that he was "fairly certain" that he left a business card, and that leaving one is his standard practice. However, he could not remember exactly, and cannot say with one hundred percent certainty that he left one.

Counsel stated again that he did not object to the indictment because he believed it was a scrivener's error, and could have been easily corrected. He said that he did not think it was a fatal flaw in the State's case, and that other documents listed the correct date.

Counsel reemphasized that he told Applicant the sentence was five (5) years, and that whether a client would have to serve sixty-five (65) or eighty-five (85) percent is not something he guarantees. Counsel said that he thought the deal was a good offer, and that a trial would

have exposed Applicant to a greater sentence. He further testified that Applicant asked him to schedule a plea hearing.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the post-conviction relief transcript, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact based upon all of the probative evidence presented.

#### **Ineffective Assistance of Counsel**

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. Because Applicant pled guilty, he must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

#### **Involuntary Guilty Plea**

An applicant asserting a constitutional violation must generally frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his or her guilty plea was induced by ineffective assistance of counsel must prove

counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

#### **Sentence Calculation**

Applicant alleges that trial counsel was ineffective for misadvising Applicant regarding the terms of the negotiated sentence and how that sentence is calculated within the Department of Corrections. Applicant further alleges that this ineffective assistance rendered his guilty plea involuntary.

This Court finds Applicant has failed to meet his burden with respect to either of these allegations. In light of the thorough colloquy during Applicant's guilty plea, as well as conflicting testimony presented at the evidentiary hearing, Applicant's testimony that counsel told him he would only have to serve sixty-five (65) percent of his sentence is not credible. This Court finds that counsel's testimony to the contrary to be entirely credible. As it is Applicant's burden to prove each allegation, and Applicant has not presented any other evidence in support of his first two allegations, they are necessarily denied and dismissed.

#### **Indictment**

Applicant has also failed to meet his burden to show counsel ineffective for failing to object to the indictment.

The indictment is a notice document. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). An indictment is generally sufficient if (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) it apprises the defendant of the elements of the offense that is intended to be charged. Id. at 102-03, 610 S.E.2d at 500. In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. Id. Further, whether the indictment could be more definite or certain is irrelevant. Id.

This Court agrees with counsel that there was no basis to challenge the sufficiency of the indictment because it was a scrivener's. See State v. Bultron, 318 S.C. 323, 329-30, 457 S.E.2d 616, 620 (Ct. App. 1995) (affirming trial court's decision to deny a motion to quash an indictment based on a mere scrivener's error). A facial irregularity does not render an indictment invalid where the indictment is in writing and published by the clerk. Anderson v. State, 338 S.C. 629, 632-33, 527 S.E.2d 398, 400 (Ct. App. 2000) (citing Bultron at 329, 457 S.e.2d at 619). This allegation is therefore denied and dismissed.

### Appeal

The Court finds Applicant has failed to meet his burden to prove he did not knowingly and voluntarily waive his right to a direct appeal. Counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). However, a defendant may waive a direct appeal by making a "knowing and intelligent decision not to pursue the appeal." Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010) (quoting Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)). Furthermore, "[a]cts

inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)).

The Supreme Court of South Carolina has reversed a PCR judge’s grant of a belated appeal where the applicant “specifically acknowledged at the PCR hearing that he did not ask the plea counsel to file a direct appeal,” and “offered no evidence which reasonably demonstrated an interest in appealing” as required by the second prong of Roe.<sup>4</sup> Jones v. State, 382 S.C. 589, 597, 677 S.E.2d 20, 24 (2009). In Roe, the United States Supreme Court, held that counsel has a constitutionally imposed duty to consult with the defendant about an appeal when the defendant reasonably demonstrated *to counsel* that he was interested in appealing. 528 U.S. 470, 480, 120 S.Ct. 1029, 1036 (emphasis added). Here, Applicant did make any indication *to counsel* that he wished to appeal.

The record is clear that Applicant was informed of his right to appeal by the plea judge, and that he had ten days to exercise that right. Tr. p. 10. Additionally, this Court finds counsel’s testimony that Applicant did not ask him to file an appeal to be credible. Even Applicant acknowledged, at the evidentiary hearing, that he never expressed any interest *to counsel* that he wished to file an appeal. Instead, he sent a letter to the clerk of court asking for an appeal, and requesting that they forward the letter to his attorney, the Court of Appeals, and the Supreme Court. This Court finds Applicant’s failure to tell his attorney directly that he wished to appeal constituted a valid waiver of that right. See Bonnette, supra. This is particularly true in light of counsel’s credible testimony that his general practice is to leave business cards with clients at the end of their representation, and that he believes he left one with Applicant. Taken in this

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<sup>4</sup> Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000).

context, Applicant's conflicting testimony is simply not credible. This allegation is therefore denied and dismissed.

#### **ALL OTHER ALLEGATIONS**

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

*[Signature follows]*

**CONCLUSION**


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

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

**IT IS THEREFORE ORDERED**

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

AND IT IS SO ORDERED this 1 day of Feb, 2016.

  
 \_\_\_\_\_  
 D. CRAIG BROWN  
 Presiding Judge  
 Eleventh Judicial Circuit

Florence South Carolina