

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Orangeburg County

Maite Murphy, Circuit Court Judge

STEVEN IRICK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001452

APPENDIX

WANDA H. CARTER  
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1 STATE OF SOUTH CAROLINA

2 COUNTY OF ORANGEBURG

CIRCUIT COURT  
2013-GS-38-00641 & 00643  
2014-GS-38-00220

5 STATE OF SOUTH CAROLINA,

6 -vs-

TRANSCRIPT OF RECORD

7 STEVEN IRICK,  
Defendant.

10 Heard on Monday, March 17, 2014  
11 Orangeburg, South Carolina

13 BEFORE:

14 THE HONORABLE FRANK R. ADDY, JR.

17 APPEARANCES:

18 Counsel on Behalf of the State:  
19 B. Harrison Bell, Jr., Esq.

20 Counsel on Behalf of the Defendant:  
21 Clarissa Warren Joyner, Esq.

23 Cheri L. Young, RPR  
24 Circuit Court Reporter  
P O Box 5232  
25 Aiken, SC 29804-5232

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON MARCH 17, 2014 AT 4:10 P.M.:

2 MR. BELL: If it please the Court, Your Honor. This  
3 is three indictments. The first being Indictment 2013-GS-  
4 38-641. I also have Indictment 2013-GS-38-643 and  
5 Indictment Number 2014-GS-38-220.

6 These are all the State versus Steven Irick. He's  
7 charged in each of these with distribution of cocaine base  
8 or crack cocaine. He would plead guilty to those charges,  
9 Your Honor. The State is recommending a five-year  
10 sentence concurrent on each. We're also nolle prosequing  
11 some proximity charges as part of this plea. And this was  
12 our trial up for this week, Your Honor.

13 THE COURT: All right.

14 MR. BELL: These have all been true billed by the  
15 grand jury.

16 THE COURT: For the benefit of my court reporter,  
17 could you just give me your name?

18 MS. JOYNER: My name is Clarissa Joyner, Your  
19 Honor. I represent the Defendant, Steven Irick.

20 THE COURT: Ms. Joyner, they tell me he wants to  
21 plead guilty to three different counts of distribution of  
22 cocaine, first offense. And I think each count would  
23 carry up to 15 years but in this case they've recommended  
24 a five-year sentence worked out for him; correct?

25 MS. JOYNER: Yes, Your Honor.

1 THE COURT: You've explained to Mr. Irick the  
2 penalties involved with all these offenses, you've  
3 reviewed with him his constitutional rights, and I assume  
4 that you agree with his decision to plead guilty?

5 MS. JOYNER: Yes, I do, Your Honor. And I have  
6 reviewed all of that information with him.

7 THE COURT: All right. Good.

8 Mr. Irick, if you would just raise your right hand,  
9 please, sir.

10 (Defendant placed under oath.)

11 THE COURT: You are Steven Irick?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: They tell me that you want to plead  
14 guilty to three counts of distribution of crack; do you  
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Each count would carry up to 15 years  
18 but in this case they've negotiated a five-year sentence  
19 for you. Is that your understanding?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Typically -- or they've recommended, but  
22 typically I follow recommendations from the State. Do you  
23 understand, Mr. Irick?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In the last 24 hours have you taken any

1 medication or any substance that would affect your  
2 thinking?

3 THE DEFENDANT: No, sir.

4 THE COURT: And do you suffer from any emotional or  
5 nervous problems or have you ever been treated for any  
6 kind of mental illness?

7 THE DEFENDANT: No, sir.

8 THE COURT: Mr. Irick, are you in fact guilty of  
9 distribution of crack cocaine, three counts?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I'm going to ask the solicitor for the  
12 facts. I need you to listen carefully because when he's  
13 done speaking I'll ask if that's what you did. Okay? So  
14 listen if you would to what he says you did.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Go ahead, please.

17 MR. BELL: If it please the Court, Your Honor.  
18 These three occurred all in the City of Orangeburg in  
19 Orangeburg County. The first was September 14th, 2012.

20 That's when the City of Orangeburg Department of  
21 Public Safety, their drug enforcement team headed by  
22 Lieutenant Jenkins who's in the courtroom, Your Honor.  
23 They had an individual who could buy from Mr. Irick. They  
24 had gotten complaints from the neighborhood. This  
25 individual went to 121 Dickson Street in the City of

1 Orangeburg. Went there about two o'clock in the  
2 afternoon, met up with Mr. Irick, discussed purchasing  
3 some powder cocaine at the time.

4 He told the individual to come back about two hours  
5 later. The individual came back around four o'clock, met  
6 up with Mr. Irick at his house at that address. He stated  
7 that he didn't have any powder at that time but showed a  
8 rock of crack cocaine or cocaine base to the person of --  
9 that person said they would take it, gave him \$100. And  
10 he ended up giving that person five rocks of cocaine base  
11 which was analyzed and found to be .71 grams of cocaine  
12 base.

13 On September 20th, 2012, again, they set up for a  
14 person to go make a buy at 121 Dickson Street in the City  
15 of Orangeburg. At the time he went there, Mr. Irick was  
16 out on, in an empty lot next to it. In the negotiations  
17 he pointed down to the ground. The person went over and  
18 picked up some rocks believed to be cocaine base. And  
19 there was another individual there who said to put the  
20 money on the ground. So they put -- threw the money on  
21 the ground and they took money and the person got the  
22 cocaine base and took it back and gave it to the police  
23 which turned out to be .91 grams of cocaine base.

24 And both of these had been videotaped, video- and  
25 audiotaped. And that has been provided to the defense.

1 He was arrested on those two charges back on March  
2 of 2013. He got out on bond.

3 And then on July 19th, 2013, again, at -- well, it  
4 started out at 121 Dickson Street, another individual --  
5 this was a different source -- went there and negotiated  
6 about buying some things. Mr. Irick gave, took him, got  
7 him in his pickup truck, his white pickup truck and took  
8 him to his house. When the person waited Mr. Irick showed  
9 up a while later with another individual who got out and  
10 gave him some, what turned out to be cocaine base. It was  
11 in a Golden Flake bag and they gave him 100-some dollars.  
12 for that. It was about the same amount of cocaine base,  
13 Your Honor.

14 And, again, that was video- and audiotaped.

15 THE COURT: All right. Mr. Irick, you heard what  
16 the State alleges happened on these various dates, these  
17 two times in September of '12, and that incident this past  
18 July 19th. Is that what happened on those occasions?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So you did sell some crack cocaine to  
21 those folks on those days?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I need to review with you rights that  
24 you're giving up by pleading guilty.

25 If at any time you have any question about anything

1 I say to you, I want you to stop me and you can ask me  
2 about it or you can talk to your lawyer about it if you  
3 need to. Okay, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand of course that you  
6 have the right to a jury trial on each and every one of  
7 these cases. You don't have to plead guilty. Do you  
8 understand that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You could actually have three different  
11 jury trials because we have three different incident  
12 dates.

13 And in those trials you and your attorney would help  
14 pick 12 people from Orangeburg County who would be the  
15 jury. The State would have the burden of proving your  
16 guilt beyond a reasonable doubt.

17 Do you understand that, Mr. Irick?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Up until such time as all 12 of those  
20 jurors were satisfied of your guilt beyond a reasonable  
21 doubt, you would not be punished in any way, shape or form  
22 for any of these crimes.

23 Now the way the State would go about trying to do  
24 that is they'd call witnesses to testify and you and your  
25 attorney could question those witnesses. You

1 could confront them, you could ask them any questions  
2 relevant to any issue involved in these cases.

3 Even though you have no burden of proof, Mr. Irick,  
4 you could certainly call your own witnesses to testify.  
5 If those witnesses didn't want to come to court you could  
6 subpoena them. You could force them to come in here.

7 In a trial you could also take the stand in your own  
8 defense if you wanted to. Do you understand though,  
9 nobody can compel you to be a witness against yourself in  
10 any criminal case. So if you decided you didn't want to  
11 testify I would tell that jury that they couldn't take  
12 that into account, they couldn't even discuss it in  
13 deciding whether you were guilty or not. They are to give  
14 it no consideration whatsoever.

15 Do you understand, Mr. Irick?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That's your fifth amendment right  
18 against self-incrimination. You give that up by pleading  
19 guilty.

20 Additionally in a trial you would be presumed  
21 innocent of any wrongdoing. You'd be able to challenge  
22 any of the evidence the State has against you. You could  
23 also present any defense you might have.

24 Mr. Irick, I have no way of knowing if you have a  
25 defense to these charges or not. I'm sure that's

1 something you talked to your lawyer about; is that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand, though, if you plead  
4 guilty you waive your right to present any defense. Do  
5 you understand, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All these are very important rights.  
8 Are you sure want to give them up and plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And are you satisfied with the discovery  
11 response from the State?

12 MS. JOYNER: Yes, Your Honor.

13 THE COURT: And you shared that with your client?

14 MS. JOYNER: I have.

15 THE COURT: To the extent that he's wanted or needed  
16 to see it?

17 MS. JOYNER: Yes. He had access to the information  
18 before I was appointed on the case, and I went over it  
19 with him as well.

20 THE COURT: All right. Very good.

21 Mr. Irick, are you happy with the way that  
22 Ms. Joyner has represented you on this charge?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any complaints to make  
25 against her?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. You've had enough time to  
3 talk to her?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any complaints to make  
6 against the solicitor's office, law enforcement, court  
7 personnel, or anyone involved in this?

8 THE DEFENDANT: No, sir.

9 THE COURT: And aside from the recommendation of  
10 five years and dismissal of the other charges, has anyone  
11 promised you anything or held out any hope of reward to  
12 get you to plead guilty?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anyone threatened you, forced you,  
15 coerced you in any way to get you to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: So you are pleading guilty of your own  
18 free will?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Pleading guilty because you did commit  
21 these crimes?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you understood all my questions?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You need to ask me about anything that

1 we've gone over?

2 THE DEFENDANT: No, sir.

3 THE COURT: I do find that there's a substantial  
4 factual basis for these pleas. They are freely,  
5 voluntarily, knowingly and intelligently made. Mr. Irick  
6 knows what he's doing and he's satisfied with competent  
7 counsel. So I'll accept his plea.

8 Tell me about him.

9 MS. JOYNER: Thank you.

10 Mr. Irick is 41 years old. He has four children.  
11 He's a very devoted father. He wishes to get this -- to  
12 serve his time and to move forward with being a good  
13 father for his children. He's very remorseful for his  
14 actions and has taken responsibility and we'd ask the  
15 Court to follow the recommendation of the State.

16 THE COURT: All right. Mr. Irick, anything that  
17 you'd like to say, sir?

18 THE DEFENDANT: No, sir.

19 THE COURT: What kind of jail credit, or what's he  
20 done in jail?

21 MS. JOYNER: He's been in jail for about a month,  
22 Your Honor.

23 MR. BELL: Yes. I think he was here on February the  
24 20th when his bond was revoked, I know. I don't know what  
25 he served before that.

1 THE COURT: So about 30 days total. Does that sound  
2 about right, Mr. Irick?

3 THE DEFENDANT: About 30 days; yes, sir.

4 MS. JOYNER: Yes.

5 THE COURT: Mr. Irick, I'm sure this is something  
6 you've already been told but I just want to make sure that  
7 you're aware. Do you understand once you get done serving  
8 this five-year sentence if you get out and you start  
9 messing around with drugs again, the penalties go up  
10 substantially. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So it's very important for your own well  
13 being and that of your four kids that you not get involved  
14 with this kind of business again once you get out.

15 THE DEFENDANT: Yes, sir. Yes, sir.

16 THE COURT: As I'm sure you're probably aware, the  
17 person that came to you looking for crack was probably  
18 somebody you knew; right? Somebody on the street?

19 THE DEFENDANT: Sir?

20 THE COURT: The CI that they sent over to buy crack  
21 was somebody that you knew.

22 THE DEFENDANT: Oh, yeah. Yes, sir.

23 THE COURT: All right. So that's always the person  
24 that's going to approach you and make the buy.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: So you can't trust anybody especially in  
2 this business. All right?

3 THE DEFENDANT: Yes, sir

4 THE COURT: The best thing you can do is get out of  
5 the business.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: THE SENTENCE, MR. IRICK, ON ALL CHARGES  
8 IS YOU'RE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR  
9 FIVE YEARS, GET CREDIT FOR THE 30 DAYS THAT YOU SERVED IN  
10 JAIL, AND ALL SENTENCES SHALL RUN ON CONCURRENTLY WITH  
11 EACH OVER.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I wish you luck, sir. Take care.

14 THE DEFENDANT: Thank you.

15 MS. JOYNER: Thank you.

16 MR. BELL: Thank you, Your Honor.

17 END OF CASE: 4:23 P.M.

18 \*\*\*

19 CERTIFICATE OF REPORTER

20

21 STATE OF SOUTH CAROLINA )

22 COUNTY OF AIKEN )

23

24 I, Cheri L. Young, Registered Professional Reporter

25 and Official Court Reporter for the State of South

1 Carolina, Second Circuit-At Large, do hereby certify that  
2 the foregoing proceedings were written stenographically by  
3 me using computer-aided translation; further, that the  
4 foregoing is a true, accurate and complete record, to the  
5 best of my skill and ability, of all the proceedings had  
6 and evidence introduced in the hearing of the captioned  
7 case, relative to appeal, in the Court of General Sessions  
8 for Orangeburg County, on the 17th day of March, 2014.

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

11 I have hereunder set my hand this 27th day of August,  
12 2014.

13  
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15 Cheri L. Young, RPR  
16 Official Court Reporter  
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JUN 19 2014

FORM 5

Referred to PCR / dm  
Answered \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
County of ORANGEBURG )  
STEVEN IRICK 157469 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

2014-CP-38-00746

v.

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

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 A.C.T. P.O. BOX 1151  
FAIRFAX S.C. 29827
2. Name and location of Court which imposed sentence ORANGEBURG COUNTY  
COURT HOUSE 1406 AMELIA ST. ORANGEBURG S.C. 29115
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2013GS-38-00641 - Dist. Cocaine 1st offense 2014GS-38-00220-05
  - (b) 2613GS-38-00643 " "

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CLERK OF COURT  
ORANGEBURG COUNTY  
COURT HOUSE  
1406 AMELIA ST.  
ORANGEBURG, SC 29115  
C. J. [Signature]

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty YES
  - (b) after a plea of not guilty N/A
  - (c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO, COUNSEL FAILED TO DO HER DUTY

- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. N/A
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. \_\_\_\_\_
    - ii. N/A
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

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 COUNTY OF ...

- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) I REQUESTED COUNSEL TO DO APPEAL, NEVER
  - (b) HEARD BACK FROM HER.

(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: DUE-PROCESS VIOLATION ART. I. SEC. 3.

(a) INEFFECTIVE ASSISTANCE OF COUNSEL 6<sup>TH</sup> AMEND. V.

(b) FAILED TO INVESTIGATE CASE OR CALL WITNESSES

(c) FAILED TO HAVE A BLAIR HEARING, MENTALITY INCOM-  
-PETEN

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

(a) SEE ATTACHMENT FACTS

(b) SEE ATTACHMENT FACTS

(c) SEE ATTACHMENT FACTS

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

(a) any petition in a State Court under South Carolina Law? N/A

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

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

(d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A

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

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

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

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

i. N/A

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

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

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

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JULY 10 2014

" ATTACHMENT FACTS "  
 INEFFECTIVE ASSISTANCE OF COUNSEL  
 6TH. AMEND. VIOLATION.  
 DUE-PROCESS A.R.T. 1. SEC. 3.

COUNSEL IS STRONGLY PRESUMED TO HAVE RENDERED ADEQUATE ASSISTANCE AND MADE ALL SIGNIFICANT DECISIONS IN THE EXERCISE OF REASONABLE PROFESSIONAL JUDGMENT. BUTLER V. STATE, 286 S.C. 441, 334 S.E. 2D, 813 [1985] THE PROPER MEASURE OF COUNSEL'S PERFORMANCE REMAINS WHETHER HE HAS PROVIDED REPRESENTATION WITHIN THE RANGE OF COMPETENCE REQUIRED OF ATTORNEYS IN CRIMINAL CASES. TURNER V. BASS 753 F. [2D] 342 [4<sup>TH</sup> CIR, 1985] MARZULLO V. MARYLAND, 561 F. [2D] 540 [4<sup>TH</sup> CIR, 1977]

APPLICANT HERE ALLEGES FAILURE OF HIS ATTORNEY TO RESEARCH, DEVELOP AND PRESENT EVIDENCE IN MITIGATION DURING THE SENTENCING PHASE OF HIS PLEA. SPECIFICALLY, COUNSEL IS CHARGED WITH HAVING FAILED [1] TO INVESTIGATE AND CONTACT WITNESSES WHO WOULD TESTIFY AS TO APPLICANT'S GOOD CHARACTER, [2] TO PRESENT EVIDENCE SHOWING APPLICANT'S LOW MENTALITY AND [3] TO FULLY DISCUSS THE SENTENCING PHASE WITH APPLICANT SO AS TO RENDER MEANINGFUL ASSISTANCE.

"ATTACHMENT FACTS"  
 INEFFECTIVE ASSISTANCE OF COUNSEL  
 6<sup>TH</sup> AMEND. VIOLATION.  
 DUE-PROCESS ART. 1, SEC. 3.

APPLICANT CONTENDS THAT COUNSEL FAILED TO DISCOVER AND PRESENT WITNESSES TO TESTIFY TO HIS CHARACTER. SEVERAL FAMILY MEMBERS AND FORMER EMPLOYER COULD TESTIFIED, THAT APPLICANT IS MENTALITY ILL. AND COUNSEL SHOULD HAVE SET A HEARING WITH THE COURT AND A DOCTOR, TO SHOW HE WAS MENTALITY SLOW. A BLAIR V. STATE HEARING. IF APPLICANT HAD UNDERWENT A SERIES OF INTELLIGENCE TESTS, THAT ADMINISTERED BY AN INTERN UNDER SUPERVISION OF A DOCTOR OF MENTAL HEALTH OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, THE DOCTOR WOULD HAVE FOUND THAT THE APPLICANT WAS MENTALITY RETARTED THESE CLAIMS COUNSEL FAILED TO DISCUSS THE THEORY OF HIS DEFENSE AND DID NOT INQUIRE INTO PREFERENCES REGARDING MITIGATION EVIDENCE.

THE BENCHMARK FOR JUDGING ANY CLAIM OF INEFFECTIVENESS MUST BE WHETHER COUNSEL'S CONDUCT SO UNDERMINED THE PROPER FUNCTIONING OF THE ADVERSARIAL PROCESS THAT THE PLEA CANNOT BE RELIED ON AS HAVING PRODUCED A JUST RESULT. AND FOR THESE REASONS THIS PLEA SHOULD BE VACATED.

Dear Clerk of Court

PLEASE CLOCK STAMP THIS P.C.R. APP. IN  
YOUR FILE BOOK AND RETURN A CLOCKED COPY TO ME  
FOR MY RECORDS

AND WHEN COUNSEL IS APPOINTED LET ME KNOW  
WHO IT IS.

THANKING YOU IN ADVANCE,  
I REMAIN

" ATTACHMENT FACTS "  
 INEFFECTIVE ASSISTANCE OF  
 COUNSEL. 6<sup>TH</sup> AMEND. VIOLATION  
 DUE - PROCESS ART. I. SEC. 3.

THE BURDEN OF PROOF IS ON THE APPLICANT IN POST-CONVICTION PROCEEDINGS TO PROVE THE ALLEGATIONS IN HIS APPLICATION. GRIFFIN V. MARTIN, 278 S.C. 620, 300 S.E. [2D] 483 [1983] WHERE ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL ARE MADE, THE QUESTION BECOMES, WHETHER COUNSEL'S CONDUCT SO UNDERMINED THE PROPER FUNCTIONING OF THE ADVERSARIAL PROCESS THAT THE PLEA CANNOT BE RELIED ON AS HAVING PRODUCED A JUST RESULT.

) STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052, 2064, 80 L. ED. [2D] 674, 692 [1984] FIRST, THE DEFENDANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT. THIS REQUIRES SHOWING THAT COUNSEL MADE ERRORS SO SERIOUS THAT COUNSEL WAS NOT FUNCTIONING AS THE COUNSEL GUARANTEED BY THE SIXTH AMENDMENT. SECOND, THE DEFENDANT MUST SHOW THAT THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENSE.

THIS REQUIRES SHOWING THAT COUNSEL'S ERRORS WERE SO SERIOUS AS TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL, A TRIAL WHOSE RESULT IS RELIABLE.

Sentence Date: March 17, 2014  
Indictment/Case #: 2013C-538-0643  
#: 2014C-538-0220 #: 2013C-538-0641

(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

FIRST BITE OF THE APPLE

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

(a) which grounds have been presented:

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

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

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

2014 JUN 16 PM 12:23  
CLERK OF COURT  
CRIMINAL JUSTICE

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) FIRST TIME ON P.C.R.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO, COUNSEL FAILED TO DO HER DUTY
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
NONE

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. CLARISSA JOYNER  
1259 AMELIA ST.
  - ii. ORANGEBURG S.C. 29115
  - iii. \_\_\_\_\_

- (b) the proceedings at which each such attorney represented you:
  - i. PLEA / SENTENCING.
  - ii. COUNSEL HAD SOME OTHER LAWYER  
STAND IN THAT I DO NOT KNOW.
  - iii. \_\_\_\_\_

2014 JUN 16 PM 02:23  
 CRIMINAL JUSTICE  
 COURT REPORTER  
 COURT REPORTER  
 COURT REPORTER

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

TO VACATE SENTENCE AND CLEAR DEFENDANTS RECORD.

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

NO

STATE OF SOUTH CAROLINA )  
County of ALLENDALE )

VERIFICATION

I, STEVEN IRICK #157469, 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.

Steven Irick

SWORN to and subscribed before me this 10 day of June, 2014.

Virginia Staub (L.S.)  
Notary Public

My Commission Expires: 12-12-22

2014 JUN 16 11:12 AM  
CLERK OF COURT  
GRAND JURY

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

I, STEVEN IRICK #157469, 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.

Steven Irick  
Applicant

SWORN or affirmed to and subscribed before me this  
10 day of June, 2014.

Virginia Smith  
Notary Public

My Commission Expires: 12-12-22

2014 JUN 16 PM 10:23  
CLERK OF COURT  
CLERK OF COURT  
CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Steven Vintell Irick, #157469,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

2014-CP-38-00746

**RETURN**

Respondent, making its Return to the Application for post-conviction relief filed July 16, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the May 2013 and February 2014 terms of the Orangeburg County Grand Jury for Distribution of Cocaine Base, 1<sup>st</sup> Offense in three separate indictments (2013-GS-38-0641, -0643 and 2014-GS-38-0220). Applicant was represented by Robert Douglas Mellard, Esquire. On March 17, 2014, Applicant appeared before the Honorable Frank R. Addy and pleaded guilty as indicted. The State recommended a sentence of five (5) years imprisonment which Judge Addy accepted.

Applicant did not appeal his plea or sentence.

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

## II.

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

1. "Due-process violation Art. 1 Sec. 3"
2. "Ineffective assistance of counsel 6<sup>th</sup> Amendment."
  - a. "Failed to investigate case or call witnesses."
  - b. "Failed to have a Blair hearing, mentality [sic] incompetent."
  - c. Counsel failed to present mitigation evidence during sentencing phase.
  - d. Counsel failed to investigate witnesses.

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

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

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

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

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

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

#### IV.

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

V.

Wherefore, having made its Return, Respondent requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

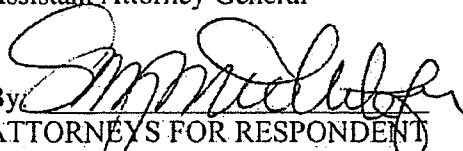
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL  
Assistant Attorney General

By   
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

Sept. 23<sup>rd</sup>, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	2014-CP-38-00746
	)	
Steven V. Irick, #157469	)	
	)	
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:

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

DATED this 23<sup>rd</sup> day of September, 2014.

*Sara Moore*

Sara Moore, Legal Assistant  
 For Respondent



## I N D E X

1  
2  
3 POST-CONVICTION RELIEF HEARING Page 3  
4

WITNESS

5  
6 Steven Irick DIRECT BY MR. WALLER 5  
7 CROSS BY MR. MITCHELL 20  
8 REDIRECT BY MR. WALLER 25  
9

10 Clarissa Joyner DIRECT BY MR. MITCHELL 26  
11 CROSS BY MR. WALLER 33  
12

## CLOSING ARGUMENT:

13  
14  
15 BY MR. WALLER 39  
16 BY MR. MITCHELL 40  
17

18 CERTIFICATE OF REPORTER 41  
19  
20

21 \*\*NO EXHIBITS INTRODUCED\*\*  
22  
23  
24  
25

1 (The following proceedings were held  
2 February 23, 2016, Dorchester County, South  
3 Carolina.)

4 MR. MITCHELL: May it please the Court,  
5 this is Steven Irick versus the State of South  
6 Carolina, case number 2014-CP-38-746. He was  
7 indicted in May of 2013 and February of 2014 out of  
8 Orangeburg grand jurors for distribution of cocaine  
9 base. There's three separate indictments there.  
10 He was represented on the charges by Ms. Clarissa  
11 Joyner. Pled guilty March 17th, 2014 before Judge  
12 Addy where he followed the State's recommendation  
13 of five years imprisonment. Mr. Irick filed his  
14 timely application July 16th of 2014 where he has  
15 alleged various aspects of ineffective assistance  
16 of counsel and that he did not plead guilty  
17 knowingly and voluntarily.

18 Mr. Irick is present here today and  
19 represented by Mr. Jon Waller and I will turn it  
20 over to him at this time.

21 THE COURT: Mr. Waller.

22 MR. WALLER: Thank you, Your Honor. We  
23 would call Steven Irick.

24 THE CLERK: State your full name for  
25 the record.

1 THE APPLICANT: Steven Irick.

2 STEVEN IRICK

3 who, after being first duly sworn, testified as  
4 follows:

5 THE COURT: Your witness.

6 DIRECT EXAMINATION

7 BY MR. WALLER:

8 Q. Good morning, Mr. Irick. How are you  
9 today?

10 A. Good morning. I'm all right.

11 Q. Mr. Irick, I want to talk about the  
12 charges that -- the three charges you pled guilty  
13 to. Do you recall those?

14 A. Yes, sir.

15 Q. And you originally were charged with  
16 six general sessions charges and two smaller  
17 magistrate level charges; is that right?

18 A. Yes, sir.

19 Q. And you were -- when you pled guilty  
20 Ms. Clarissa Joyner was your attorney; is that  
21 right?

22 A. Yes, sir.

23 Q. She wasn't your first attorney, was  
24 she?

25 A. No, sir.

1 Q. When you first got arrested, and I want  
2 to go back to the first set of charges, who was  
3 your attorney?

4 A. Doug Mellard.

5 Q. Okay. At some point did you get a  
6 different attorney?

7 A. Yes, sir.

8 Q. Who was your next attorney?

9 A. Breen Stevens.

10 Q. Breen Stevens of the public defender's  
11 office?

12 A. Yes, sir.

13 Q. And how did Mr. Mellard and Mr. Stevens  
14 come to be your attorneys?

15 A. I put the application in to get paid  
16 for that, and then after that I came back to the  
17 second appearance and then Breen Stevens said he  
18 was my attorney.

19 Q. Okay. So they were appointed to  
20 represent you?

21 A. Yes, sir.

22 Q. The first set of charges that you had,  
23 do you recall what you were charged with the first  
24 time?

25 A. The first charges? I know it was

1 distribution or something like that. It was  
2 distribution.

3 Q. Was it two distributions and two  
4 distributions within proximity of a school or a  
5 church?

6 A. Yes, sir.

7 Q. Sound familiar?

8 A. Yes, sir.

9 Q. And the warrants in those cases allege  
10 that those took place in 2012; is that right?

11 A. Yes, sir.

12 Q. And then later on you got charged again  
13 with something that supposedly took place in 2013?

14 A. Yes, sir.

15 Q. Okay. What happened when you were  
16 charged with the 2013 charges?

17 A. When I was charged with the 2013  
18 charges then they took me back and revoked my bond.  
19 They send me a paper in the mail saying motion for  
20 -- motion to revoke bond.

21 Q. So you were out, you made bond after  
22 the first set of charges?

23 A. Yes, sir.

24 Q. And you were meeting with your  
25 attorneys?

1 A. Yes.

2 Q. And were y'all talking about your case?

3 A. Yes, sir.

4 Q. What did y'all talk about regarding  
5 your case?

6 A. Me and Breen Stevens was talking about  
7 going to the jury. I was asking him I wanted to  
8 take a jury because they don't have nothing on me.  
9 So every time I would go for appearance to see a  
10 judge, I asked to see a judge, so I asked Mr.  
11 Harrison, I said I thought I was going to trial.  
12 It's taking too long. I want to go to the jury.  
13 And they know I want to go to a jury so they came  
14 with another charge.

15 Q. So you wanted a jury trial?

16 A. Yes, sir.

17 Q. So did you and Mr. Mellard or you and  
18 Mr. Stevens ever discuss the evidence the State  
19 said they had against you in your case?

20 A. Yes, sir, Mr. Breen Stevens, we  
21 discussed that.

22 Q. Was there any video or audio?

23 A. We had a video with the first case he  
24 showed me and I looked at it. It was somebody  
25 standing up interrogating a female saying police

1 saying you did this and that. That's it. They  
2 showed their hand.

3 Q. When you got rearrested and you said  
4 the State served you with an intent to try to  
5 revoke your bond?

6 A. Yes, sir.

7 Q. So you were locked back up then and you  
8 couldn't make the new bond because the State was  
9 trying to revoke it; is that right?

10 A. I made bond on the second charges, but  
11 I didn't make bond when they revoked it. I stayed  
12 in the county jail.

13 Q. Okay. Who was your attorney for the  
14 bond revocation?

15 A. Ms. Clarissa Joyner.

16 Q. How did she come to be your attorney?

17 A. She been my attorney because I hired  
18 her to represent me on the bond revocation only.

19 Q. Your -- what day did your bond  
20 revocation take place?

21 A. It was on the 20th of February. I had  
22 hired her the 19th.

23 Q. So you hired her on the 19th for a bond  
24 revocation?

25 A. Yes, sir.

1 Q. Did you hire her for your whole case?

2 A. No, sir.

3 Q. What all did you hire her for?

4 A. Just represent me on the bond so I  
5 could try to stay out on my bond.

6 Q. So you only hired her for the bond  
7 revocation hearing?

8 A. Yes, sir.

9 Q. What did y'all -- you and Ms. Joyner  
10 talk about? If you hired her on the 19th and had  
11 your hearing on the 20th what did y'all talk about  
12 in that time frame?

13 A. We never talked about nothing. She  
14 talked to Mr. Stevens. She talked to me on the  
15 phone. She showed up the next day, that was it.  
16 We never talked face to face.

17 Q. Okay.

18 A. I paid her \$2,000, my wife.

19 Q. Now, after that how did she come to  
20 represent you at your guilty plea?

21 A. She told me the court hired her as a  
22 pro bono judge over my case and that she my new  
23 attorney now.

24 Q. The court appointed her to be your  
25 attorney?

1 A. That was what she told me.

2 Q. Now, when she was appointed to  
3 represent you you now had six warrants; is that  
4 correct?

5 A. I had a warrant with the '13, yes, sir.

6 Q. The new one and also the previous ones?

7 A. Yes, sir.

8 Q. Did y'all discuss those charges, all of  
9 the charges?

10 A. We didn't talk about the charges. We  
11 was talking about -- still talking about the bond,  
12 then it came up. She was saying I'm going to bring  
13 you over to the courthouse and show you a tape.  
14 When I got to the courthouse it wasn't no tape.  
15 All that came up now pleading guilty. Got these  
16 papers here, they are going to find you guilty. He  
17 got this judge that going to find you guilty if you  
18 go to a jury trial. She lawyered me into pleading  
19 guilty.

20 Q. You hired her on February 19th you  
21 said; is that right?

22 A. Yes, sir.

23 Q. 2014?

24 A. Yes, sir.

25 Q. You pled guilty March 17th of 2014; is

1 that right?

2 A. No, sir.

3 Q. When did you plead guilty?

4 A. It was like March 20th something.

5 Q. But in March of the same year?

6 A. Yes, it was March the same year.

7 Q. What did you and Ms. Joyner talk about  
8 in that right around a month time frame about your  
9 case?

10 A. Before I plead guilty?

11 Q. Between when you hired her and when you  
12 pled guilty what did y'all talk about your case?

13 A. We didn't talk about nothing. We  
14 didn't talk about nothing.

15 Q. The third charges, the third set from  
16 2013, was there any audio or video in that case?

17 A. None. None whatsoever.

18 Q. Did the State say they had an audio and  
19 video?

20 A. They said they had an audio and video,  
21 but they never presented it.

22 Q. Did you ever see it?

23 A. I never saw it.

24 Q. Do you know if your attorney ever saw  
25 it?

1           A.    I know he didn't.  No, he never saw it.  
2           He said he never saw it.

3           Q.    I'm talking about Ms. Joyner?

4           A.    Oh, no, she never saw it.

5           Q.    Did you and her ever talk about the  
6           video from the last set?

7           A.    Never talked about it.

8           Q.    Did you and her ever talk about any  
9           video or audio from the 2012 charges?

10          A.    We talk about that one time.  They said  
11          they had audio and video that she was going to show  
12          me.  So when I got over to the courthouse they  
13          never had audio and video and she started talking  
14          about a guilty plea.

15          Q.    Was that the same day you pled guilty?

16          A.    Same day I plead guilty.  She said she  
17          was calling me over to the courthouse to see the  
18          audio and video.  I got there, it wasn't no audio  
19          and video.

20          Q.    So you never saw it?

21          A.    Never saw it.

22          Q.    Mr. Irick, have you ever been treated  
23          for any mental health issues?

24          A.    Yes, sir.

25          Q.    How long have you been treated for

1 mental health issues?

2 A. When I was getting disability since  
3 2002 all the way up until my arrest.

4 Q. What were you getting disability for?

5 A. I was getting it for bipolar, mentally  
6 challenged, whatnot and schizophrenia and all that.

7 Q. Do you know how long you have been  
8 treated total?

9 A. As being treated, I was getting  
10 treated, but I was treated before and then I got  
11 off of disability, you know, I stopped seeing them.  
12 And then when I got back on I started receiving the  
13 check 2002, I was getting treated ever since then.

14 Q. Okay. Are you able to handle your own  
15 finances, your money?

16 A. No, sir.

17 Q. Why is that?

18 A. They said I'm not responsible.

19 Q. Who said that?

20 A. The doctor.

21 Q. Did you and Ms. Joyner ever discuss  
22 those issues?

23 A. I was telling her and my wife called  
24 and said he sees a mental health counselor. She  
25 was like that's not necessary. He don't need to

1 see the mental health counselor. Everything will  
2 be fine.

3 Q. I know you testified earlier that you  
4 had been talking to Mr. Stevens about going to  
5 trial.

6 A. Yes, sir.

7 Q. Did you and Ms. Joyner ever talk about  
8 going to trial?

9 A. No, sir.

10 Q. Did you ever tell her you wanted to go  
11 to trial?

12 A. Yes, sir.

13 Q. What was her response?

14 A. I told her that, she was like, shake  
15 her head. Shake head like (indicating).

16 Q. Okay. When the solicitor called your  
17 case the day you pled guilty he told the Court this  
18 was up for trial that week? Were you aware of  
19 that?

20 A. That's what he said, but I didn't know  
21 I was.

22 Q. Had y'all prepared for trial, you and  
23 Ms. Joyner?

24 A. No, sir.

25 Q. About how long had she represented you

1 at that point?

2 A. Well, from the 19th to the 20th is the  
3 day she come and say she was my lawyer for the  
4 court. She just -- I just hired her on the bond  
5 revocation, that was it. And then when she came to  
6 me about she was my attorney that was about a week  
7 before I went to court.

8 Q. Did y'all ever discuss a continuance,  
9 asking for a continuance to have more time to get  
10 ready for trial?

11 A. No, sir.

12 Q. Did she -- when did she tell you about  
13 the evidence the State had against you?

14 A. Well, she kept laying there a piece of  
15 paper saying oh, they got to plead guilty, he got  
16 his judge up there, he going to find you guilty  
17 anyway. She was showing me a kind of paper. She  
18 was saying about some still frames, some still  
19 frame pictures or something she was telling me  
20 about, but I never saw them. Some still frame  
21 evidence. That's all she kept showing me, a piece  
22 a paper.

23 Q. What did she tell you about her review  
24 of all the discovery? Did she review everything?

25 A. No, sir.

1 Q. How do you know she didn't review  
2 everything?

3 A. Because she ain't never talked to me  
4 about it. She never showed me nothing.

5 Q. Did you ask her about it?

6 A. I asked her about it.

7 Q. Okay. What was your understanding of  
8 what led to you being charged with the 2013, the  
9 last one?

10 A. The last one I understand, what you  
11 mean charged?

12 Q. How did you get charged?

13 A. All I know is Sam Jenkins rolled past  
14 my house, came back up the street. They locked me  
15 up and then when I got arrested took me back,  
16 locked me up, said I am being charged with selling  
17 some drugs to some moles. He told me the name. He  
18 said something about he bought some drugs from me  
19 or something. When he got to court he said  
20 something different, at the bond hearing.

21 Q. Okay. Was there something about the  
22 vehicle that was being driven in that charge?

23 A. Yes, sir.

24 Q. What did you understand about that?

25 A. He said F-150 that I was driving it was

1 mine, but it came back with a different name. So I  
2 said how can it be mine? He said because we see  
3 you driving it all the time. I got it in my  
4 brother's name and that. I let some other guy get  
5 out, sold some drugs to moles. I was the driver.

6 Q. Let me back you up a little bit. So  
7 who was the truck registered to?

8 A. Willie Irick.

9 Q. Who was that to you?

10 A. My brother.

11 Q. Do you and your brother look alike?

12 A. Just alike.

13 Q. And the allegation was that someone  
14 else got out of the truck?

15 A. Yes, sir.

16 Q. And did the drug deal or whatever?

17 A. Yes, sir.

18 Q. But not -- they didn't say it was you?

19 A. No.

20 Q. Did you and Ms. Joyner talk about that  
21 set of circumstances?

22 A. All she talked about was that at the  
23 bond hearing, that was it. It was Sam Jenkins was  
24 saying..

25 Q. You can't tell me what your brother

1 said, but did you and your brother talk about that  
2 at all?

3 A. My brother was supposed to go down  
4 there and see Ms. Joyner and let them know it was  
5 him. He said something about she refused to talk  
6 to him.

7 Q. So after talking to your brother it was  
8 your understanding he was going to go talk to Ms.  
9 Joyner?

10 A. He was going down there to talk to her  
11 and come forward.

12 Q. Do you know if he was ever able to talk  
13 to her?

14 A. He said that he went down there and she  
15 was like I know it was Steve, this and that,  
16 refused him.

17 Q. You were charged with three  
18 distributions, but also three distributions within  
19 the proximity of a church or school or park. Did  
20 you and Ms. Joyner ever talk about what the State  
21 would have to prove on those charges, the proximity  
22 charges?

23 A. No, sir. No, sir.

24 Q. What was your understanding of where  
25 the State alleged that the drug deals took place,

1 do you know?

2 A. No, sir. My understanding was they  
3 said I sold these drugs and it was in a school zone  
4 or park and playground, all this. That was it.

5 Q. Okay. Where do you live? Where did  
6 you live?

7 A. 117 Dixon Street.

8 Q. Is that what was on the warrants?

9 A. No, sir.

10 Q. What was on the warrants?

11 A. 121 Dixon Street.

12 Q. What did you and Ms. Joyner talk about  
13 as far as being the State saying that the drug  
14 deals took place within half a mile of a church or  
15 a school or park?

16 A. We didn't never talk about that.

17 Q. Okay. And you didn't plead guilty to  
18 those charges, though, is that right?

19 A. Did I plead guilty?

20 Q. You didn't plead guilty to the  
21 proximity charges?

22 A. Oh, no, sir.

23 Q. When you showed up that day and went in  
24 front of the judge and pled guilty did you know  
25 what was going to happen with all the charges?

1 A. No, sir.

2 Q. You had six charges, right?

3 A. Yes.

4 Q. Did you know which ones you were  
5 pleading guilty to?

6 A. No, sir.

7 Q. Did you know what was going happen to  
8 the other ones?

9 A. Well, I know after I got in court, but  
10 I didn't know before.

11 Q. Okay. Beg the Court's indulgence for  
12 one second, please.

13 (Brief pause.)

14 Mr. Irick, I don't have any further  
15 questions. Please answer any questions Mr.  
16 Mitchell may have for you.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. MITCHELL:

20 Q. Good morning, Mr. Irick.

21 A. Good morning.

22 Q. So you pled to three counts  
23 distribution of cocaine, right?

24 A. Yes, sir.

25 Q. And that was with a recommendation of

1 five years made by the State, right?

2 A. Yes, sir.

3 Q. Mr. Bell?

4 A. Yes.

5 Q. You knew that going in that day, you  
6 knew that while you were pleading, right?

7 A. Excuse me?

8 Q. Did you understand that when you were  
9 pleading guilty?

10 A. That was to plead to five years? I  
11 understand that was when I went into court.

12 Q. That's after talking with Ms. Joyner,  
13 right?

14 A. After talking with Ms. Joyner.

15 Q. She let you know what the offer was,  
16 right?

17 A. Right before, yes, sir.

18 Q. So you then accepted that offer, right?

19 A. Yes, sir.

20 Q. Now, you testified you never saw the  
21 video or the audio of the buys; is that right?

22 A. No, sir.

23 Q. Ms. Joyner never showed them to you?

24 A. Mr.

25 Q. But she told you about what was

1 contained in them; is that fair to say?

2 A. One more time.

3 Q. Had she seen them and then told you  
4 about what was on them?

5 A. She ain't told me she seen them. She  
6 ain't told me that.

7 Q. She told you what the State thought  
8 they could prove that was on those tapes, right?

9 A. We didn't discuss none of that, no,  
10 sir.

11 Q. You knew that there was a videotape and  
12 audiotape?

13 A. She said they had it. That's what they  
14 said.

15 Q. It was you on that video and you on  
16 that audio?

17 A. That's what they say.

18 Q. So you take issue with that video now?

19 A. I take issue with it?

20 Q. Yes.

21 A. You can say because I ain't never seen  
22 it.

23 Q. Are you saying you are not on that  
24 video?

25 A. Me? No, I'm not on the video, no, sir.

1 Q. You are not on that video?

2 A. No, sir.

3 Q. You didn't sell crack on those days  
4 that were alleged in the indictments?

5 A. No, sir.

6 Q. So you pled guilty to all of this  
7 saying that you did and that you did sell the drugs  
8 and now you are testifying that you did not?

9 A. I did not sell them.

10 Q. You see the problem I am having here  
11 though? You told Judge Addy all these things and  
12 you agreed that yes, I did sell the drugs, I did  
13 sell the drugs later in 2013, and now you are  
14 denying all that?

15 A. That's because she lawyered me into.  
16 She told me you will get 15 years and then this and  
17 that, telling me all this and that. So I just went  
18 ahead and pled.

19 Q. You went ahead and pled, even lied to  
20 Judge Addy?

21 A. You can say that because I ain't sold  
22 the drugs.

23 Q. Okay. So it's your position now today  
24 that it was your brother on these videotapes and  
25 not you, right?

1           A.    It was from the beginning when I talk  
2 to Stevens.  It was my brother from the beginning.

3           Q.    It was always your brother, not you,  
4 right?

5           A.    From the beginning.

6           Q.    So you went to court, pled guilty,  
7 accepted a five-year sentence for something your  
8 brother did?

9           A.    You could say because I accepted it,  
10 yes, sir.  It wasn't me from the beginning.

11          Q.    Okay.

12          A.    It was not me.

13          Q.    Then you pled guilty.  You gave up on  
14 the jury trial and went to court and said I'll take  
15 the five years?

16          A.    She was lawyering me into it, sir.  And  
17 I asked to see my counselor, mental health  
18 counselor because I didn't understand physically  
19 what was going on and she was like no, no, no  
20 mental health counselor, this and that.  Keep  
21 interrogating me so I plead guilty.

22          Q.    So you pled guilty to three charges and  
23 you had numerous other ones dismissed, right, the  
24 proximity and some of the other lower level ones?

25          A.    Yes, sir.

1 Q. That was all part of the deal?

2 A. Part of the deal once I got into court,  
3 yes, sir.

4 Q. Right. And you're likely getting out  
5 in a few months later this year; is that right?

6 A. Yes, sir.

7 Q. All right.

8 MR. MITCHELL: No further questions.  
9 Thank you.

10 REDIRECT EXAMINATION

11 BY MR. WALLER:

12 Q. Just briefly, Your Honor. Mr. Irick,  
13 did you and Ms. Joyner ever talk about what the  
14 judge was going to ask you when you pled guilty?

15 A. No, sir.

16 Q. Did you talk about what the judge was  
17 going to -- what was going to happen during the  
18 guilty plea?

19 A. No, sir.

20 Q. When the solicitor informed the Court  
21 that you were up for trial that week were any of  
22 your -- any witnesses or anything in your defense  
23 there?

24 A. No, sir, because actually I thought I  
25 was going to see a tape from the whole beginning.

1 My family, nobody was there. They didn't even know  
2 I was going to court. I didn't know I was going to  
3 court.

4 Q. Had you and Ms. Joyner talked about any  
5 mitigation or anything about your sentence?

6 A. No, sir.

7 MR. WALLER: No further questions.

8 THE COURT: You may call your next  
9 witness.

10 MR. WALLER: No further witnesses, Your  
11 Honor.

12 THE COURT: Mr. Mitchell.

13 MR. MITCHELL: Your Honor, the State  
14 calls Ms. Clarissa Joyner.

15 THE CLERK: State your full name for  
16 the record.

17 THE WITNESS: Clarissa Joyner.

18 CLARISSA JOYNER

19 who, after being first duly sworn, testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. MITCHELL:

23 Q. Good morning, Ms. Joyner.

24 A. Good morning.

25 Q. How are you doing?

1 A. I'm fine. How are you?

2 Q. Great. Thanks for being here today.

3 A. Thank you.

4 Q. How long have you been practicing law?

5 A. I have been practicing law since 1993.

6 Q. Do you do a lot of criminal defense in  
7 your normal practice?

8 A. In recent years I don't do as much, but  
9 I started off working for Jack Swerling and did  
10 primarily criminal defense work. I prosecuted in  
11 Lexington County for a few years and when I opened  
12 my practice I would say about 50 percent of it was  
13 criminal. That was in 1998.

14 Q. You have handled drug cases before?

15 A. Yes, I have.

16 Q. Distribution cases like this?

17 A. Yes, in state and federal court.

18 Q. So how did you become involved in Mr.  
19 Irick's case?

20 A. Mr. Irick came to see me on  
21 February 19th, 2014 trying to retain me on a bond  
22 revocation matter. It was scheduled for the next  
23 day. I tried to persuade him he needed to go with  
24 his current counsel, there wasn't a lot of time to  
25 prepare for a hearing in one day. He implored me

1 to take his case. He said he had no confidence in  
2 his lawyer that was appointed. I called his  
3 lawyer, Breen Stevens, and talked with him about  
4 the case. And he actually agreed to share the  
5 whole file with me on that day. So I did take the  
6 case. And I met with Breen Stevens for about two  
7 hours that day and went over the discovery packets  
8 for all three sets of charges and prepared for the  
9 bond hearing. I spoke with the investigator,  
10 Samuel Jenkins, before the hearing as well. And we  
11 proceeded on the 20th with the bond revocation  
12 hearing.

13 The judge indicated that he had to be  
14 tried within 90 days or his original bond would be  
15 reinstated. But he was -- his bond was revoked.

16 Q. Then you were appointed to represent  
17 him?

18 A. I was. Breen Stevens and I had  
19 discussed the case, discussed case law. I actually  
20 saw all of the videotapes during that time frame  
21 and he asked if I was interested in taking the  
22 case. It was going to be tried within that short  
23 window of time. He said he thought I did a good  
24 job at the bond hearing and asked if I would be  
25 interested in the appointment. I spoke with the

1 Defendant, Mr. Irick, about that. My appointment  
2 was made the day after the bond hearing.

3 Q. So with the 90 days when you first met  
4 Mr. Irick when you knew the case was set on that  
5 tight time frame, what did y'all discuss in those  
6 meetings?

7 A. We discussed -- actually we went  
8 through the discovery for all of the cases, the  
9 written discovery. And we discussed his brother  
10 and the fact that the vehicle in the third set of  
11 charges that were from 2013, that that vehicle was  
12 owned by his brother. I spoke with Investigator  
13 Jenkins who indicated that he recognized Steven  
14 Irick and Steven advised me that he and his brother  
15 were nearly twins. That they looked exactly alike.  
16 In fact, that was one of the rationales I used at  
17 the bond hearing, that there was identification  
18 issues and I was prepared to move forward in trying  
19 the case based on those discrepancies, based on  
20 some weaknesses in the case.

21 So there was never any me persuading  
22 him. I met with his brother because he provided  
23 that he was one of the primary witnesses, could  
24 attest to the vehicle not being his and could give  
25 him -- could provide me more information..

1                   His brother came to my office and met  
2 with me. Mr. Irick was in jail at this time. Mr.  
3 Irick had given me authority to go over the case  
4 with his brother. And I went through all of the  
5 discovery and I even played the videotape for his  
6 brother and showed him the still photographs  
7 because the video and audio were pristine. You  
8 could see him clearly. I showed him the still  
9 pictures and his brother said that doesn't look  
10 like me. If I were to testify in court the jury  
11 could clearly see that that's not me, that that's  
12 Steven. And he recommended to Steven that he plead  
13 guilty.

14                   I always left the door open for him to  
15 go to trial if that's what he wanted to do. And  
16 knowing we had such a short window of time I went  
17 to the jail repeatedly. I met with him numerous  
18 times. I even took my laptop to the jail to show  
19 him the tapes. So he saw them. He saw the still  
20 photographs. We went through the evidence.

21                   Q.    Were you here when he testified  
22 earlier?

23                   A.    I was.

24                   Q.    He had a point of contention that -- he  
25 testified he did not believe he had seen the

1 videos. You believe you showed him the videos and  
2 the audio?

3 A. Well, I remember taking my laptop to  
4 the jail so that we could see them and I also had  
5 the still photographs and we went through those  
6 because the still photographs were based on the  
7 actual disk and I did have disks for all the  
8 incidents. He had maintained in his testimony that  
9 there were not any disks I believe or any video for  
10 the third incident. There was a dispute as to  
11 whether it was him, but there was audio and clear  
12 video for all three offenses.

13 Q. How did the plea discussions come about  
14 with Mr. Bell, the solicitor?

15 A. Well, there was a plea offer that was  
16 on the table when I took the case. I took the case  
17 with the intention of taking him to trial because  
18 he said he wanted to go to trial. After I met with  
19 his brother and his brother saw the videotape and  
20 clearly thought that the images were not identical  
21 as my client had maintained, his brother went to  
22 the jail or either talked with him, I am not sure  
23 if he saw him. But I know he spoke with him  
24 because he was critical in helping him I guess  
25 decide whether he wanted to plead.

1                   But I left the door open to go to  
2 trial. I went to the jail the weekend before our  
3 case was to start every day that weekend, went over  
4 the evidence with him and we were planning to go to  
5 trial. He made the decision that he wanted to take  
6 the plea. I did tell him that there was certainly  
7 a possibility that he could be convicted and he was  
8 exposed to 15 years on each of those distribution  
9 charges. I thought that the third case was the  
10 weakest case, but that's not what they were  
11 proceeding on first.

12                   Q. So they would have gone with what you  
13 judged as the stronger cases first?

14                   A. Yes. And that's what I explained to  
15 him, that although I thought an acquittal was  
16 perhaps something that would be achieved on the  
17 third case, I wasn't as confident as related to the  
18 first and second case because of the video and the  
19 audio that was pretty clear.

20                   Q. So his five-year recommendation, that  
21 offer had been out there the entire time you were  
22 representing him?

23                   A. Yes. In fact, Breen had went over the  
24 case with him as well. Like I indicated, I met  
25 with Breen not only the day before the bond

1 hearing, but in preparing for court being that  
2 there was such a short window and he was familiar  
3 with the case. Even though he asked me to take the  
4 appointment he was still involved and he and I  
5 spoke about the case, spoke about case law. And  
6 basically I was preparing for trial.

7 MR. MITCHELL: I don't have any further  
8 questions. Please answer any Mr. Waller has.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. WALLER:

12 Q. Ms. Joyner, when exactly if you have in  
13 your notes, what day exactly were you appointed to  
14 represent Mr. Irick?

15 A. I think it was February 21st.

16 Q. And he ended up pleading guilty?

17 A. March the 17th.

18 Q. So just under a month, February is a  
19 short month, and so four weeks or so?

20 A. Yes. I think the State expedited his  
21 case in light of the bond order that would have  
22 reverted his case to reinstatement of the bond. So  
23 they fast tracked this case so that they would try  
24 him within that time frame.

25 Q. And the solicitor indicated the Monday

1 when he pled guilty or the day he pled guilty that  
2 his case was subject to being called for trial? It  
3 was on the trial list that week?

4 A. Well, I received notice -- actually  
5 right after my appointment I received notice that  
6 we were on the trial docket for that month. It  
7 wasn't as if I didn't know the case was -- when I  
8 took the appointment I knew there was a very short  
9 window of time.

10 Q. Sure. Have you had a chance to review  
11 your file in advance of today?

12 A. I looked back through it. There were a  
13 lot of activity after the case. He sent me a  
14 letter wanting his money back and threatened to  
15 file a bar complaint if I didn't give him his money  
16 back. He filed a bar complaint so I responded to  
17 the bar complaint. He then filed a fee dispute so  
18 I responded to the fee dispute.

19 So I remembered in that context because  
20 I was responding to his other actions taken after  
21 court.

22 Q. If you have -- if you can recall, what  
23 case was the State intending to try first?

24 A. I think it was the September 20th. It  
25 was either the 14th or the 20th. It was the one

1 from September. I didn't look back at it in that  
2 detail before today.

3 Q. Was it the first set or the third one?

4 A. It wasn't the third one. It was the  
5 one in 2012 of September. There were two cases in  
6 September of 2012.

7 Q. If you recall, what exactly did you do  
8 to prepare for trial that week?

9 A. You mean what --

10 Q. If the trial was going forward, if he  
11 hadn't pled on Monday and the trial was scheduled  
12 to be that week, what exactly had you done at that  
13 point to prepare for trial?

14 A. Like I said, it wasn't just a week, but  
15 I had -- he had indicated to me the identification  
16 issues in the third case. But that wasn't what was  
17 relevant, but I met with his brother concerning his  
18 knowledge. I looked at the law. I looked at all  
19 of the evidence. I spoke with Investigator Jenkins  
20 concerning the case. I met with him. And I  
21 reviewed the allegations. I think I wrote a lot of  
22 just notes in regard to the time frame in regards  
23 to my observation of what was in the video. And  
24 just prepared to defend him based on it not being  
25 him.

1           Q.     So that was going to be my next  
2 question.  What was your strategy if the case had  
3 gone to trial?

4           A.     It was an identification issue.  Like I  
5 said, he maintained he looked a lot like his  
6 brother so we were going to deflect and basically  
7 maintain that it was not him that's depicted in the  
8 video.  I had concerns about that because my view  
9 of the video was it looked like him.

10          Q.     Had you and Mr. Irick discussed any  
11 potential witnesses that he might have?

12          A.     We discussed his brother Willie Irick  
13 who, like I said, I met with and viewed the  
14 videotape with.  There was a confidential informant  
15 and I talked with him who saw who it was.  It was a  
16 female.  And I looked into her background and we  
17 talked about that.  But there weren't any other  
18 witnesses that he provided in terms of like an  
19 alibi or anything.

20          Q.     I know you testified that the judge at  
21 the bond hearing ruled that his original bond would  
22 revert back to his original bond if the case wasn't  
23 tried within 90 days.  Did you ever think about  
24 making a motion for a continuance if the case was  
25 called the week of March 17th in order to get ready

1 or did you feel you were ready?

2 A. Well, I felt that -- no, I didn't make  
3 a motion for continuance because it was made pretty  
4 clear that the case was going to be tried within  
5 that window of time. I went over everything. I  
6 felt confident that I knew the facts and the law as  
7 relates to the case.

8 Q. Did you and Mr. Irick ever discuss any  
9 treatment for mental health that he might have  
10 received?

11 A. That's the first I am hearing of that  
12 today. I knew he was receiving SSI. I got some  
13 documents. I think I subpoenaed some records  
14 relating to him receiving SSI. But he never  
15 appeared to me to have any mental health issues in  
16 our conversations. And he certainly never told me  
17 about any counselor or bipolar. And Breen had been  
18 involved in his case for an extended period of time  
19 before I had -- before I got involved and there was  
20 never an issue -- when Breen and I discussed the  
21 case there was never an issue of his mental  
22 capacity.

23 Q. Did you discuss with Mr. Irick that if  
24 he pled guilty or if he went to trial and was  
25 convicted that he would be sentenced and what you

1 and he could offer to the Court to try to mitigate  
2 the sentence?

3 A. Well, we discussed his family  
4 background. He had four children. We just  
5 discussed just his basic index information, just  
6 who he was. But there wasn't any mitigation in  
7 terms of the crime itself. That wasn't any mental  
8 health issue that was brought up.

9 Q. Did you have any of his family or  
10 anybody there with him at the plea?

11 A. I don't remember if Willie was there.  
12 He certainly knew about it. I had met with his --  
13 I don't know if it was his girlfriend or a female  
14 when he came in initially for the bond. It was a  
15 female with him. I can't remember who she was.  
16 But I had met with other family. But no, I don't  
17 recall. I don't recall who was all was there.  
18 Like I said, we were -- in that Sunday before he  
19 pled, we were planning and I was anticipating going  
20 to trial. When I met with him on that Sunday he  
21 told me that he was -- he would enter the plea. So  
22 I don't know. I don't remember.

23 Q. Do you know if you contacted anyone and  
24 said he is going to plea tomorrow, that being the  
25 Sunday to the Monday, and asking anyone to come up

1 there?

2 A. Leading up to his trial date like I  
3 said, I had discussed extensively the case with his  
4 brother. He had four children, but I didn't  
5 discuss specifically with them coming to court.  
6 No. I was focusing more up until Sunday on getting  
7 ready for actual trial.

8 Q. Okay. It was just a recommendation, it  
9 wasn't a negotiated plea or anything like that; is  
10 that correct?

11 A. We talked with Judge Addy I believe  
12 before the plea was taken and he gave firm  
13 indication that he would follow the recommendation.

14 Q. Beg the Court's indulgence, please.  
15 (Attorney confers with client.)

16 MR. WALLER: No further questions.

17 THE COURT: You may step down, Ms.  
18 Joyner. Thank you. Any other witnesses?

19 MR. MITCHELL: No further witnesses  
20 from the State.

21 THE COURT: Any summation?

22 MR. WALLER: Just briefly, Your Honor.  
23 I think the testimony was it was a very short  
24 turnaround from Ms. Joyner being retained until Mr.  
25 Irick pleading guilty. I think she actually

1 testified that she -- when he first sought to hire  
2 her that it wasn't enough time for her to even  
3 prepare for the bond hearing. I would contend that  
4 four weeks is not enough time to get ready for the  
5 case if it was going to trial. Mr. Irick testified  
6 that he was not able to review any discovery with  
7 her. He wanted -- he asked for a trial the entire  
8 time. And that he contends that he was pressured  
9 into entering the guilty plea. We will just ask  
10 the Court to review the documentation. Thank you.

11 THE COURT: Thank you. Anything, Mr.  
12 Mitchell?

13 MR. MITCHELL: Judge, I think Mr.  
14 Irick's testimony is not credible. I think he is  
15 denying a lot of things that did happen, especially  
16 reviewing the discovery. I think the plea colloquy  
17 testimony here today confirms the plea was made  
18 knowingly and voluntarily.

19 THE COURT: Thank you, gentlemen. I  
20 will take the time to review the record and notify  
21 you of an opinion.

22 MR. WALLER: Thank you, Your Honor.

23 (These proceedings were concluded at  
24 11:30 a.m., February 23, 2016, Dorchester County,  
25 South Carolina.)

1  
2  
3 CERTIFICATE OF REPORTER

4 I, Ruth C. Weese, Registered Diplomate  
5 Reporter for the State of South Carolina at Large,  
6 do hereby certify that the foregoing transcript is  
7 a true, accurate, and complete record.

8 I further certify that I am neither related  
9 to nor counsel for any party to the cause pending  
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my  
12 official seal this 28th day of July, 2016 at  
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

15 \_\_\_\_\_  
16 Ruth C. Weese

17 Registered Diplomate

18 Reporter  
19  
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STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Steven Irick, #157469,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2014-CP-38-<sup>07416</sup>~~00906~~

TRUE COPY

ORDER OF DISMISSAL

CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

FILED FOR RECORD

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 16, 2014. Respondent made its Return on September 24, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk's Office to represent Applicant. An evidentiary hearing was held on February 23, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

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

#### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the May 2013 and February 2014 terms of the Orangeburg County Grand Jury for Distribution of Cocaine Base, 1<sup>st</sup> Offense in three separate indictments (2013-GS-38-0641, -0643

and 2014-GS-38-0220). Applicant was represented by Counsel Joyner. On March 17, 2014, Applicant appeared before the Honorable Frank R. Addy and pleaded guilty as indicted. The State recommended a sentence of five (5) years' <sup>MM</sup>imprisonment which Judge Addy accepted. Applicant did not appeal his plea or sentence.

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

1. Involuntary and unintelligent guilty plea in that Counsel failed to review the evidence in the case.
2. Ineffective assistance of Counsel in:
  - a. Failing to have Applicant evaluated; and
  - b. Failing to investigate the facts of case.

### III. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was

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

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

##### **Involuntary and Unintelligent Guilty Plea**

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to review with him the State's evidence which included the

audio and video of the controlled drug buys. This Court finds Applicant's guilty plea was ~~entered~~<sup>mm</sup> freely and voluntarily entered. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because Counsel did not review with him the evidence the State planned to present if the case were to go to trial. This Court finds this contention meritless. This Court finds the record reflects Applicant was fully advised of the State's evidence. The plea court's thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his waiver of rights. Applicant testified that Counsel did not review the audio and video recordings with him. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding her

preparation and advice concerning the case, specifically that she reviewed the evidence in all three incidents with Applicant and discussed with him that he was likely to be convicted. The record further reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, <sup>voluntarily</sup> ~~voluntary~~, and intelligently made.

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

Applicant also alleges Counsel was ineffective in failing to investigate his competency and whether he had a defense as to identity if he proceeded to trial.

#### **Competency**

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate Applicant's competency. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of Counsel's credible testimony that Applicant never told her he had any mental health issues, Applicant has produced no reliable testimony that would diminish his culpability on the charges. Notably, this allegation rests entirely on speculation because no records were produced at the hearing. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.").

### Misidentify Defense

Finally, Applicant argues that his brother was responsible for selling the drugs and not him and that he could have claimed he was misidentified. This allegation is an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 (“[T]he Uniform Post-conviction Procedure Act ‘shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.’” (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973))). “A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

Even considering this allegation on the merits, Counsel’s credible testimony that the audio and video were pristine is persuasive on the issue. Counsel also testified that a jury would likely believe that it was Applicant on the video. She further testified that Applicant was facing charges that covered three separate incidents. She noted that she believed they could only assert the misidentification on the third incident and not on the first two sets of charges. Further, Applicant has failed to show that he would have proceeded to trial but for this alleged misadvice. It is clear Applicant was advised that misidentify could be a defense at trial, but that it was unlikely to be successful. Applicant has failed to meet his burden.

### All Other Allegations

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

## V. CONCLUSION

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

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

### IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 23 day of May, 2016.

  
 MAITE MURPHY  
 Presiding Judge

St. George, South Carolina

WITNESSES

Paul Wise

DOCKET NO. 2013GSS38-0641

The State of South Carolina

County of ORANGEBURG

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

Defendant

Orangeburg Police Department

COURT OF GENERAL SESSIONS

May 6, 2013 TERM

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

ARREST WARRANT NUMBER

2012A3820800195

Arrested: March 15, 2013

~~TRUE BILL~~  
ACTION OF GRAND JURY

*Winnifera B. Clark*

Date MAY 01 2013

Foreperson of Grand Jury

Date: May 1, 2013

VERDICT

Foreperson of Petit Jury

Date:

Steven Vintell Irick

THE STATE  
vs.

Indictment for

DISTRIBUTION OF SOCIALLY RESPONSIBLE INVESTMENT

OFFENSE *Winnifera B. Clark*

CLERK OF COURT

ORANGEBURG COUNTY, SC

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

Defendant

Witness:

SC Code: 44-53-375(B)

ORANGEBURG COUNTY, SC

FILED FOR RECORD  
WINNIFERA B. CLARK  
CLERK OF COURT  
ORANGEBURG COUNTY, SC  
2013 MAY -1 A 11: 52  
ATTEST: *Winnifera B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

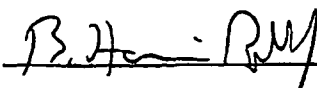
INDICTMENT  
2013GS38-0641

At a Court of General Sessions, convened on May 6, 2013 the Grand Jurors of Orangeburg County present upon their oath:

**DISTRIBUTION OF COCAINE BASE, 1<sup>ST</sup> OFFENSE**

That in Orangeburg County, South Carolina, on or about September 14, 2012, the Defendant, Steven Vintell Irick, did distribute, dispense, deliver, or otherwise aid, abet, attempt or conspire to do the same a quantity of cocaine base. This offense being a violation of Section 44-53-375 of the South Carolina Code of Laws, as amended

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

  
\_\_\_\_\_  
Harrison Bell, Solicitor

WITNESSES

Paul Wise

DOCKET NO. 2013GSS38-0643

The State of South Carolina

County of ORANGEBURG

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

Defendant

Orangeburg Police Department

COURT OF GENERAL SESSIONS

May 6, 2013 TERM

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

ARREST WARRANT NUMBER  
2012A3820800210

THE STATE  
vs.

Defendant

~~FILED~~  
ACTION OF GRAND JURY

Steven Vintell Irick

Witness:  
C. C. PUSLAND G.S.

FILED  
MAY 01 2013  
Date

Foreperson of Grand Jury  
Date: May 1, 2013

Indictment for

DISTRIBUTION OF COCAINE BASE, 1<sup>ST</sup>  
OFFENSE ATTEST: TRUE COPY

VERDICT

Winnifred B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

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

2013 MAY -1 A 11: 52

Foreperson of Petit Jury

Date:

SC Code: 44-53-375(B)

STATE OF SOUTH CAROLINA )  
                                          )  
COUNTY OF ORANGEBURG )

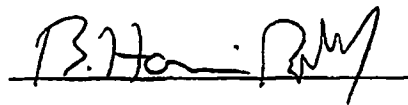
INDICTMENT  
2013GS38-0643

At a Court of General Sessions, convened on May 6, 2013 the Grand Jurors of Orangeburg County present upon their oath:

**DISTRIBUTION OF COCAINE BASE, 1<sup>ST</sup> OFFENSE**

That in Orangeburg County, South Carolina, on or about September 20, 2012, the Defendant, Steven Vintell Irick, did distribute, dispense, deliver, or otherwise aid, abet, attempt or conspire to do the same a quantity of cocaine base. This offense being a violation of Section 44-53-375 of the South Carolina Code of Laws, as amended

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



Harrison Bell, Solicitor

**WITNESSES**

Sam Jenkins

Orangeburg Police Department

**ARREST WARRANT NUMBER**  
2013A3820800394

Arrested: December 6, 2013

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date: February 5, 2014

**VERDICT**

**TRUE BILL**

*Winifred B. Clark*  
Date: FEB 05 2014

Foreperson of Petit Jury  
Date:

DOCKET NO. 2014GSS38-0220

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

February 10, 2014 TERM

THE STATE  
vs.

Steven Vintell Irick

Indictment for

DISTRIBUTION OF COCAINE BASE

ATTEST: TRUE COPY

*Winifred B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC  
SC Code: 44-53-375(B)

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

Defendant

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

Defendant

Witness:

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

ATTEST: TRUE COPY  
*Winifred B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

FILED FOR REC'D  
WINNIFRED CLARK  
CLERK OF COURT  
ORANGEBURG, SC

2014 FEB -5 A 10: 19

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

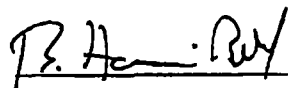
INDICTMENT  
2014GS38-0220

At a Court of General Sessions, convened on February 10, 2014 the Grand Jurors of Orangeburg County present upon their oath:

### DISTRIBUTION OF COCAINE BASE

That in Orangeburg County, South Carolina, on or about July 19, 2013, the Defendant, Steven Vintell Irick, did distribute, dispense, deliver, or otherwise aid, abet, attempt or conspire to do the same a quantity of Cocaine Base (crack cocaine). This offense being a violation of Section 44-53-375 of the South Carolina Code of Laws, as amended

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



Harrison Bell, Solicitor