

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

JAN 20 2017

S.C. SUPREME COURT

Appeal from York County

Honorable Alison Renee Lee, Circuit Court Judge

ERIC ANTONIA SPRATT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001346

APPENDIX

JOHN H. STROM  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

JUSTIN HUNTER  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX.....i

TRIAL TRANSCRIPT..... 1

APPLICATION FOR POST-CONVICTION RELIEF ..... 77

RETURN ..... 84

POST-CONVICTION RELIEF HEARING TRANSCRIPT..... 90

ORDER OF DISMISSAL..... 150

59(e) MOTION..... 158

ORDER DENYING 59(e) MOTION ..... 159

INDICTMENTS..... 160

25  
24  
23  
22  
21  
20  
19  
18  
17  
16  
15  
14  
13  
12  
11  
10  
9  
8  
7  
6  
5  
4  
3  
2  
1

MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER  
ATTORNEY FOR THE DEFENDANT

ERIN JOYNER, ASSISTANT SOLICITOR  
ATTORNEY FOR THE STATE

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

THE HONORABLE LEE S. ALFORD, JUDGE.

B E F O R E :

JUNE 6, 2011 )  
YORK, SOUTH CAROLINA )  
2006-GS-46-1625 )  
TRANSCRIPT OF RECORD )

DEFENDANT. )  
ERIC ANTONIO SPRATT, )

-VS- )  
THE STATE )

IN THE COURT OF GENERAL SESSIONS )  
COUNTY OF YORK )

STATE OF SOUTH CAROLINA )

INDEX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESSES

PAGE

ERIC ANTONIO SPRATT (DW)

DIRECT EXAMINATION BY MS. INZERILLO 15

CROSS EXAMINATION BY MS. JOYNER 19

REDIRECT EXAMINATION BY MS. INZERILLO 28

RECROSS EXAMINATION BY MS. JOYNER 32

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	ATTORNEY REPRESENTATION FORM		26
4	S-2	NOTICE OF INITIAL APPEARANCE		26
5				
6	D-1	BOOKING REPORT		31
7	D-2	BOOKING REPORT		31
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, JUNE 6, 2011)

2 THE COURT: Counsel?

3 MS. JOYNER: May it please the court, Your Honor,  
4 we are back before this court in the matter of the State  
5 versus Eric Spratt.

6 Your Honor, Mr. Spratt was tried in his absence  
7 and convicted on June 9th, 2006, of trafficking cocaine --  
8 or crack cocaine, less than 100 grams.

9 The sealed sentence was issued by Judge Cole, who  
10 was the trial judge.

11 Mr. Spratt was picked up on a bench warrant and  
12 brought before this court on May 25th of 2007, where his  
13 sentence was opened by Judge Newman.

14 Judge Newman ruled at that time that Mr. Spratt  
15 had been incorrectly sentenced as a third offense. He  
16 reduced Judge Cole's 30 year sentence to 10 years as  
17 trafficking crack cocaine less than 100 grams, second  
18 offense.

19 Your Honor, the State appealed that sentence by  
20 Judge Newman and this matter was reversed and remanded back  
21 to the trial court.

22 Your Honor, we have previously provided the court  
23 with a copy of that opinion.

24 We are back before this court, Your Honor, for the  
25 purposes of resentencing, as the court ordered a hearing to

1 determine whether Mr. Spratt waived his right to counsel  
2 during a 1998 guilty plea before Judge Hayes for possession  
3 of crack cocaine, first offense.

4 And, Your Honor, I did ask that Ms. Meeks to bring  
5 up to court the folder for the trafficking crack cocaine  
6 charge. 2006-GS-46-1625 was the indictment number on that  
7 case.

8 THE COURT: Let me -- clarify for me, the sentence  
9 that was used for enhancement, who sentenced on that?

10 MS. JOYNER: There was two sentences, Your Honor,  
11 that are included with the folder that Ms. Meeks passed up.  
12 They were Court's Exhibit 1 and 2.

13 The State sought to use a 1998 conviction for  
14 possession of crack cocaine, and also a 1999 conviction for  
15 I believe also -- I believe that was the possession with  
16 intent to distribute crack cocaine. We sought to use those  
17 two convictions.

18 As to the 1999 conviction, which was actually  
19 Court's Exhibit 1, Your Honor, Mr. Spratt did have an  
20 attorney on that charge, and Ms. Inzerillo did not challenge  
21 the State's use of that charge for enhancement.

22 She did challenge the use of the 1998 conviction  
23 for possession of crack cocaine, first offense, and that  
24 would be Court's Exhibit No. 2 contained in the folder, Your  
25 Honor. That was a guilty plea taken by Judge Hayes on

1 September 22nd of 1998, and Mr. Spratt received five years,  
2 suspended to three years probation.

3 THE COURT: All right, I'm with you.  
4 Counsel?

5 MS. INZERILLO: Thank you, Your Honor.  
6 May it please the court.

7 Your Honor, we would agree with Ms. Joyner's  
8 rendition of the facts.

9 We have handed up a copy of the transcript from  
10 the hearing in front of Judge Newman, which included all of  
11 the exhibits that were provided to the court during that  
12 hearing. We would just ask to incorporate that, all of  
13 those exhibits into the transcript of this hearing as well.

14 We do so -- well, we are before Your Honor on a  
15 motion to essentially leave Mr. Spratt's sentence as it is.  
16 We are still challenging that 1998 conviction as effective,  
17 and, therefore, cannot be used to enhance.

18 Your Honor, as Ms. Joyner did explain to the  
19 court, when the sentence was re-opened on May 25th, 2007,  
20 Judge Newman did read the sentence and did hear the motion.

21 Your Honor, at this time we would ask that Judge  
22 Newman's -- the defense's motion be placed back in front of  
23 Judge Newman for reconsideration.

24 In consideration of this, we have handed the court  
25 and to the State Cox v. Fleetwood Homes of Georgia, Inc.,

1 which is very factually similar to our case, Your Honor, in  
2 which on a remand -- it's effectively a civil case, but on a  
3 remand it went back before the judge who originally made the  
4 determination on I believe a contracted issue. And the  
5 court did say that the original judge would be allowed to go  
6 back and make more specific findings based on what he heard  
7 previously, even though he is no longer in this  
8 jurisdiction.

9           Judge Newman was a visiting judge in this  
10 jurisdiction during that term of May 25th, 2007. As the  
11 court is aware, he's actually a resident judge in Richland  
12 County, and so with this case being factually similar, Your  
13 Honor, we would just ask that this be placed back before  
14 Judge Newman.

15           MS. JOYNER: Your Honor, we would oppose the  
16 motion. We believe it's correctly before this court. Under  
17 the authority of Locklear v. Harvey, 273 S.C. 58, and State  
18 v. McGuinn, 268 S.C. 112, the South Carolina Supreme Court  
19 decision; 1977 as to McGuinn, and 1979 as to Harvey.

20           I think that the case that Ms. Inzerillo handed up  
21 is distinguishable. I think, number one, is because -- and  
22 I don't have my rule book with me, but I believe that that  
23 opinion is predicated on the Rules of Court that are very  
24 specific to the procedural posture that case was in.

25           I think that the opinion, the Fleetwood opinion,

1 cites back to rules repeatedly, and in those specific rules  
2 the judge is allowed to retain jurisdiction over the matter  
3 throughout, and I don't think that is applicable here.

4 I think the reasoning of Harvey and McGuinn,  
5 although they are not on all fours, I don't believe  
6 Fleetwood is on all fours either, but I think they are  
7 closer to the issue, and that each of those cases involve a  
8 remand for the resentencing, and they very specifically  
9 stated that any judge may hear those. And I think that  
10 this, the Spratt opinion, the written opinion the court very  
11 specifically remanded it to trial court does not remand it  
12 to Judge Newman, so we would ask that it remain with Your  
13 Honor.

14 THE COURT: Okay. I have given some thought to  
15 that. I would be more than happy to hand this back to Judge  
16 Newman, if he was available, but he's not available in this  
17 jurisdiction, obviously. Efforts would have to be made to  
18 do that, but I do not find in this case that it was  
19 specifically remanded to Judge Newman. I do not see that  
20 they remanded it to the trial court, and that's important.  
21 If they remanded it back to the judge who made that decision  
22 to take further testimony and evidence and make a decision  
23 on that issue, they didn't do that.

24 What they did is they ruled and reversed it and  
25 sent it back. The issues that's to be passed on, which is

1 whether the 1998 offense could be used to enhance or not,  
2 any judge can make that determination. Judge Newman would  
3 have no more information than I would. He would have to  
4 collect the same information that I have got to collect and  
5 make that decision. He doesn't have any special -- he  
6 doesn't retain any information about this case that I have  
7 to go back and get. In other words, we both start from  
8 exactly the same point.

9 Now, there are a line of cases which says -- you  
10 know, judges used to rotate when we had some travel. You  
11 remember those days. It's probably about three years ago  
12 and we used to rotate frequently. Back then, particularly  
13 civil cases, but even in a criminal case, I think if you --  
14 if you sentence somebody in a criminal case and the person  
15 can file a motion to reconsider the verdict, or change the  
16 sentence, or reconsider the sentence, change the sentence,  
17 the judge who heard it would retain jurisdiction to be able  
18 to do that. Even though he would leave the circuit and go  
19 outside the circuit, he would retain -- he would retain  
20 jurisdiction to make that decision, but only he can make  
21 that decision, or she, as the case may be. But in civil  
22 cases that is more likely to occur, because a judge who  
23 maybe heard a week of trial on various issues and that and  
24 makes a ruling or issues a ruling in that case and then the  
25 court determines that he needs to make some additional

1 findings based on that information he had, which may be an  
2 extension of the transcript, or he heard the whole trial,  
3 they sent it back to that particular judge. Otherwise, a  
4 new judge might have to try the case over again to make that  
5 decision. So in those cases, even though the judge has left  
6 the jurisdiction, he would retain jurisdiction and they  
7 would refer it specifically to him and make that issue.

8 Also, if a judge took something under advisement  
9 and wasn't ready to rule on it, and he took it under  
10 advisement, once he left the circuit, basically he would  
11 have no more jurisdiction there. But the rules say, and the  
12 courts have said, that if it's something he has yet to rule  
13 on and took it under advisement and has not yet ruled on,  
14 even to consider a motion to reconsider that decision, a  
15 motion to amend that decision for a new trial and that kind  
16 of stuff, even though he left, he is the only judge that can  
17 make those decisions, really, and so he would continue to  
18 have jurisdiction, even though he has left the circuit.  
19 It's understandable in those cases.

20 In this case I find that Judge Newman and I would  
21 start out from the exact same position and he would have no  
22 knowledge that I would not have as a trial judge in making  
23 these decisions. So the court finds that the appellate  
24 court just sent this back to the trial court and whoever the  
25 judge may be. It doesn't have to be any specific judge, but

1 any judge having jurisdiction in the circuit then can  
2 consider this question. Because, as I say, Judge Newman had  
3 no more than knowledge about it than I had and he would have  
4 to rely on anything that he already heard and then make the  
5 decision.

6 So the question presented to the court is, number  
7 one, could the sentence be used for enhancement. And I  
8 believe that, if I recall my reading of the case correctly,  
9 Judge Newman determined that since this was an uncounseled  
10 plea, that you could not use it as an enhancer, and that  
11 would not be my understanding of the law, and the appellate  
12 court didn't agree with that. They said that if it was an  
13 uncounseled plea, but the defendant waives his right to be  
14 represented for that plea, after given his Faretta-type  
15 warning about self-representation, that he could waive his  
16 right to have an attorney represent him and go ahead with  
17 the plead pro-se, and that would have been this court's  
18 understanding all along, that that is the law.

19 And so, anyway, so that's where we are, I guess.  
20 They sent it back for the court to make a determination  
21 whether this uncounseled plea, that the defendant was  
22 given -- that Mr. Spratt was given his warnings about  
23 self-representation or advised of the dangers of  
24 self-representation, and he chose then to proceed on with a  
25 guilty plea, and I have done that many times over the years,

1 have allowed a defendant to plead guilty after fully  
2 advising him of his right to have a attorney represent him  
3 and the dangers of self-representation. I've allowed them  
4 to do that. And so that's where we are, as I understand it.

5 Do you disagree in any way with that at this  
6 point?

7 MS. INZERILLO: No, sir.

8 THE COURT: I know that you are asking that Judge  
9 Newman be the one to hear it and do the sentencing, and I  
10 don't think that's necessary or required by this appellate  
11 court decision. I think this court had jurisdiction to make  
12 that decision, so we will proceed on.

13 MS. INZERILLO: Thank you, Your Honor.

14 In that case we would move forward with our motion  
15 before the court at this time, which again is to move this  
16 court to allow the sentence to remain the same and to find  
17 that the 1998 conviction is uncounseled, and, therefore,  
18 cannot be used to enhance.

19 By way of background, Your Honor, Mr. Spratt was  
20 convicted of trafficking crack, third offense, which carries  
21 25 to 30 years at the time of the sentencing. That was  
22 predicated on two prior convictions; a 1998 possession of  
23 crack. He was sentenced by Judge Hayes, and the paperwork  
24 that I have pulled from the clerk's office, which the court  
25 has a copy of, indicates that Mr. Spratt was pro-se at that

1 time.

2 THE COURT: Let me clarify one thing. I'm sorry  
3 to interrupt you, but are you -- his sentence -- the minimum  
4 sentence was 25, max was 30?

5 MS. INZERILLO: Yes, sir.

6 THE COURT: Okay. Go ahead, please.

7 MS. INZERILLO: He was -- subsequently, in 1998  
8 Judge Hayes sentenced him to five years, suspended on three  
9 years probation.

10 And in 1999, Mr. Spratt was again before the court  
11 on an unrelated -- or what appears to be an unrelated PWID  
12 crack cocaine charge, the plea of which -- for which he was  
13 represented. The plea of which violated that probation,  
14 Judge Cooper sentenced him to six months probationary  
15 sentence; revocation on that case.

16 Your Honor, under the case law it is our position  
17 that that revocation then calls into question that initial  
18 conviction just as a threshold matter that Mr. Spratt was,  
19 in fact, sentenced and did incarceration -- was sentenced to  
20 incarceration pursuant to an uncounseled plea. I believe  
21 the threshold matter --

22 THE COURT: So the record would be clear, what you  
23 are saying is that it could be used for enhancement -- it  
24 could not -- it could be used for enhancement if he didn't  
25 serve any time? If he paid a fine or something, it wouldn't

1 matter whether he was represented or not. So you are saying  
2 that's not the case here?

3 MS. INZERILLO: That's correct, Your Honor.

4 THE COURT: Proceed then.

5 MS. INZERILLO: Thank you, Your Honor.

6 And the case -- in this case is that he did -- was  
7 actually incarcerated under that sentence a year later.

8 Your Honor, secondarily to that before we get into  
9 the testimony by the defense, I would also note to the court  
10 that there is no transcript of that 1998 proceeding. When  
11 we did this hearing in 2006, we go through the Clerk of  
12 Court's office documents, myself, could not find one. I  
13 could only find the sentencing sheet. There is no markings  
14 on the sentencing sheet that would give us any guidance as  
15 to whether any warnings were given or Mr. Spratt waived any  
16 of his right to --

17 THE COURT: You don't do that. There is no place  
18 on the sentencing sheet, unless you write it in there.

19 MS. INZERILLO: Right, and I know we don't use  
20 these type of sentencing sheets anymore, so I did want to  
21 make that clear for the record.

22 Moreover, Your Honor, I did call Court  
23 Administration. Ms. Janet Fisher was the court reporter at  
24 the time, and I just wanted to verify prior to this hearing  
25 that there was no transcript. And Court Administration did

1 verify that pursuant to Rule 607 what she does under court  
2 reporter transcript and tapes under Section I, which is  
3 retention of the tapes, that they should retain the tapes  
4 for a period of five years. Court administration did verify  
5 that that would have been the case in this case, that it  
6 would have been retained for five years after the 1998 the  
7 court date, which would have made it unavailable, not only  
8 before Your Honor, but also before Judge Newman. So that  
9 does put us in the situation, Your Honor, of having Mr.  
10 Spratt tell the court as a defendant in that case what his  
11 recollection was of the events at that plea.

12 And we would ask permission to allow Mr. Spratt to  
13 take the stand at this time.

14 THE COURT: All right, bring him around and be  
15 sworn.

16 ERIC ANTONIO SPRATT, having been first duly sworn,  
17 testified as follows:

18 DIRECT EXAMINATION BY MS. INZERILLO:

19 Q. Good afternoon.

20 Can you tell the judge your name?

21 A. Eric Antonio Spratt.

22 Q. And, Mr. Spratt, were you convicted in your absence of  
23 trafficking crack cocaine on June 8th, 2006?

24 A. Yes, ma'am.

25 Q. And were you present for your sentencing before Judge

1 Newman on May 25th, 2007?

2 A. Yes, ma'am.

3 Q. And was it your understanding at the time of your  
4 sentencing that the conviction in the indictment was for  
5 trafficking, third offense?

6 A. Yes, ma'am.

7 Q. And that that third offense was based on two prior  
8 convictions of 1998, possession of crack, and 1999, PWID  
9 crack cocaine?

10 A. Yes, ma'am.

11 Q. And at that sentencing hearing do you recall  
12 challenging the 1998 conviction?

13 A. Yes, ma'am.

14 Q. Okay. Mr. Spratt, are you the same Eric Antonio Spratt  
15 that was -- did, in fact, plea before Judge Hayes in the  
16 1998 possession of crack?

17 A. Yes, ma'am.

18 Q. And when you pled to that charge, you did not have an  
19 attorney, is that right?

20 A. Yes, ma'am.

21 Q. And Judge Hayes gave you a probationary sentence?

22 A. Yes, ma'am.

23 Q. And then the next year you -- that probationary  
24 sentence was violated when you pled to a second PWID crack  
25 cocaine charge?

1 A. Yes, ma'am.

2 Q. All right. And you got jail time of six months  
3 revocation?

4 A. Yes, ma'am, but also four years.

5 Q. Okay. The four years was on the PWID, is that right?

6 A. Yes, ma'am.

7 Q. Now, do you remember pleading in 1998 in front of Judge  
8 Hayes?

9 A. Yeah, I remember standing before Hayes accepting the  
10 plea.

11 Q. Okay. Did you have an attorney?

12 A. No, ma'am.

13 Q. Did you sign any piece of paper waiving your right to  
14 have an attorney?

15 A. My right hand to God, I never waived my rights to  
16 counsel.

17 Q. Do you remember conversing with Judge Hayes during that  
18 hearing?

19 A. I remember being here. I guess I was in the back  
20 somewhere, and a lady came to me and she told me what the  
21 situation was. She brought me before the judge and we stood  
22 and I accepted probation.

23 Q. Okay.

24 A. I never waived my right for counsel.

25 Q. Do you recall if Judge Hayes explained to you you had

1 the right to get an attorney?

2 A. No, ma'am.

3 Q. Did he not do it, or do you not recall that he did it?

4 A. If I was told that I could have someone to fight for  
5 me, the things I did not know, I would have accepted it. I  
6 would never turn down help from counsel, because I know  
7 nothing about law myself.

8 Q. Okay. And how old were you at the time that you  
9 entered this plea?

10 A. 17. I had just turned 17.

11 Q. Was it your first time coming to General Sessions?

12 A. My first time ever.

13 Q. When you were arrested again in 1998, were you  
14 represented?

15 A. Yes, ma'am.

16 Q. Okay. Mr. Spratt, did you appeal your 1998 -- I  
17 mean -- yeah, 1998 conviction?

18 A. No, ma'am. I was 17. I didn't know. I really  
19 realized -- I basically thought everything that happened was  
20 supposed to happen that way. I didn't know until you  
21 brought it to my attention in 2007.

22 Q. Okay. Is there anything else that you remember from  
23 that hearing that you would wish the court to know?

24 A. No, ma'am, just that I just didn't know I could have  
25 had someone argue the things I did not know of, or maybe get

1 something better than I did get, but, no, ma'am.

2 Q. The lady that came and spoke to you back in -- you were  
3 in this holding cell here?

4 A. Yes, ma'am.

5 Q. The lady that came to speak with you, was her name  
6 Julia Mims?

7 A. I'm assuming. I remember Julia, or something, I guess,  
8 yes, ma'am.

9 Q. Was she a solicitor?

10 A. Well, she -- when we came in here, she posted me at one  
11 end -- yeah, she went to the opposite end.

12 Q. So she sat across the courtroom before you?

13 A. Yes, ma'am.

14 MS. INZERILLO: Those are all the questions that I  
15 have.

16 CROSS EXAMINATION BY MS. JOYNER:

17 Q. Mr. Spratt, could you just please tell me -- you said  
18 that you were 17 when you entered your guilty plea in 1998?

19 A. Yes, ma'am.

20 Q. That wasn't the first time that you had ever been  
21 arrested, was it?

22 A. Well, as a juvenile I was.

23 Q. As a juvenile.

24 Now, how many of those offenses as a juvenile were you  
25 approved for the public defender's office?

1 A. I don't know. My mom -- every time I was in trouble  
2 they called my mom. I never had to deal with anything.

3 Q. So your mom requested the attorneys on your behalf?

4 A. I would guess so. I mean, that's who was in charge. I  
5 mean, that's who they called anytime. I got in trouble,  
6 they never consented with me or anything about it.

7 Q. Do you recall meeting with Anna Timothy on one of your  
8 cases? Do you recall having a female public defender as a  
9 juvenile?

10 A. It's been a long time. I mean, I remember being in  
11 trouble as a juvenile, going through --

12 Q. So if I told you you had Anna Timothy as a lawyer in  
13 1996, would you doubt me? Would you say that's a lie, or  
14 could that be true?

15 A. Well, would I doubt it --

16 Q. Yeah.

17 A. -- that I had an attorney?

18 Q. Right.

19 A. Well, I mean, I was a juvenile. I mean, I -- I guess  
20 they did what they were supposed to. I mean --

21 My mom was always there. I mean, every time I went in  
22 as a juvenile my mom was there. I didn't really have to do  
23 anything. She -- you know.

24 Q. But did you have an attorney represent you in Family  
25 Court?

1 A. I would guess. I mean --

2 Q. Is there a reason that you think you can't remember  
3 this?

4 A. Not --

5 Q. Just that's it's been a long time?

6 A. There's not a reason. It's just that everything was  
7 set up different. I mean, it was a Family Court, and, you  
8 know, I was with my mom then, you know. People -- I mean,  
9 people stood there and people argued. I was young. I don't  
10 know nothing about court, or law, or any of that, you know,  
11 but I accept the fact that I'm pretty sure she didn't sit  
12 there and let me go without it.

13 Q. You are pretty sure what?

14 A. My mom didn't let me go without. I'm pretty sure she  
15 didn't let me go without it, without counsel. I mean --

16 Q. So if I told you that on -- you had a hearing in Family  
17 Court on July 20th of 1998, and you were represented by now  
18 deputy public defender B.J. Barrowclough, would you agree  
19 with me that that's correct?

20 A. Like I said before, I would agree.

21 Q. Okay.

22 A. But, I mean -- yes, ma'am.

23 Q. Okay. Do you remember being convicted in Family court  
24 of driving without a license on July 20th of 1998?

25 A. Yeah, I remember being in trouble for driving.

1 Q. Okay. So that you were -- you did -- were you  
2 adjudicated delinquent for that charge, correct?

3 A. What?

4 Q. You were found guilty in Family Court, correct?

5 A. Yeah. Yes, ma'am.

6 Q. So if I tell you that was -- the court records reflect  
7 that was July 20th of 1998, you would agree with that?

8 A. I mean, you are asking me to point out some things that  
9 are pretty obvious. I mean, yeah, I wouldn't -- I wouldn't  
10 argue with you. I mean --

11 Q. Do you recall which date, what date that you were  
12 convicted?

13 Let's go back to your adult record, your first adult  
14 conviction.

15 A. Okay.

16 Q. Do you recall what date that you were arrested for that  
17 possession of crack charge?

18 A. No, ma'am.

19 Q. Were you -- do you recall the facts of that case, how  
20 you came to be arrested?

21 Was it a traffic stop? I mean, do you remember that  
22 kind of stuff about the conviction?

23 A. About the drug charge?

24 Q. Yeah, the 1998 drug charge.

25 A. I think it happened in the city jail.

1 Q. It happened in the city jail?

2 A. I'm thinking. I don't know. I don't -- I don't --

3 Q. So the incident date on the indictment -- the incident  
4 date on the warrant for that charge would tell you what day  
5 that you were arrested, right? They caught you with the  
6 drugs on you?

7 A. (No response).

8 Q. Okay, that's a confusing question.

9 As to your first adult conviction, were you found with  
10 drugs actually on your person?

11 A. I'm -- I'm -- I'm thinking. I don't know, but I'm  
12 pretty -- I don't -- I remember getting the drug charge. I  
13 just don't -- I mean --

14 Q. You don't remember the facts of the case exactly?

15 A. No, ma'am, that's -- I mean, not specifically where  
16 they got them from, no, I just -- no, ma'am.

17 Q. So if I told you it was July 29th, 1998, that you were  
18 arrested as an adult for possession of crack, do you agree  
19 that sounds like the right date?

20 A. I got a few drug charges. I mean --

21 Q. You have what?

22 A. I said I have a few drug charges, and the police --  
23 each one, and how it went is going to be pretty hard. I  
24 mean --

25 Q. Okay.

1 (Attorney Representation Form marked as State's  
2 Exhibit No. 1 for identification)

3 (Notice of Initial Appearance Form marked as  
4 State's Exhibit No. 2 for identification)

5 BY MS. JOYNER:

6 Q. So your vague recollection, is this correct, that you  
7 were already in the city jail when you were found with  
8 crack?

9 A. Like I said, I got in trouble for drugs a few times,  
10 and to place each one at the time would be difficult. All I  
11 know is it happened.

12 Q. Okay. I'm going to show you first what's been marked  
13 as State's Exhibit 1. Is that your signature, Mr. Spratt?

14 A. Yes, ma'am.

15 Q. Okay. And it's kind of hard to read the date, but does  
16 that look to be like July 29th, 1998?

17 A. (No response).

18 Q. That's okay.

19 But that is your signature?

20 A. Yes, ma'am.

21 Q. Okay. And can you read to me that first paragraph  
22 regarding attorney representation?

23 A. "If you would like an attorney representing you --

24 Q. Can you read it out loud for the court?

25 A. "If you would like an attorney to represent you --

1 THE COURT: Sir, I can't hear you. If you would  
2 speak up just a little bit..

3 A. "If you would like an attorney to represent you on your  
4 pending charges, you should secure such", authority -- I  
5 mean "attorney prior to your initial appearance as listed on  
6 your bond. You should be sure to get a letter of  
7 representation from your attorney and bring that letter to  
8 the court with you."

9 BY MS. JOYNER:

10 Q. Okay. And does that indicate -- is it circled that you  
11 should seek private counsel or private attorney?

12 A. That's what it says, the initial appearance, private --  
13 yeah, I should have counsel.

14 Q. And did you sign that form, Mr. Spratt? Is that your  
15 signature?

16 A. I mean, it looks like it.

17 Q. It looks like your signature?

18 A. Yes, ma'am, it looks like it.

19 Q. Do you remember one way or the other whether you signed  
20 it?

21 A. No, ma'am.

22 Q. Okay.

23 A. I mean --

24 Q. Let me show you what's been marked as State's Exhibit

25 2.

1 A. Yes, ma'am.

2 Q. Is that your signature?

3 A. It looks like it.

4 Q. Okay. And is that your notice of initial appearance  
5 for your July 1998 crack charge?

6 A. That's what it's saying.

7 Q. That's what it says. Okay.

8 MS. JOYNER: Your Honor, we would offer State's  
9 Exhibit -- actually put State's Exhibits 1 and 2 into the  
10 record.

11 THE COURT: Any objection, counsel?

12 MS. INZERILLO: Could I review them just one more  
13 time?

14 THE DEFENDANT: Yeah, because -- I mean --

15 MS. INZERILLO: No objection.

16 THE COURT: Admitted without objection.

17 BY MS. JOYNER:

18 Q. Now, I'm going to ask you -- you said that you had a  
19 lot of drug charges? You got in trouble for -- pinpointing  
20 which day, you know, what happened.

21 Do you recall in your 1998 plea Judge Hayes discussing  
22 with you your right to have a jury trial?

23 A. To have a jury trial? No, I mean, the jury trial  
24 didn't come up. I mean, the woman -- the lady that talked  
25 to me told me she was recommending me get probation. We

1 came in and I got probation. I never was given counsel,  
2 but, I mean, I wouldn't have turned it down.

3 Q. I'm sorry, what was the last thing you said?

4 A. I was saying I never was given counsel because I would  
5 have never turned it down. She came to me and she was  
6 saying that I was offered -- she was offering probation.

7 Q. So you don't recall whether Judge Hayes discussed with  
8 you your right to a jury trial?

9 A. No, because I accepted the plea that she offered me. I  
10 mean, a jury trial didn't -- I don't recall that coming up.  
11 It didn't come up.

12 Q. I'm sorry?

13 A. I say I don't recall anything about a trial coming up.  
14 I only accepted the plea that she offered.

15 Q. Do you recall him talking to you about your rights to  
16 confront your witnesses?

17 A. No, ma'am.

18 Q. Do you recall him asking you whether you had any legal  
19 defenses to the crime?

20 A. Legal defenses to the crime?

21 Q. Did he ask you if you had any legal defenses?

22 A. Meaning what? What do you mean? Like -- what do you  
23 want, before that?

24 Q. During this plea did he ask you any questions about  
25 whether you had any legal defenses?

1 A. Legal defenses? You mean -- what's that? Like you are  
2 talking about something that happened before I was in front  
3 of him or something?

4 Q. Well, I'm asking you, do you recall Judge Hayes asking  
5 you a question about whether or not you had any legal  
6 defenses to the 1998 crack charge during the plea? Did he  
7 ask you that question?

8 A. I -- no, ma'am. I recall being given -- all I remember  
9 is him announcing that I was given probation; five years,  
10 three. I remember getting probation.

11 Q. That's all that you remember about that 1998 plea?

12 A. Yeah. I -- I ain't smart. I mean, I -- that's what  
13 happened to me. I know that. I mean --

14 MS. JOYNER: Beg the court's indulgence?

15 A. Yes, ma'am.

16 (Off the record)

17 (Back on the record)

18 MS. JOYNER: We don't have any more questions for  
19 Mr. Spratt, Your Honor.

20 MS. INZERILLO: Your Honor, may I follow up with a  
21 few more questions?

22 THE COURT: Yes, ma'am.

23 REDIRECT EXAMINATION BY MS. INZERILLO:

24 Q. Mr. Spratt, I just want to be clear on just a couple of  
25 things, okay?

1 A. Yes, ma'am.

2 Q. All right. When the solicitor was asking you about  
3 Family Court cases that you had --

4 A. Yes.

5 Q. -- do you remember going to the court in Family  
6 Court --

7 A. Yes.

8 Q. -- as a juvenile?

9 A. Yes, ma'am.

10 Q. And just to clarify, those were criminal cases?

11 A. Yes, ma'am.

12 Q. Is that right?

13 A. Yes.

14 Q. You got charged with a crime?

15 A. Yes.

16 Q. That's why you had to go to juvenile court?

17 A. Yes, ma'am.

18 Q. When you went to juvenile court, did you just get an  
19 attorney, or did you have to ask for one?

20 A. Every time I had help, I just remember them being  
21 there. They come and talked to me. I never had to, you  
22 know --

23 Q. So you didn't have to ask anybody for an attorney?

24 A. No, ma'am.

25 Q. Okay. And if you -- you don't remember yourself asking

1 anyone for an attorney?

2 A. No. I mean, growing up, especially when I started --  
3 when my first time here, I thought you had to pay for a  
4 lawyer. I didn't know anything about the law. I mean,  
5 so --

6 Q. Okay. Now, do you remember -- around the same time  
7 that you went in front of Judge Hayes, do you remember going  
8 to city court for a possession of marijuana charge that was  
9 a first offense? Do you remember going in front of Judge  
10 Modla?

11 A. City court?

12 Q. Yes, the lady judge at Rock Hill city court?

13 A. Yeah, I remember being in city court.

14 Q. Okay. And at that time do you remember if you had an  
15 attorney?

16 A. City court?

17 Q. Do you remember having to pay a fine --

18 A. Yeah. Yes, ma'am.

19 Q. -- from there?

20 Do you remember if an attorney was there when you went  
21 in front of the lady judge?

22 A. No, ma'am.

23 Q. Okay. Do you remember asking anyone at that court for  
24 an attorney?

25 A. No, ma'am.

1 Q. Okay.

2 (Booking Report and Certified Conviction sheet  
3 marked as Defendant's Exhibit No. 1 for identification)

4 (Booking Report and Certified Conviction Sheet  
5 marked as Defendant's Exhibit No. 2 for identification)

6 MS. INZERILLO: Your Honor, at this time we would  
7 move Defendant's Exhibit 1 and 2, which are copies of the  
8 certified convictions from Judge Modla's court indicating  
9 that Mr. Spratt did not have an attorney.

10 MS. JOYNER: No objection.

11 THE COURT: Admitted without objection.

12 BY MS. INZERILLO:

13 Q. Now, Mr. Spratt, Ms. Joyner also asked you about  
14 State's Exhibit 1 and 2, is that right?

15 A. Yes, ma'am.

16 Q. I'm going to show you these, okay?

17 A. Yes.

18 Q. And I want you to you tell me, is there anywhere on  
19 that piece of paper that tells you you have the right to an  
20 attorney, or does it just tell you what you need to do if  
21 you get one?

22 A. It says --

23 Q. Does it tell you you need to get -- if you get an  
24 attorney, you need to get a letter of representation?

25 A. Yes, ma'am.

1 Q. Okay. So nowhere in there does it tell you you have  
2 the right to an attorney, is that right?

3 A. No, ma'am, it only says, "on that date you will be  
4 provided with a preliminary hearing on your charges, unless  
5 you choose to waive your right," which I never have done it.

6 Q. Okay. So that's the only right they told you that you  
7 can waive is a preliminary hearing?

8 A. Yes, ma'am. It says, "unless you choose to waive your  
9 right." Yes, ma'am.

10 Q. Okay. And nowhere on that sheet or that form does it  
11 tell you that essentially it's in your best interest to get  
12 an attorney, because the attorney can help you with things  
13 like legal defenses you may not know, if you don't have an  
14 attorney?

15 A. Yes, ma'am.

16 Q. Is that right?

17 A. Yes.

18 Q. And --

19 MS. INZERILLO: I have no more questions, Your  
20 Honor.

21 RE-CROSS EXAMINATION BY MS. JOYNER:

22 Q. I want to be clear, Mr. Spratt. You agree that on July  
23 20th of 1998, you were convicted in Family Court of driving  
24 without a license, correct?

25 A. I remember being convicted of driving without a

1 license.

2 Q. Okay. And you did have an attorney, B.J. Barrowclough,  
3 in court with you, correct?

4 A. Yes.

5 Q. In Family Court?

6 A. Yes, ma'am.

7 Q. Okay. Nine days later you were arrested and charged  
8 with possession of crack cocaine as an adult, correct?

9 A. Yes, ma'am.

10 Q. Okay. And you completed forms -- you signed -- it is  
11 your signature on forms State's Exhibit 1 and 2, correct,  
12 these forms I showed you earlier?

13 A. Yes, ma'am.

14 Q. And that form -- that form, State's Exhibit 1, it does  
15 mention public defenders, doesn't it?

16 A. Yes, ma'am, which I was not given one.

17 Q. What's that?

18 A. Just I was not -- I clearly didn't have one.

19 Q. Okay.

20 A. Okay.

21 Q. But you had been in the past represented by other  
22 members of the public defender's office in Family Court, is  
23 that correct?

24 A. Yes, ma'am.

25 Q. Okay. And do you recall what date in 1998 that you

1 entered your guilty plea?

2 A. No, ma'am.

3 Q. Okay. And you don't really recall anything about your  
4 guilty plea, except that you received probation, is that  
5 correct?

6 A. I recall understanding this for a fact. I would never  
7 turn down a defender, someone gives me someone to help me.  
8 I mean, that's never happened. I mean, it never happened.  
9 Until then I come here and I was without it. I would have  
10 never turned it down and I never waived my right to it.

11 Q. Okay. But you don't remember anything about your 1998  
12 guilty plea, do you?

13 A. I mean, you were asking me specific dates and times and  
14 stuff. I mean, I'm -- I'm not going to sit here and lie  
15 about it. I'm not -- no, I don't remember what you asked  
16 me.

17 Q. You don't remember --

18 A. No, ma'am.

19 Q. You don't remember anything that Judge Hayes discussed  
20 with you?

21 A. No, I would -- I would remember someone saying you have  
22 a right to someone helping you and you have a right to  
23 choose to turn it down. I would clearly would remember  
24 that.

25 Q. You would remember that?

1 A. Yes, ma'am.

2 Q. You wouldn't remember somebody talking to you about  
3 your trial rights, but you would remember somebody  
4 offering --

5 A. I mean, not dates and times and stuff like that, no, I  
6 wouldn't, but something that could help me, yes, I pay  
7 attention to it.

8 Q. You would only remember something that would help you?

9 A. Of course. I mean --

10 Q. You wouldn't remember something that would hurt you,  
11 would you?

12 A. I would never turn my right down. If that's what you  
13 are trying to get at, I would never turn my right down for  
14 counsel.

15 Q. But you don't remember anything that Judge Hayes said  
16 to you during your guilty plea, do you?

17 A. You asked me -- I mean, you asked me specific  
18 questions. And instead of me lying, I'm telling you the  
19 truth.

20 Q. Okay. Do you remember anything that Judge Hayes said  
21 to you during your guilty plea, other than getting  
22 probation?

23 A. I remember him giving me five years suspended to three  
24 years probation.

25 Q. Do you remember anything else about the guilty plea?

1 A. He asked me did I agree with the probation, did I agree  
2 with the five years. Yeah, I agreed with it. I mean --

3 Q. That's what you remember?

4 A. Yes, ma'am.

5 Q. Okay.

6 MS. JOYNER: Nothing else, Your Honor.

7 MS. INZERILLO: Nothing further, Your Honor.

8 THE COURT: All right, let me ask you this. You  
9 have a pretty convenient memory. The only thing that you  
10 remember is that you don't remember and that you were not  
11 advised by Judge Hayes at the time that you pled guilty that  
12 you had a right to have an attorney and you wanted an  
13 attorney to represent you. You don't recall him asking you  
14 that?

15 THE DEFENDANT: Your Honor --

16 THE COURT: Just answer my question. I don't need  
17 the rigamarole. You just went through it every time  
18 somebody asked you a question. I'm asking you a specific  
19 question. I want a yes or no.

20 Did Judge Hayes say "you have a right to an  
21 attorney. Do you want an attorney to represent you?" Did  
22 he ask you that?

23 THE DEFENDANT: I don't recall him --

24 THE COURT: You don't recall that?

25 THE DEFENDANT: No.

1 THE COURT: But he could have asked you that? You  
2 just don't recall it?

3 THE DEFENDANT: Your Honor, I didn't -- I didn't  
4 waive -- I don't --

5 THE COURT: I know your answer to everything is "I  
6 didn't waive my right to an attorney," but I'm asking you to  
7 answer my specific questions, because I got to make a  
8 determination about that.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. And I'm asking you, did Judge  
11 Hayes say, "you have a right to an attorney to represent you  
12 on this charge. Do you want an attorney, or do you want to  
13 proceed without an attorney?" You don't remember him  
14 telling you that you had a right to an attorney and asked  
15 you if you wanted an attorney?

16 THE DEFENDANT: No, sir.

17 THE COURT: You don't remember him asking you  
18 that?

19 THE DEFENDANT: No, sir.

20 THE COURT: Did he ask you that?

21 THE DEFENDANT: No, sir.

22 THE COURT: Did you waive your right to have your  
23 charge presented to the Grand Jury to proceed on with a  
24 guilty plea? Did you waive your right?

25 THE DEFENDANT: To present it to the Grand Jury?

1 THE COURT: Yes, sir.

2 THE DEFENDANT: Talking about here, in the  
3 courtroom?

4 THE COURT: On this charge. We are talking about  
5 Judge Hayes.

6 When he was taking up your plea, did he ask you if  
7 you wanted to waive your right to have the charge presented  
8 to the Grand Jury, or waive it?

9 THE DEFENDANT: No, sir.

10 THE COURT: Is this your signature waiving  
11 presentment to the Grand Jury on your indictment, sir, at  
12 the time of your plea? Is that your signature waiving  
13 presentment to the Grand Jury?

14 THE DEFENDANT: What -- Your Honor --

15 THE COURT: Here, look at it.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Look at it.

18 Is that your signature?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So you waived presentment to the Grand  
23 Jury, but you don't recall waiving your right to have this  
24 charge presented to the Grand Jury before the court took  
25 your plea?

1 THE DEFENDANT: I'm saying, are you saying in  
2 court?

3 THE COURT: I'm not saying anything. I'm asking  
4 you a question.

5 Do you remember waiving your right to have this  
6 charge presented to the Grand Jury by the plea judge before  
7 he would take your plea? Do you recall that, waiving your  
8 right to have the charge presented to the Grand Jury?

9 THE DEFENDANT: No.

10 THE COURT: The judge advising you about your  
11 right to have it presented to the Grand Jury.

12 THE DEFENDANT: To the preliminary?

13 THE COURT: To the Grand Jury for indictment.

14 THE DEFENDANT: You mean preliminary hearing,  
15 right?

16 THE COURT: No, enough on the preliminary hearing.  
17 This is presentment to the Grand Jury. It's not a  
18 preliminary hearing before a magistrate. This is  
19 presentment of the charge to the Grand Jury.

20 Did the judge -- do you remember if the judge  
21 asked you if you wanted to waive your right to have the  
22 charge presented to the Grand Jury and go forward with the  
23 guilty plea?

24 THE DEFENDANT: I mean, if it's there, I had to.  
25 I mean, Your Honor, I mean I am just being honest with you.

1 THE COURT: Yeah, I know.

2 The only thing you remember is you didn't waive  
3 your right to a lawyer, you would never do that.

4 THE DEFENDANT: Your Honor --

5 THE COURT: Did he ask you -- did he advise you of  
6 your right to have a trial by jury, what your rights would  
7 be in a jury trial? Did Judge Hayes advise you of that,  
8 that you had a right to go before the jury?

9 THE DEFENDANT: I'm trying to recall that part,  
10 but, I mean, I accepted the plea. And if I did turn down  
11 any --

12 THE COURT: Did he advise you of your right to  
13 remain silent and not say anything?

14 THE DEFENDANT: We didn't go through all that.

15 THE COURT: All right. He didn't go through that  
16 with you, is that what you are saying?

17 THE DEFENDANT: Your Honor, I can only recall  
18 going through remaining silent and --

19 THE COURT: Did he ask the solicitor to present  
20 the facts concerning your charge, what happened with regard  
21 to your charge?

22 THE DEFENDANT: I remember --

23 THE COURT: Did he ask you if you agreed with what  
24 they said or not?

25 THE DEFENDANT: Yeah, I remember her explaining

1 what went on with me getting the charge and everything, or  
2 how it happened.

3 THE COURT: And did the judge ask you if you  
4 agreed with it or not?

5 THE DEFENDANT: Yeah, I remember agreeing with  
6 everything she put up.

7 THE COURT: So now you do remember that?

8 THE DEFENDANT: No. I'm just saying I can  
9 remember her saying what happened and why I was in front of  
10 him, do you understand, my charges, I remember.

11 THE COURT: You remember probation, don't you?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: That's the reason you pled guilty to  
14 get that probation, correct?

15 THE DEFENDANT: I mean, I pled it -- yes, sir,  
16 that's what she came to me with.

17 THE COURT: But you had a chance to get out of  
18 jail that day on probation, didn't you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. I have no further  
21 questions.

22 Any followup to the questions that I asked, from  
23 either side?

24 MS. JOYNER: Not from the State.

25 MS. INZERILLO: No, Your Honor.

1 THE COURT: Thank you, sir. You may stand down.

2 MS. INZERILLO: Your Honor, at this time that  
3 would be the extent of the testimony that the defense is  
4 prepared to present.

5 We do believe that we have carried our burden of  
6 the preponderance of evidence to at least call into a  
7 question the 1998 conviction.

8 Mr. Spratt has indicated under oath that not only  
9 does he not specifically recall Mr. -- I mean, I'm sorry,  
10 Judge Hayes advising him of his rights, but that he does  
11 remember not being advised of his rights, and as well does  
12 specifically recall had he been advised of those rights, he  
13 would have certainly taken the judge up on that and gotten  
14 an attorney.

15 I can go more into argument now, Your Honor. I'm  
16 not sure how Your Honor wants to structure this hearing. I  
17 can go into argument, but if you think --

18 THE COURT: I don't really need any argument right  
19 not.

20 It's going to come down to the question -- the one  
21 concern I have -- and, of course, I will allow the State to  
22 present anything they wish to present on this. If they are  
23 not prepared to do that, I had agreed that if you had a  
24 witness that was not available right now that you wanted to  
25 call, that I would allow you to do that later and keep the

1 record open to do that.

2 The only question I have got is who has the burden  
3 of proof on this. And I -- you know, I know if you come  
4 back on a post-conviction relief, the applicant has the  
5 burden of proof as to whether a charge is enhanced or not.

6 When it comes down to a sentence enhancement, we  
7 are back to the point where he is -- the defendant has, I  
8 guess -- was he found guilty after a trial?

9 MS. INZERILLO: Yes.

10 THE COURT: If he was -- yeah, that's right.

11 If he was found guilty after the trial and you get  
12 into the sentencing phase, you are to that point.

13 MS. INZERILLO: Yes, sir.

14 THE COURT: And so we backtrack to that.

15 The judge -- Mr. Spratt was not -- he was absent  
16 for his trial. The judge entered a sentence that was  
17 sealed. Judge Newman opened up the sentence and he read it  
18 at that time.

19 Now, either when Judge Cole sentenced Mr. Spratt  
20 originally at the trial in absence or when Judge Newman  
21 heard it when he opened the sentence, he could hear that  
22 issue as well. And it being sent back and the court  
23 determine -- Judge Newman incorrectly looked at the  
24 enhancement, but now it's back before this court. So I'm in  
25 the same position that Judge Cole would have been in and the

1 same position that Judge Newman would have been in. We are  
2 back to the question of enhancement at that point.

3 Now, who bears the burden on that point with  
4 regard to the issue of enhancement? This is not a PCR, so  
5 we are back to that point. Who has the burden?

6 MS. INZERILLO: I do, Your Honor. The burden --  
7 my understanding of the procedure for this would be that Ms.  
8 Joyner has the burden to present prior convictions that  
9 would in her view enhance this to third. Then under Talley  
10 v. State, which I handed up to Your Honor, the burden then  
11 shifts to the defense to show by a preponderance of the  
12 evidence that one, or more, of those prior convictions are  
13 defective. And so having gone --

14 THE COURT: Let's do that. Does the State wish  
15 more time to present testimony?

16 MS. JOYNER: Yes, sir, Your Honor. We have one  
17 witness we would like to call that's not available.

18 THE COURT: All right. Well, why don't we do this  
19 then. Just save your argument and let's take up that  
20 witness.

21 I would tell you, though, that Judge Hayes has  
22 sentenced many people in his 20 years, or so, on the bench.  
23 And the 13 years that I have been on the circuit bench I  
24 have had occasions to look at his guilty pleas that he  
25 presided over, including many of them on post-conviction

1 relief, and I have seen his plea colloquy many times in  
2 those transcripts, including those where somebody waives  
3 their right to have an attorney and are familiar with the  
4 colloquy that he asks a defendant about. That doesn't mean  
5 he does it in every single case, but I'm just saying I have  
6 never seen one where he didn't advise a defendant of his  
7 right to have an attorney, an appointed attorney, if he  
8 wanted one. I have never had one, never seen one where  
9 Judge Hayes didn't do that.

10 And I can tell you for a fact that I have never  
11 done that in my 13 years. I have never not advised somebody  
12 of their right to have an attorney represent them and  
13 explain those rights to them or what benefits they would  
14 have in not appointing someone and have somebody. And I  
15 think everybody knows that I will appoint one if I have any  
16 reason to question as to whether they are entitled to have  
17 one, I will appoint one.

18 And so in having said that, that doesn't mean  
19 necessarily that Judge Hayes didn't it in this particular  
20 case. I understand that. So I'll look at that, but Mr.  
21 Spratt has a convenient memory about that. He doesn't  
22 remember anything except that he pled guilty and he would  
23 not have waived his right to an attorney, if he had asked if  
24 he wanted one. He remembers he got probation and walked out  
25 after that plea was processed out. So that's the only thing

1 he remembers. He doesn't remember any of his rights or  
2 anything being given to him by the plea judge.

3 But let's -- I'll just -- I'll wait until I hear.  
4 I just wanted to be sure I want this presented and certified  
5 whose burden of proof it was. I know it's Mr. Spratt's  
6 burden. That would be by a preponderance of the evidence.

7 MS. INZERILLO: Yes, Your Honor.

8 MS. JOYNER: Yes.

9 THE COURT: Thank you. We will hold it open.

10 (Whereupon, proceedings were adjourned until June  
11 7, 2011)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

3  
 4 THE STATE )  
 5 -vs- ) TRANSCRIPT OF RECORD  
 6 ERIC ANTONIO SPRATT, ) 2006-GS-46-1625  
 7 DEFENDANT. ) JUNE 7, 2011  
 8 YORK, SOUTH CAROLINA

9  
 10 B E F O R E:  
 11 THE HONORABLE LEE S. ALFORD, JUDGE.  
 12

13  
 14 A P P E A R A N C E S:  
 15 ERIN JOYNER, ASSISTANT SOLICITOR  
 16 ATTORNEY FOR THE STATE  
 17 MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER  
 18 ATTORNEY FOR THE DEFENDANT  
 19  
 20 MICHAEL R. WATTS  
 21 CIRCUIT COURT REPORTER  
 22  
 23  
 24  
 25

## INDEX

1		
2		
3	WITNESSES	PAGE
4	E.B. SPRINGS, IV, ESQUIRE (SW)	
5	DIRECT EXAMINATION BY MS. JOYNER	50
6	CROSS EXAMINATION BY MS. INZERILLO	52
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
2	D-3	TRANSCRIPT OF RECORD		69
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, JUNE 7, 2011)

2 THE COURT: Ready to proceed?

3 MS. JOYNER: Yes, Your Honor.

4 Your Honor, the State calls E.B. Springs.

5 E.B. SPRINGS, IV, ESQUIRE, having been first duly  
6 sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. JOYNER:

8 Q. Would you please state your full name for the record?

9 A. My name is Eli Baxter Springs, IV.

10 Q. And are you a solicitor in the Sixteenth Circuit?

11 A. I am.

12 Q. How long have you been employed in the Sixteenth  
13 Circuit?

14 A. I started as an assistant solicitor here in July of  
15 1998.

16 Q. And at that time was Judge John C. Hayes a resident  
17 judge here in York County, as he is today?

18 A. He was.

19 Q. And beginning in July for 1998 to the present, have you  
20 had an occasion to witness Judge Hayes conduct pleas in plea  
21 court?

22 A. Yes, I have, many, many times.

23 Q. And going back to 1998, July, onward from 1998, have  
24 you ever had an occasion to see Judge Hayes do pleas  
25 involving pro-se defendants?

1 A. I have seen him do many pro-se pleas, watching other  
2 people's pleas, and he's done many, many pro-se guilty pleas  
3 of my own.

4 Q. And in your experience in viewing these pleas, in 1998,  
5 did Judge Hayes have a certain routine or practice regarding  
6 advising pro-se defendants of their right to have an  
7 attorney?

8 A. Yes. Judge Hayes, as he goes through the Boykin  
9 advisement colloquy, the Faretta Warnings to a pro-se of the  
10 dangers of self-representation, he has sort of a rhythmic  
11 cadence that he gets, and I have heard that cadence come  
12 from him year after year after year that covers all the  
13 warnings about the dangers of self-representation.

14 Q. And just in general as to the general plea colloquy  
15 regarding the right to a trial and all those other companion  
16 rights, does he also have routine and practice regarding  
17 those rights?

18 A. Yes. Yes, he does.

19 Q. Okay. And has that been your experience from 1998,  
20 forward, as to Judge Hayes?

21 A. Yes. And as I say, I have been hearing that same  
22 rhythmic colloquy from Judge Hayes these 12, 13 years.

23 Q. Now, you did not take a part at all in the prosecution  
24 of Mr. Spratt in 1998?

25 A. I don't know. I have prosecuted a lot of people.

1 Q. Thank you.

2 Please answer any questions that Ms. Inzerillo has.

3 MS. INZERILLO: May it please the court, Your  
4 Honor?

5 THE COURT: Counsel.

6 CROSS EXAMINATION BY MS. INZERILLO:

7 Q. Good morning, Mr. Springs.

8 A. Good morning, Ms. Inzerillo.

9 Q. Mr. Springs, you weren't present for Mr. Spratt's  
10 particular guilty plea in September of 1998, were you?

11 A. I don't know.

12 Q. So you can't testify as to whether or not Judge Hayes  
13 on that day during that plea gave Mr. Spratt those Faretta  
14 Warnings, or any warnings, about the dangers of  
15 self-representation?

16 A. I do not remember being there for his plea that day,  
17 no.

18 Q. Okay.

19 MS. INZERILLO: No further questions, Your Honor.

20 MS. JOYNER: Nothing further from the State.

21 THE COURT: Let me ask you a question, Mr.  
22 Springs.

23 THE WITNESS: Yes, sir.

24 THE COURT: In all the times that you have seen  
25 Judge Hayes, Judge Hayes -- of course, you say since 1998,

1 you started in July of 1998. And, of course, he's been a  
2 circuit judge for about 20 years, have you ever heard him  
3 take a guilty plea, a pro-se guilty plea, without first  
4 having explained the right -- the dangers of  
5 self-representation and getting a waiver of a right to an  
6 attorney from a defendant in a pro-se plea? Have you ever  
7 heard of one?

8 THE WITNESS: No, sir, never once.

9 THE COURT: That's all the questions that I have.  
10 Any questions related to the questions that I  
11 asked?

12 MS. JOYNER: No, sir, Your Honor.

13 MS. INZERILLO: No, sir, Your Honor.

14 THE COURT: Thank you, sir.

15 MS. JOYNER: We have no further witnesses.

16 THE COURT: Anything in reply?

17 MS. INZERILLO: No, Your Honor.

18 If I could --

19 THE COURT: Yes, ma'am.

20 MS. INZERILLO: -- make the argument.

21 Your Honor, I just wanted to start today by saying  
22 when we convened this hearing at the end of the last  
23 session, the court did inquire as to which side bears the  
24 burden. And in reply to that question I did cite Talley v.  
25 State. To correct that, I think a better analysis of that

1 in the State v. Payne case that has been handed to the court  
2 by the State in this matter.

3 THE COURT: Let me find that, if you don't mind.

4 MS. INZERILLO: Sure.

5 It's about four of five paragraphs from the  
6 conclusion section.

7 THE COURT: How does it start, the paragraph?

8 MS. INZERILLO: The paragraph starts -- it's an  
9 addendum paragraph. It says, "when the State is prosecuting  
10 a person for an offense."

11 THE COURT: I got you. Just give me one moment.

12 (Off the record)

13 (Back on the record)

14 THE COURT: Okay, proceed.

15 MS. INZERILLO: Thank you, Your Honor.

16 Your Honor, in this case, as State v. Payne does  
17 explain once the State has presented certified convictions  
18 of prior convictions of which it is using to enhance a  
19 current case, the burden then shifts to the defense to prove  
20 by a preponderance of the evidence that one or more of those  
21 priors are defective.

22 Your Honor, at issue in this case is the  
23 conviction from 1998.

24 As a threshold matter, as we discussed on Monday,  
25 I don't think it's disputed by the client that Mr. Spratt

1 did receive probation in front of Judge Hayes in 1998, and  
2 in 1999 was subsequently convicted -- revoked for six months  
3 on that probation, which would, under the current case law,  
4 would give Mr. Spratt grounds to challenge that conviction.

5           Going forward, Your Honor, it is our belief that  
6 we have met that burden by a preponderance of the evidence.  
7 The testimony that has been taken today, in its entirety Mr.  
8 Spratt did take the stand. He is the only person that's  
9 taken the stand who was present that day during that plea.  
10 He was a bit confused about some of the questions, but did,  
11 when pressed by the court and by the State, say  
12 unequivocally he did not receive those rights.

13           While it's true he did not remember a lot of  
14 things about that hearing, he did say, again very  
15 emphatically, that he did not receive the right; and,  
16 moreover, indicated had he heard that, he would have stopped  
17 the proceeding and moved forward.

18           I think the court can see some of his confusion in  
19 the State's questions about legal defenses. Certainly that  
20 is one of the reasons why we give Faretta Warnings, because  
21 there is an inherent danger of self-representation, and  
22 that's evidenced by Mr. Spratt's confusion about some of  
23 those questions and some of his rights.

24           Your Honor, when we first argued this case the  
25 first time I did make arguments based on State v. Soughsby,

1 which is in the transcript, which I have handed to the  
2 court. I do stand by those arguments, but in framing this  
3 motion, in light of the Court of Appeals opinion that has  
4 been handed back down under State v. Payne, State v. Payne  
5 does indicate that when attacking -- any collateral attacks,  
6 it's treated on the same standard as essentially a PCR,  
7 which I know the court is well aware of that standard, so I  
8 won't go any further into that.

9 By testimonial evidence, Your Honor, the only  
10 person who was there has indicated he did not receive those  
11 rights. While Mr. Springs can comment on Judge Hayes' usual  
12 practice of having a custom, he indicated that he is not  
13 aware at all of what happened during Mr. Spratt's hearing,  
14 nor does he recognize Mr. Spratt at all, having any sort of  
15 tangential recollection of not only Mr. Spratt, but of his  
16 hearing on that day.

17 Your Honor, in light of this, because that is the  
18 only evidence as to what happened in the courtroom on that  
19 day, the defense feels it has met its burden and does ask  
20 the court to not consider the 1998 conviction and make a  
21 finding that this should be a crack cocaine, second offense.

22 THE COURT: Thank you.

23 MS. JOYNER: Your Honor, I just handed Ms.  
24 Inzerillo and up to the court two cases or federal cases,  
25 Your Honor. State v. Jennings -- excuse me, U.S. v.

1 Jennings and the Lucas case. And both of those cases  
2 involve federal challenges to prior convictions, collateral  
3 attacks of the prior conviction and in both of those cases  
4 allow for routine. And, in fact, there is testimony, which  
5 is why we presented testimony of Mr. Springs.

6 I'll tell the court both objecting about this case  
7 and yet he has no recollection of this plea at all. And I  
8 think it is for that reason when you are dealing with  
9 collateral attacks so far down the line, that routine and  
10 practice does come into play.

11 But before I reach that point, I would like to say  
12 to this court as to the defense's burden, it is the State's  
13 position they haven't met the burden.

14 Mr. Spratt is the only person who took the stand  
15 that was present at the plea. And of all the people who  
16 should have a recollection of what happened at the plea, Mr.  
17 Spratt very conveniently has no memory of a lot of things  
18 that he was asked about. Just to point to the court, he had  
19 a lack of memory as to the fact of his underlying arrest  
20 even. And he explained that he had been arrested several  
21 times, so that was -- that was the source of confusion and  
22 it was hard to remember.

23 And I think at one point, or I will have to defer  
24 to the record, but I think he even referenced some of the  
25 juvenile stuff that it was a long time. Well, I'll point

1 out that a lot of his juvenile convictions were very close  
2 in time to this conviction. And, in fact, the last juvenile  
3 hearing he had was about nine days before he was arrested on  
4 this underlying crack charge from 1998.

5 Very frankly he doesn't have a recollection of a  
6 plea colloquy. He doesn't remember anybody asking him or  
7 discussing his right to a trial by jury, or legal defenses,  
8 or anything else. So the only thing that he's willing to  
9 say about the hearing is that he got probation and that  
10 nobody ever talked to him about his right to an attorney.  
11 But that -- I don't think that was unequivocal. I think  
12 that there was a lot of wavering, because it was "I don't  
13 recall, I don't recall, I don't recall." And when finally  
14 pushed, it was like, "well, no, that didn't happen, because  
15 I would have basically availed myself of those rights."

16 I think when you are looking at his credibility,  
17 you have to remember which persons he said. The first thing  
18 he said, or one of the first things he said, is "if I was  
19 told that I could have someone to fight for me, I would  
20 have." But when I questioned him on cross, you know, he  
21 acknowledged that he did have attorneys in the Family Court,  
22 but that it's sort of like this feigning ignorance of the  
23 whole process. So I think that goes to his credibility.  
24 Not necessarily the question of whether he received the  
25 right, but it goes to his credibility on the matter.

1 I think that they have not met their burden,  
2 because his recollection is just so poor, and it is -- you  
3 know, it leaves me -- or at least leaves me skeptical when  
4 the only thing that he can say for certain is that he didn't  
5 hear those Faretta Warnings and he did not get his rights.

6 I think as to the State -- as to -- if the court  
7 believes they have met their burden, then the burden under  
8 State v. Payne comes back to the State and routine or  
9 practice evidence, as I said before, I think it has to come  
10 into play when you are dealing with collateral attacks this  
11 far down the line. There is no transcript. And I -- Ms.  
12 Inzerillo and I discussed this before. I never expected  
13 there would be. I, in fact, I complimented her for going to  
14 Court Administration and taking that final no, but I had no  
15 doubt there would be no transcript. I have no doubt that  
16 there would no party left that would have a recollection of  
17 the plea because so much time has passed, so I think routine  
18 and practice evidence has to come into play, because that's  
19 why there is colloquy. That's why there is a procedure.  
20 There is presumption of regularity that attaches to these  
21 things and I think that the further in time you get away  
22 from things, the more relevant the presumption comes.

23 To not allow the routine of practice evidence,  
24 does not find that to be credible for the court would  
25 basically leave the State to the disadvantage of never being

1 able to prove it in an instance like this when a prior  
2 conviction is so far removed.

3 So we would submit that they have not met the  
4 burden. If they have met the burden, that the State  
5 compiling evidence that he would have received and he did  
6 receive those warnings by routine practice.

7 MS. INZERILLO: Just briefly, Your Honor.

8 Your Honor, just in a quick review of the cases  
9 the State has handed forward, I would distinguish the case  
10 of Lucas v. U.S. the State did hand forward. In that case  
11 there actually was a more thorough record I think by  
12 availability to the parties. In that case the actual  
13 solicitor that tried the case or that prosecuted the case or  
14 did the plea testified and did testify that that person  
15 himself advised the defendant of that case of his right to  
16 an attorney; that the court heard from two of Judge  
17 Westbrook's clerks that testified as to his routine and  
18 practice because, of course, the clerk would see every  
19 single plea that the late Judge Westbrook would have done.  
20 So there is more -- I don't want to say eyewitness  
21 testimony, but more testimony and a full record from more  
22 people who were there. Unfortunately that is not the case  
23 in this case. We did not -- the solicitor in this case has  
24 moved and is not present to testify. Mr. Spratt is the only  
25 one who did testify.

1           Your Honor, addressing State v. Payne, it does  
2 allow for routine of practice evidence to be heard and to be  
3 taken into consideration, but it does also call for  
4 testimonial evidence, Your Honor, and we believe we have  
5 provided that. Considering Mr. Spratt's Sixth Amendment  
6 Right is at issue here, we do believe that we have met the  
7 burden. While it is at least currently in the times I have  
8 been in front of Judge Hayes, I have seen him give Faretta  
9 Warnings. There has been no evidence that that specifically  
10 happened here. And, again, we would reiterate that, Your  
11 Honor.

12           We have nothing further.

13           THE COURT: Okay. Well, counsel, I think you have  
14 done a good job, doing the very best for Mr. Spratt in the  
15 this case, doing everything that you can possibly raise in  
16 this. And I realize the seriousness of it, because there is  
17 a major difference between, you know, whether this is  
18 enhanceable as to a third or a second is a major difference.  
19 And that being that on the third being a mandatory minimum  
20 sentence, and being a lesser sentence on the second, and  
21 that's what Judge Newman sentenced under. And I understand  
22 the importance of that. It's a substantial difference, a  
23 major difference.

24           And I can't get into the law itself. I mean, I  
25 have to take the law as it is and I can't -- it's not my

1 decision whether I'm -- you know, I have to enforce the law,  
2 whatever it is. The legislature makes the laws. The courts  
3 do not make the laws. All we do is enforce them. So it's  
4 not up to us to concern ourselves with the wisdom of those  
5 laws. We just except them as they are. The elected  
6 officials make those decisions. It is a substantial  
7 difference, however, with the enhancement.

8 In this case the defendant bears some burden by a  
9 preponderance of the evidence to show that he was not -- in  
10 this case he's alleging he was not advised of his right to  
11 an attorney and didn't waive his right to have an attorney  
12 represent him on the charge, which at that time was simple  
13 possession. And, of course, ultimately he got probation,  
14 and he ultimately was revoked six months, served six months  
15 on that, and so to that extent it certainly required to be  
16 represented by an attorney, or he had to have waived that  
17 right to an attorney. Of course, Judge Newman ruled that  
18 the mere fact that he didn't have an attorney, an  
19 uncounseled plea was sufficient not to allow them to use it  
20 for enhancement. As I said earlier in the hearing before we  
21 adjourned, that was always my understanding that it either  
22 had to be a counseled plea or a waiver of a counsel plea or  
23 it couldn't be considered for enhancement purposes, if the  
24 defendant waives his right to have an attorney represent him  
25 after he was advised of his rights, and that's what the

1 appellate court ruled and sent it back down for the  
2 sentencing.

3 I certainly understand -- well, let me -- I  
4 understand your position. You have done everything that you  
5 could possibly do to help Mr. Spratt in this to raise  
6 everything that you could. However, he has the burden, and  
7 the court finds he has not met that burden by a  
8 preponderance of the evidence. And my reasons would be  
9 simply this. Of course, we have had testimony from Mr.  
10 Springs, who has been a practicing solicitor for a time just  
11 prior I think to this trial in absence all the way up to the  
12 current time. He's still an assistant solicitor. His  
13 testimony as it was just his regular practice and procedure  
14 that Judge Hayes uses in all of his guilty pleas and the  
15 rights that he advises all defendants of and the colloquy is  
16 just kind of pretty much a rhythmic kind of thing that he  
17 goes through. And he's testified of the procedure used in  
18 giving Faretta Warnings to a pro-se defendant before and  
19 requires them to waive their right to have an attorney  
20 represent them before he goes forward with the plea. And so  
21 that's one of the rights he explains in his colloquy to a  
22 pro-se defendant and they have to waive their right to an  
23 attorney.

24 And as I told you earlier in the hearing, one of  
25 the things, you have two judges in the circuit. We have had

1 so much non-travel over the last probably ten years. We  
2 have probably had five years, or so, of no travel because of  
3 no money to travel on. And as a result of that a judge does  
4 not hear his own plea or trial in a post-conviction relief.  
5 If he presided there, he doesn't hear the post-conviction  
6 relief. A different judge has to hear it. If you have got  
7 very little travel, that means I have had to hear a lot of  
8 Judge Hayes' cases and he's had to hear a lot of mine when  
9 you do them on post-conviction relief. And I have not seen  
10 one single case, and I get -- I read the transcripts as part  
11 of those post-conviction relief proceedings. I have not  
12 seen one single plea where Judge Hayes did not give his  
13 colloquy, the same colloquy to the defendant. Maybe a  
14 slight variation, but pretty much exactly the same. And  
15 also I have never seen one where it involved a pro-se  
16 defendant where he did not advise him, given the Faretta  
17 Warnings about self-representation and have a defendant  
18 waive his right to have an attorney representing him before  
19 he would accept that plea as being freely and voluntarily  
20 made. I have not seen one in looking at the transcripts  
21 that I have heard on post-conviction relief. It doesn't  
22 mean that he could have not given him one in some case. I  
23 understand that, but we are looking at the defendant, Mr.  
24 Spratt's, burden of proof in this case and I have got to  
25 consider that. And so -- I can think of maybe one possible

1 judge who I might not automatically assume this or not, that  
2 who varies from what he did with regard to pleas, one  
3 particular judge, but he's no longer, of course, a judge,  
4 and he's not even alive now, but that judge, you know,  
5 reading some of his transcripts he had didn't necessarily  
6 follow any kind of regular procedure in that, but Judge  
7 Hayes has followed that, according to what I have seen.

8           And, of course, Mr. Springs has testified as to  
9 his normal practice and procedure with all guilty pleas, and  
10 that's confirmed by the ones that I have seen. I haven't  
11 seen them all, but it doesn't mean he could have not failed  
12 to do it in Mr. Spratt's case, but I think it's unlikely  
13 that he failed to do it. If he did it in every single case,  
14 I don't know why he would just not have done it with Mr.  
15 Spratt's case.

16           With regard to Mr. Spratt's testimony, I don't  
17 find his testimony credible at all. First of all -- of  
18 course, I realize at the time he was 17. In fact, it's been  
19 a long time ago and so it would be difficult to remember  
20 everything, but he doesn't even remember. But if anybody is  
21 going to remember what happened, there is no one else to be  
22 able to testify. In fact, we don't have any -- I wish we  
23 had the transcript. Maybe they ought to change the rules on  
24 that. I might bring that up to the chief justice, talk with  
25 them about the rule change, because I had another PCR

1 hearing last week which I wish we had a transcript, but it  
2 had been beyond the five year period and we didn't have a  
3 transcript and didn't either and so that's an issue in that  
4 case, but it works against the applicant in a  
5 post-conviction relief. And certainly if a defendant says  
6 he wasn't given those rights about the right to have an  
7 attorney represent him, it certainly works against him if  
8 you don't have a transcript. I wish we could have a  
9 transcript. But I believe if we had a transcript, it would  
10 show that he was given his Faretta Warnings. I believe  
11 that. And he doesn't remember anything. He doesn't  
12 remember Judge Hayes advising him of his right to a jury  
13 trial, and he doesn't remember advising him of his right to  
14 the remain silent. He doesn't remember having the facts  
15 given to him at that hearing and agreeing or not agreeing  
16 with the facts. He doesn't remember waiving his right to  
17 have the charge presented to the Grand Jury, even though he  
18 signed that waiver on the indictment waiving his right. I  
19 am sure that right would have been explained to him. He  
20 signed it. He waived his right, and the court doesn't have  
21 jurisdiction to take that plea unless he waives it. And so  
22 for all those -- he doesn't remember anything. The only  
23 thing he knows, you know, is if he was offered some  
24 assistance, somebody to fight for him, he would have taken  
25 that assistance, if it would have been offered to him. He

1 doesn't specifically remember it, but he remembers -- he  
2 knows particularly when a substantial difference in the  
3 penalty he's facing today with his enhancement, he  
4 specifically remembers at that time if he'd been offered any  
5 help, he would have taken that help to help him with the  
6 procedure.

7 Another reason why, you know, the court finds that  
8 he might very well have waived his right to have an attorney  
9 represent him after being advised of it is, number one, he  
10 was caught with the crack cocaine found on his person in the  
11 jail, the Rock Hill jail, when he was there. So, I mean,  
12 they had a record of that. I mean, it was found on him  
13 there. And even if he had an attorney, what defense would  
14 he have? None. What could the attorney have done for him?  
15 He knows the attorney could have gotten him probation. You  
16 know what he got? Probation. So why would you worry about  
17 an attorney if you were getting the best results you could  
18 get under the facts and circumstances? Why would you worry  
19 about an attorney? What could the attorney have done to  
20 help him? And I'm just saying that that would have been  
21 certainly his reasoning and the explanation given to us from  
22 the solicitor about why he should go ahead and plead.

23 You know what else? He's 17 years old and he's in  
24 jail and he has been in jail a little while. And you know  
25 what? By pleading guilty and getting a probationary

1 sentence he gets out of jail, okay, and he goes his own way.  
2 So that would be a reason to go ahead and not wait to have  
3 an attorney appointed to go through that, because he  
4 certainly -- if an attorney had been appointed for him, then  
5 an attorney would have had to have met and that sort of  
6 thing and try to work out something with the solicitor's  
7 office, or, you know -- of course, you always have the  
8 possibility of a trial, but it was delayed. There's no  
9 question about it.

10 So for all those reasons I don't find his  
11 testimony credible and I don't find he's proven by a  
12 preponderance of the evidence that he wasn't advised of his  
13 right by an attorney representing him and he chose to plead  
14 guilty on a pro-se basis without an attorney. I just don't  
15 find that he's established that to the court's satisfaction.

16 And, you know, if he had any concrete evidence  
17 other than he just doesn't remember it, he said he thought  
18 he would. He thinks he would have taken any help that was  
19 offered to him.

20 All right. That's the ruling of the court. So  
21 the court finds that the offense could be used to enhance  
22 and it would be a third offense as opposed to a second  
23 offense and should be sentenced as a third offense.

24 MS. INZERILLO: Thank you, Your Honor.

25 Just one final thing.

1 THE COURT: Okay.

2 MS. INZERILLO: If I may, I have referenced  
3 several times on the record of the transcript from the  
4 previous hearing. And I know I have provided the State and  
5 the court with the copy of it, but I wanted to make it a  
6 part of the record. We can do that as a defense exhibit or  
7 a court's exhibit.

8 THE COURT: Are you talking about the hearing we  
9 held earlier this week in this hearing?

10 MS. INZERILLO: No.

11 THE COURT: The one Judge Newman had?

12 MS. INZERILLO: Yes, sir.

13 THE COURT: All right. Well, certainly you can.  
14 The appellate court had it when they made their decision.  
15 Certainly you can make it a part of the record in this case.

16 MS. INZERILLO: Thank you. Do you have a  
17 preference as to whether it's would be a defense exhibit or  
18 a court exhibit?

19 THE COURT: Yeah, I would rather it be a defense  
20 exhibit, because it's not --

21 MS. INZERILLO: All right. Thank you, Your Honor.

22 THE COURT: Well, what's before me is the  
23 appellate court decision.

24 MS. INZERILLO: Yes, sir.

25 (Court Transcript, dated May 25, 2007, marked as

1 Defendant's Exhibit No. 3 for identification)

2 MS. JOYNER: Your Honor, I wasn't sure of the  
3 situation, but it's my understanding now that sentencing  
4 goes back to Your Honor, we start afresh with the sentencing  
5 as a third.

6 THE COURT: Yes.

7 MS. JOYNER: So I have prepared a new sentencing  
8 sheet.

9 THE COURT: For the purpose of sentencing, we  
10 start over. I'm not bound by Judge Cole's sentence, and  
11 obviously I'm not bound by Judge Newman's, because it was  
12 based on a second offense as opposed to a third. I am bound  
13 by whatever the law is, okay, but I'm not bound by Judge  
14 Cole's sentence. I'm in the same shoes Judge Newman would  
15 have been in in opening the sealed sentence.

16 MS. JOYNER: Yes, sir, Your Honor.

17 THE COURT: Let me be sure you are in agreement  
18 with what the court thinks the possible sentence was at that  
19 time. It looks like to me it would have been a minimum of  
20 15 and maximum of 30?

21 MS. JOYNER: I believe it would have been a  
22 minimum of 25, and I think in the transcript at one point I  
23 misstated that, Your Honor, as 15 to 30, but I believe it  
24 was 25 to 30.

25 THE COURT: According my records, it would have

1       been 15 to 30 under the old law. But now that is old, old  
2       law when you go all the way back there, so let's take a look  
3       at what have you got?

4               MS. JOYNER: Just by going by CDR Code, Your  
5       Honor, it's showing that it is a felony, 25 to 30 years. I  
6       can pull up the statute.

7               Your Honor, there is a statute section it's  
8       currently as a 25 to 30 years as the penalty range, and  
9       that's the South Carolina court website that shows the same  
10      penalty for the CDR Code. I believe it is a 25 to 30 years,  
11      because he was trafficking more than 28 grams, third  
12      offense.

13              THE COURT: I thought he was charged with  
14      possession with intent to distribute. You say it was  
15      trafficking?

16              MS. JOYNER: Trafficking, Your Honor.

17              THE COURT: That was the charge, trafficking?

18              MS. INZERILLO: Yes, sir.

19              MS. JOYNER: Yes, sir.

20              THE COURT: Oh, that's different. I thought that  
21      you told me possession with intent to distribute third.

22              MS. JOYNER: One of his priors -- I apologize.  
23      One of his priors was PWID from 1999.

24              THE COURT: Well, that makes a difference then.  
25      What amount? How many grams was it?

1 MS. JOYNER: It was more than 28, less than 100.

2 THE COURT: All right. I beg your pardon. I  
3 misunderstood you. I thought you said PWID third.

4 That has not been changed, the new law of the  
5 trafficking.

6 MS. JOYNER: I do not believe so, Your Honor. I  
7 have not done drug cases for a very long time, so --

8 THE COURT: SO it would be 25 to 30 and a \$50,000  
9 fine. Okay.

10 MS. JOYNER: Your Honor, just for the record, Mr.  
11 Spratt's prior convictions are certified convictions are  
12 included in the file and they are the 1998 conviction for  
13 possession of crack, and the 1999 possession with intent to  
14 distribute crack cocaine. That's his only prior record,  
15 Your Honor.

16 THE COURT: Can I ask you to hand me that  
17 sentencing sheet that you had there?

18 THE CLERK: I'm filling it out.

19 THE COURT: Still working on it.

20 All right. Of course, I can hear you with regard  
21 to his record.

22 MS. JOYNER: The only prior record that Your Honor  
23 is aware of, Your Honor, as we were not the original parties  
24 to the case and I defer to Ms. Inzerillo, if you have any  
25 questions that you have.

1 THE COURT: Yes, sir.

2 MS. INZERILLO: Like Mr. Spratt, I'm the  
3 original -- the last remaining original party in this.

4 I did handle -- did represent Mr. Spratt in the  
5 pendency of his case through the trial and then through the  
6 sentencing initially.

7 Mr. Spratt has been incarcerated since 2007. So,  
8 Your Honor, I will have to calculate that time for you. I  
9 know he was sentenced on May 25th, 2007.

10 Your Honor, I will tell you that Mr. Spratt is  
11 married. His wife's name Michelle. They do have children.  
12 I have been in contact with Michelle. She's concerned about  
13 this case.

14 Essentially, Your Honor, we are asking for the  
15 mandatory minimum as given in this case. I know at the time  
16 I believe Mr. Spratt is sorry for what happened. I don't  
17 want the court to think any of the subsequent motions that  
18 we have made to detract from that, but, Your Honor, this is  
19 a serious crime. Mr. Spratt is aware of that. And we would  
20 ask the court to consider sentencing him to the minimum 25  
21 year sentence.

22 THE COURT: I'm giving him credit for the time  
23 served. I don't mind putting it in and let the sentence  
24 begin effective whenever he started serving the sentence,  
25 but if you know when that is.

1 MS. INZERILLO: May 25th, 2007. And the court --  
2 I can beg the indulgence of the court for one moment. He  
3 gets any credit for any time served.

4 THE COURT: Yes.

5 MS. INZERILLO: If my recollection serves me, as  
6 soon as he was picked up on the bench warrant, they got him  
7 into court fairly soon thereafter.

8 And I don't -- I see where Judge Newman did mark  
9 credit for time served, but there is no amount.

10 THE COURT: Okay. All right.

11 MS. INZERILLO: Mr. Spratt indicates it was April  
12 the 7th that he was picked up.

13 THE COURT: On the bench?

14 MS. INZERILLO: Yes.

15 THE COURT: April 27th or April 7th?

16 MS. INZERILLO: April the 7th.

17 THE COURT: 2007?

18 MS. INZERILLO: Yes, sir.

19 THE COURT: Mr. Spratt, is there anything that you  
20 want to tell to the court?

21 THE DEFENDANT: I'm sorry, I mean, but --

22 THE COURT: Well, the court's hands are somewhat  
23 tied in this case because you got a minimum sentence. I  
24 can't go below that. Of course, Judge Cole sentenced you to  
25 30 years, which is the maximum. Now that was a unsealed

1 sentence. You are entitled to mitigation to that and make a  
2 finding, so I think the appropriate sentence is for the  
3 minimum sentence is 25 years.

4 In case number -- so I'm going to pose the  
5 sentence on you that I would impose on you at that time if I  
6 were the sentencing judge. I think based on the mitigation  
7 and what we have heard here.

8 In case number 2006-GS-46-1625, Eric Spratt,  
9 having been found guilty of trafficking crack cocaine, third  
10 offense, in an amount between 28 and 100 grams, the sentence  
11 of the court is he be committed to the State Department of  
12 Corrections for a determinate term of 25 years.

13 He was given credit for time served by beginning  
14 this sentence effective April the 7th of 2007.

15 MS. INZERILLO: Thank you, Your Honor.

16 (END OF REQUESTED TRANSCRIPT OF RECORD)

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 7th day of June, 2011.

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

September 12, 2011



Michael R. Watts  
Circuit Court Reporter



- (b) 5/25/2007 - resentenced to 10 years
- (c) 6/7/2011 - resentenced to 25 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. 4/1/2013
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2013-UP-186
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective assistance of counsel

(b) Involuntary guilty plea

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

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_

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

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

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

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

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

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

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. \_\_\_\_\_

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

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

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

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

i. \_\_\_\_\_

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

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

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

(c) the disposition thereof:

i. \_\_\_\_\_

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

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

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

(d) the date of each such disposition:

i. \_\_\_\_\_

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

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

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

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

i. \_\_\_\_\_

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

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

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

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

\_\_\_\_\_

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

(a) which grounds have been presented:

i. \_\_\_\_\_

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

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

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

i. \_\_\_\_\_

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

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

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

(a) \_\_\_\_\_

(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? \_\_\_\_\_
  - (c) your sentencing? yes
  - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
  - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_
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. Melissa Inzerillo, York County Public Defender's Office 1675-1E York Hwy., York, SC 29745
    - ii. Wanda Carter, Appellate Defense P.O. Box 115893, Columbia, SC 29211
    - iii. \_\_\_\_\_
  - (b) the proceedings at which each such attorney represented you:
    - i. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plea and sentencing
    - ii. appeal
    - iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:  
New Trial
20. Are you now under sentence from any other court that you have not challenged?  
No

STATE OF SOUTH CAROLINA )  
 )  
County of Greenville )

VERIFICATION

I, Eric Antonio Spratt, 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.

Eric Spratt

SWORN to and subscribed before me this 19  
day of March, 2014.

Tamara Cmwell (L.S.)  
Notary Public

My Commission Expires  
September 25, 2023

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

FILED-RECEIVED  
2014 MAR 27 PM 2:29  
DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

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

I, Eric Antonio Spratt, 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.

Eric Spratt  
Applicant

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

Tamara Conwell  
Notary Public

My Commission Expires  
September 25, 2023

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

FILED-RECEIVED  
2014 MAR 27 PM 2:29  
DAVID HAMILTON  
C.C.P. & U.S.  
YORK COUNTY, SC

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 Eric Antonia Spratt, #257899, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-0952

**RETURN**

In response to the post-conviction relief application filed on March 27, 2104, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the May 2006 term of the York County Grand Jury for Trafficking in ice, crank or crack cocaine (2006-GS-46-1625) and Possession of Marijuana (2006-GS-46-1626). Melissa Inzerillo, Esquire, represented him. On June 6, 2006, the Applicant proceeded to a jury trial *in absentia* pursuant to which he was found guilty of both charges as indicted. The Honorable Derham Cole issued a sealed sentence. On May 25, 2007, the Applicant appeared before the Honorable Clifton B. Newman for the unsealing of the sentence. Judge Newman sentenced the Applicant to confinement for thirty (30) years for trafficking crack cocaine and one (1) year, concurrent, for Possession of Marijuana. The Applicant immediately moved for a reconsideration of the sentence. Judge Newman granted the motion and reduced the Applicant's sentence to ten (10) years, finding the conviction to be a second rather than a third offense.

The State filed a notice of appeal on June 4, 2007. The South Carolina Court of Appeals reversed Judge Newman and remanded the case for additional proceedings with respect to the issue of a waiver of counsel during Applicant's 1998 guilty plea. State v. Spratt, 383 S.C. 212, 678 S.E.2d 266 (Ct. App. 2009). The Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court, which was granted. Following submission of briefs and oral argument by the parties, the South Carolina Supreme Court issued an order denying the Petition for Writ of Certiorary as improvidently granted. State v. Spratt, Op. No. 2011-UP-MO-005 (S.C. Ct. filed January 31, 2011).

On June 6-7, 2011, the Applicant appeared before the Honorable Lee S. Alford on remand consistent with the South Carolina Court of Appeals' opinion. After a hearing, Judge Alford determined the Applicant failed to meet his burden of showing that he was not advised of and did not waive the right to counsel at his 1998 guilty plea. The 1998 conviction was thereafter used to enhance the trafficking conviction from a second offense to a third offense. Judge Alford sentenced the Applicant to twenty-five (25) years with credit for time served.

A notice of appeal was filed on the Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Spratt, Op. No. 2013-UP-186 (filed May 8, 2013). The Remittitur was issued on June 4, 2013.

## II.

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

1. "Ineffective assistance of counsel"
2. "Involuntary guilty plea"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and  
Page 2 of 5

the South Carolina Department of Corrections' records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### III.

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process

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

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

#### IV.

The Applicant further alleges his guilty plea was not voluntarily made. The Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

The Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the

voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record.

Accordingly, the Respondent requests an evidentiary hearing on this allegation: Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

By:   
~~ATTORNEYS FOR RESPONDENT~~

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

June 24, 2014.

STATE OF SOUTH CAROLINA )

COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS

2014-CP-46-0952

ERIC SPRATT, #257899 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )

Respondent. )

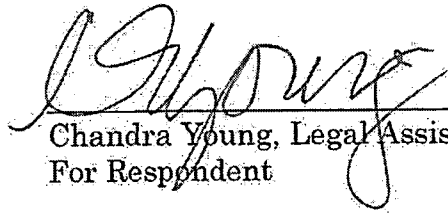
1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire  
Post Office Box 88  
Irmo, SC 29063

DATED this 24<sup>th</sup> day of June, 2014.

  
Chandra Young, Legal Assistant  
For Respondent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA

-----x

ERIC SPRATT,

Petitioner,

Case No.

-against-

2014-CP-46-0952

STATE,

Respondent.

-----x

November 20, 2014

York, S.C.

B E F O R E:

HONORABLE ALISON R. LEE

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

THOMMY A. THOMAS, Esquire

Attorney for the Petitioner

J. RUTLEDGE JOHNSON, Esquire

Attorney for the Respondent

Aileen Butler

Official Court Reporter



1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
3				
4		NO EXHIBITS MARKED		
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 MR. JOHNSON: May it please the court, this is  
2 case of Eric Antonia Spratt versus State of South  
3 Carolina. It is case number 2014-CP-46-00952. It has  
4 quite a lengthy procedural history if he you will bear  
5 with me.

6 Applicant was indicted at the May 2006 term of the  
7 York County Grand Jury for trafficking crack cocaine  
8 and possession of marijuana. Melissa Inzerillo  
9 represented him. On June the 6th, 2006 he proceeded  
10 to a trial in absentia pursuant to which he was found  
11 guilty of both charges as indicted.

12 The Honorable Durham Cole issued a sealed sentence.  
13 On May 25th, 2007 applicant appeared before the  
14 Honorable Clifton B. Newman for unsealing of the  
15 sentence. Judge Newman sentenced him to confinement  
16 for thirty years for trafficking crack cocaine and one  
17 year concurrent for possession of marijuana. The  
18 applicant immediately moved for reconsideration of the  
19 sentence. Judge Newman granted the motion and reduced  
20 the sentence to ten years finding the conviction to be  
21 a second rather than a third offense.

22 State filed a Notice of Appeal on June 4th, 2007.  
23 South Carolina Court of Appeals reversed Judge Newman  
24 and remanded the case for additional proceedings with  
25 respect to the issue of waiver of counsel during

1 applicant's 1998 guilty plea. Applicant then filed a  
2 petition for Writ of Cert in South Carolina Supreme  
3 Court which was granted. Following the submission of  
4 briefs and oral argument the Supreme Court issued an  
5 Order denying the petition as improperly granted.

6 On June 6th and 7th, 2011 he appeared before the  
7 Honorable Lee A. Alford on remand consistent with the  
8 Court of Appeals opinion. After a hearing Judge  
9 Alford determine that the applicant had failed to meet  
10 his burden of showing he was not advised of and did  
11 not waive his right to counsel at his 1998 guilty  
12 plea. The '98 conviction was thereafter used to  
13 enhance the trafficking conviction from a second  
14 offense to a third. Judge Alford sentenced the  
15 applicant to 25 years with credit for time served.

16 A Notice of Appeal was filed on his behalf and  
17 appeal was perfected. The South Carolina Court of  
18 Appeals confirmed that conviction and sentence. A  
19 Remittitur was thereafter issued June the 4th, 2013.  
20 Mr. Spratt then filed a post conviction relief  
21 application March 27th, 2014 and the State filed its  
22 return June 24, 2014 and he is represented here today  
23 by Mr. Tommy Thomas.

24 THE COURT: And before we begin, Judge Newman  
25 opened the sealed sentence?

1 MR. JOHNSON: Yes, ma'am.

2 THE COURT: And he also heard the motion to  
3 reconsider the imposition of a thirty-year sentence;  
4 is that correct.

5 MR. JOHNSON: Yes, ma'am.

6 THE COURT: And there was an appeal from that by  
7 the State?

8 MR. JOHNSON: Yes, ma'am.

9 THE COURT: And so I assume that there is a  
10 transcript of that proceeding --

11 MR. JOHNSON: I do not have that proceeding. It  
12 may be in our direct appeal file. I just didn't think  
13 it was part of this.

14 THE COURT: And it may not be an issue. In the  
15 event it's available I just want to make sure.

16 MR. JOHNSON: I believe it would be available,  
17 yes, ma'am.

18 THE COURT: And so really the issue that we are  
19 here on at this particular time relates to the hearing  
20 before Judge Alford when it came back from appeal as  
21 to taking testimony on the -- on the -- whether or not  
22 the plea in 1998 was uncounseled.

23 MR. JOHNSON: Correct.

24 THE COURT: And that's the hearing that I have  
25 before me that I have read and that was in June of

1 2011?

2 MR. JOHNSON: Yes, ma'am.

3 THE COURT: Okay, and there were two volumes, one  
4 on June 6th and one on June 7th.

5 MR. JOHNSON: Yes, ma'am.

6 THE COURT: Okay, I want to make sure. Yes, sir  
7 Mr. Thomas.

8 MR. THOMAS: Your Honor, if it please the Court.  
9 It took me a while to kind of understand this case and  
10 I had to kind of keep going over and over and I tried  
11 my best to simplify my understanding to be able to  
12 present it to the Court to tell the story basically of  
13 what our position is and what we think happened.

14 The facts are simple, but the concept is pretty  
15 complicated and it is basically an enhancement --

16 THE COURT: Right.

17 MR. THOMAS: -- as the Court just heard. We've  
18 isolated I guess three issues. And one is that we  
19 think counsel was ineffective of the argument of the  
20 waiver of counsel before Judge Alford, and I would be  
21 glad to set that out and show you why I think that was  
22 ineffective. And the other thing is there was no  
23 objection to introduction of opinion. One was is the  
24 opinion of Judge Alford who says I've known Judge  
25 Hayes for years. I've know this, this and this, and

1 also the opinion of EB Springs who said he practiced  
2 in the solicitor's office for some years and he also  
3 attested to the regularity of what Judge Hayes says in  
4 the courtroom. And the third issue is that there was  
5 no transcript, and counsel did not request some sort  
6 of reconstruction of the plea transcript from back I  
7 think it was in '98, Your Honor.

8 THE COURT: Well, we all know that there would not  
9 have been any kind of transcript available from 1998.

10 MR. THOMAS: And there wasn't. And one thing that  
11 keeps jumping out to me are two different terms. One  
12 is actual imprisonment and one is the issue of  
13 presumption of regularity and we hope to tie those in  
14 to be able to explain to the Court how we think those  
15 are relevant in this case Your Honor.

16 THE COURT: All right. Yes, sir.

17 MR. THOMAS: Your Honor, if it please the Court we  
18 call Mr. Spratt to the stand.

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

22 THE COURT: State your full name, please.

23 THE WITNESS: Eric Antonio Spratt.

24 THE COURT: Yes, sir, Mr. Thomas.

25 MR. THOMAS: May it please the Court.

1 DIRECT EXAMINATION

2 BY MR. THOMAS:

3 Q Mr. Spratt, you are currently serving a sentence in the  
4 South Carolina Department of Corrections?

5 A Yes, sir.

6 Q And how long is that sentence?

7 A Twenty-five years.

8 Q And this is for what crime?

9 A Third offense traffic.

10 Q And that offense was enhanced by two prior offenses?

11 A Yes, sir.

12 Q And when were those offenses.

13 A 1998 and 1999.

14 Q All right. And briefly what was the '98 charge?

15 A I think it was possession of crack cocaine.

16 Q All right. And did you have counsel at that time?

17 A No, sir.

18 Q And what did you receive as sentence for that?

19 A Suspended sentence of probation.

20 Q All right. And what was the other charge that you had  
21 in '99?

22 A Possession with intent I think.

23 Q Okay, and did you receive a sentence for that?

24 A I received four years.

25 Q All right. And what happened to the 98 charge?

1 A I received six months.

2 Q As revocation of your probation?

3 A Yes, sir.

4 Q Now, Mr. Spratt, you were tried in your absence in  
5 2006?

6 A Yes, sir.

7 Q And then you were brought before the Court in 2007?

8 A Yes, sir.

9 Q And a sealed sentence was opened at that time?

10 A Yes, sir.

11 Q And what type of sentence did you receive?

12 A I received 30-year sealed sentence and \$50,000 fine.

13 Q All right, sir, and that was in front of Judge Newman?

14 A Yes, sir.

15 Q And was motion made for --

16 A Dismissal of my '98 conviction because I was actually  
17 incarcerated later upon violation of probation.

18 Q Okay. So, for improper enhancement?

19 A Yes, sir.

20 Q And what kind of relief did Judge Newman grant?

21 A He ruled that it was unconstitutional because I was not  
22 represented by counsel.

23 Q And what kind of sentence did he give you?

24 A He gave me second offense ten years.

25 Q And that was appealed?

- 1 A That was appealed by the State.
- 2 Q Went to the Court of Appeals?
- 3 A Court of Appeals.
- 4 Q And what did the Court of Appeals say?
- 5 A Under State versus Payne they reversed and remanded it  
6 for a hearing to determine whether or not I waived my right  
7 knowingly and intelligently.
- 8 Q Whether you waived your right to counsel under the 1998  
9 conviction?
- 10 A Yes, sir.
- 11 Q And then that was taken to the Supreme Court?
- 12 A Yes, sir.
- 13 Q And then?
- 14 A They granted it and they I think -- however you say it  
15 -- they grant -- they agreed to the superior court that a  
16 hearing needed to take place to determine whether or not I  
17 waived my right to counsel.
- 18 Q So what happened is that the Court of Appeals decision  
19 stood as final decision?
- 20 A Yes, sir.
- 21 Q Okay. Now, let me ask you about this. The -- and you  
22 know this case as well as anyone, at the time that -- at the  
23 time you were convicted in 1998, did you have a right to  
24 counsel?
- 25 A No, sir, I did not possess the right of counsel due to

1 Scott versus Illinois. The only people possess the right of  
2 counsel were actual imprisonment was being imposed.

3 Q Ok. So that term "actual imprisonment" --

4 A As being incarcerated.

5 Q So, that was the key. That was the trigger?

6 A Yes, sir.

7 Q And since you were not in prison --

8 A Yes, sir.

9 Q -- you had no right to counsel at the time?

10 A Yes, sir.

11 Q Okay, but later that changed?

12 A 2002, Alabama versus Shelton, the Supreme Court decided  
13 that the constitution right to counsel extended to a person who  
14 receives a suspended sentence upon probation.

15 Q All right. So then they said that if there was -- that  
16 you were entitled to an attorney if you received a sentence that  
17 may end up in the actual deprivation of a personnel liberty?

18 A Yes, sir.

19 Q Meaning incarceration?

20 A Yes, sir.

21 Q And was that applied retroactively to you?

22 A Yes, sir, under Taylor versus State 2007, South  
23 Carolina Supreme Court ruled that it does apply retroactively to  
24 collateral review.

25 Q Okay. So at the time in '98, it's your position that

1 you didn't waive your right to an attorney because you had no  
2 right to an attorney?

3 A I gave the Court my testimony. I never waived my right  
4 to counsel. I was never addressed that I had the right to  
5 counsel. I pleaded guilty. I entered a plea bargain in  
6 exchange for probation and that's what I received, probation.

7 Q Okay. And that's what you testified to in front of  
8 Judge Alford? You testified in front of Judge Alford that  
9 you --

10 A Never waived my right to counsel.

11 Q Never waived your right to counsel?

12 A Yes, and never was given the right to counsel.

13 Q And that had you been offered an attorney that you  
14 would --

15 A I would absolutely took it. I mean an attorney could  
16 have told me that I was going to get probation. It wouldn't  
17 have been a different outcome. I would've still accepted it.

18 Q So, it's your position that counsel was ineffective in  
19 arguing your case in front of Judge Alford, why?

20 A Because when it came down to the hearing to determine  
21 whether or not I waived my right to counsel it could have  
22 clearly been addressed that I never possessed the right of  
23 counsel due -- under Alabama versus Shelton. It only applied  
24 years later after my '98 conviction.

25 Q And Judge Alford was making an attempt to determine

1 under Supreme Court Court of Appeals decision to determine if  
2 you had waived counsel?

3 A Yes, sir.

4 Q All right, sir, and it's your position that you  
5 couldn't have waived counsel at the time in front of Judge Hayes  
6 because you didn't have the right?

7 A Exactly.

8 Q Now --

9 MR. THOMAS: If it please the Court, may I  
10 approach? I just to refer to a couple portions of  
11 the transcript?

12 THE COURT: Yes, sir.

13 Q Mr. Spratt, Judge Alford identified two different  
14 issues that was before the court, and this is on page 11 of the  
15 transcript.

16 THE COURT: Can you -- since I have two  
17 transcripts, can you identify which one.

18 MR. THOMAS: The first one.

19 THE COURT: June sixth?

20 MR. THOMAS: Yes, ma'am.

21 Q I would ask you if you can look at the transcript and  
22 they are lines six through seven and lines twelve through  
23 fifteen.

24 A Okay. Do you want me to read?

25 Q Yes, if you would please.

1           A     So the question presented to Court is, number one,  
2 could the sentence be used for enhancement.

3           Q     All right, and what is the second one?

4           A     Line twelve, they said that if it was an uncounseled  
5 plea but the defendant waives his right to counsel -- waives to  
6 be represented for -- excuse me. But the defendant waives his  
7 right to be represented for that plea after giving his  
8 Faretta-type warnings.

9           Q     Okay. So basically what we would determine whether it  
10 could be used for enhancement and whether or not there was a  
11 waiver?

12          A     Yes, sir.

13                   MR. THOMAS: Let me show on the transcript page  
14                   13, lines 24 through 25 and the transcript on page 14  
15                   would be line one and line six and seven, Your Honor.

16          Q     Mr. Spratt, I'm going to let you look at those. If  
17 you can read those to yourself. Basically what Judge Alford is  
18 saying there is that it couldn't be used to enhance if you paid  
19 a fine or that type of thing which would have been a situation  
20 where there was no incarceration.

21          A     Exactly.

22          Q     Which would have been prior to Alabama versus Shelton?

23          A     Yes, sir.

24          Q     Okay, and then he talks also about the case when you  
25 were actually incarcerated under suspended sentence on page 14?

1 A Yes, sir.

2 Q Okay. Is this where in this hearing the concept of  
3 actual incarceration starts to come in?

4 A Yes, sir.

5 Q And is that how it was presented to Judge Alford the  
6 issue of actual incarceration?

7 A Yes, sir.

8 Q Okay, and was the issue of actual incarceration  
9 applicable to you at the time that you entered into this plea  
10 back in 1998?

11 A No, sir.

12 Q All right, because you weren't incarcerated?

13 A Exactly.

14 Q And the case of Shelton had not come along?

15 A No, sir.

16 Q So at this point in time you were not entitled to  
17 representation?

18 A Exactly.

19 Q Now, how do you feel that this issue was not properly  
20 presented to Judge Alford?

21 A Well, first of all I wrote some down but I can go  
22 without reading.

23 Q What?

24 A I wrote down some things but I could go without reading  
25 it.

1 Q Well, let's just answer the question.

2 A How did I feel -- could you repeat question?

3 Q Okay. You feel like the issue of the waiver was not  
4 properly presented to Judge Alford and why do you feel that  
5 issue was not properly presented?

6 A Well, because it didn't actually apply to me. I mean,  
7 I had no possession of the right to counsel in 1998. I plead  
8 guilty in the plea bargain in exchange for probation without the  
9 knowledge of having the right to counsel and by law at that time  
10 the right to counsel wasn't required in the case like mine,  
11 so ---

12 Q Okay. But the issue that was presented to Judge Alford  
13 --

14 A Under me being actually incarcerated.

15 Q Actually incarcerated?

16 A Yes, sir.

17 Q Which used a lot of discussion regarding to pass the  
18 past actions of Judge Hayes and whether or not your waiver would  
19 have been included in any warnings that Judge Hayes would have  
20 given you; is that correct?

21 A Yes, sir.

22 Q And what's the problem with that line of reasoning?

23 A Because it wasn't a part of the law. I mean, what he  
24 did -- I mean -- what do you mean?

25 Q We couldn't presume that he did something if it wasn't

1 required that he do it?

2 A Yeah, exactly. Being presumption of regularity based  
3 on Parker versus the Highway Department which was used in State  
4 versus Payne, the case used against me, stated that upon  
5 conviction there is no longer the presumption of innocence. It  
6 then it raises a legal presumption that everything was just.

7 Q Okay. So what you are saying is that if we take the  
8 approach -- and I apologize for the lengthy questions.

9 A Yes, sir.

10 Q If we take the concept that Judge Hayes would have  
11 conducted his courtroom in a certain fashion. Okay. We take  
12 that, then we can't assume that he would have conducted his  
13 courtroom in the fashion of asking you about waiving counsel  
14 because of what?

15 A It wasn't required. Due to that it wasn't required.  
16 To fashion of him asking whether or not I waive my right to  
17 counsel give me the warnings within Faretta. It wasn't  
18 required. I wasn't required to receive that.

19 Q So we would have had to ask Judge Hayes to be  
20 clairvoyant to know that this case of Alabama was going to come  
21 down which was going to change and give you the right of counsel  
22 with your 1998 plea?

23 MR. JOHNSON: Objection to leading. That is so  
24 much testimony, Your Honor.

25 MR. THOMAS: I will try to rephrase it, Your Honor.

1 Q Could Judge Hayes at that point of time been able to --  
2 at that point in time the law was that you were not entitled to  
3 right of counsel?

4 A Yes, sir.

5 Q And that is is what Judge Hayes would have to rely on?

6 A That's what he would have had to go by.

7 MR. THOMAS: Your Honor, may I approach again?

8 THE COURT: Yes.

9 Q I want to bring your attention the first transcript  
10 page 44 and 45 and specifically lines 21 through 25 and one  
11 through 17 on page 45. I just want you to look over that.

12 A Yes, sir. Okay.

13 Q And those are statements made by Judge Alford?

14 A Yes, sir.

15 Q Okay. Would you -- what's Judge Alford saying?

16 A He's basically saying that -- I mean, he can't  
17 guarantee that it took place.

18 Q No, let me look at -- what is he saying about Judge  
19 Hayes's conduct?

20 A Well, he said I would tell you though that Judge Hayes  
21 has sentenced many people in his 20 years or so on the bench and  
22 13 years that I have been on the Circuit Bench I have had  
23 occasions to look at his guilty pleas that he presided over  
24 including many of them on post conviction relief. I have seen  
25 his plea colloquy many times in those transcripts including

1 those where somebody waives their right to have an attorney.

2 Q Okay. All right. So he is saying he has observed  
3 Judge Hayes in regards to his habit of asking about waiving --

4 A Their right to counsel.

5 Q -- their right of counsel. Okay.

6 Is there is there a problem with that analysis?

7 A Yeah. Well, my problem would be I didn't possess the  
8 right to counsel.

9 Q So that pattern of activity that Judge Alford observed  
10 would not apply to you?

11 A It wouldn't apply to me.

12 Q In 1998?

13 A 1998.

14 Q And that's because the case of Alabama versus Shelton  
15 had not come out yet?

16 A Exactly.

17 Q Okay. Then bringing your attention to page 51 in the  
18 second transcript. And I will bring your attention to page 51  
19 lines 8 through 12. If you look at the top who is testifying at  
20 that point in time?

21 A EB Springs.

22 Q Right, and just look over that paragraph if you would  
23 please.

24 What is Mr. Springs saying? Just summarize it for us.

25 A He's basically saying that Judge Hayes goes through an

1 advisement colloquy and Faretta warnings to pro se and the  
2 dangers of self representation.

3 Q Okay. And is he saying basically -- what is he  
4 basically saying about waiver of counsel by Judge Hayes?

5 A There is nothing there about a waiver.

6 Q But, Mr. Springs was used to show the past practice of  
7 Judge Hayes?

8 A Yes, sir.

9 Q Which would include the past practice of asking someone  
10 whether they waive counsel?

11 A Well, not by what EB Springs just said.

12 Q All right. But there's a problem with implying again  
13 that Judge Hayes' pattern of waiver is wrong?

14 A Yes, sir.

15 Q Okay, and why is that presentation or that pattern  
16 wrong?

17 A Under what EB Springs said?

18 Q Yes.

19 A Well, probably the only requirement that was required  
20 of me because it dealt with pleading guilty and waiving those  
21 rights, constitutional rights, but due to Faretta he spoke of, I  
22 didn't possess the one under the Faretta law because the only  
23 one -- the only people that possess the right to Faretta  
24 warnings are those who possess the right to counsel, to waive.

25 Q Okay. Let's talk about Faretta because I know that you

1 looked at all this. How does Faretta apply to you?

2 A In 1998?

3 Q Uh-huh.

4 A It didn't.

5 Q And why didn't it apply to you?

6 A Because I didn't possess the right to counsel. I  
7 didn't have a right to waive for it to apply to me. The Faretta  
8 case was built off of the Supreme Court knows that a person has  
9 a right to waive the right to counsel.

10 Q Okay. So if I were to ask you in 1998 why couldn't  
11 Judge Alford have determined that you waived counsel under the  
12 Faretta warnings?

13 A Why couldn't he?

14 Q Yeah.

15 A Because those warnings would pertain to a person who  
16 actually waived their rights. Who actually stated I waived my  
17 right to counsel and they would have to be warned of dangers of  
18 doing so, but because it wasn't addressed it didn't apply.

19 Q And is that because you didn't have a right to counsel  
20 to begin with?

21 A Yes, sir.

22 Q Because in Faretta he had a right to counsel?

23 A Yes, sir. They ruled it from State versus Payne which  
24 was the case the State used that basically got the case back in  
25 Court before Alford. Where they stated he represented himself

1 and was actually incarcerated for 15 days and later in his 1995  
2 conviction asked that it not be used for enhancement because he  
3 was not warned or given Faretta warnings and they stated on, you  
4 know, Park versus The Highway that they were able to presumption  
5 by law or assume that he waived it because he possessed it and  
6 you know, the conviction was presumed just.

7 Q And again we are talking about a presumption of  
8 regularity?

9 A Yes, sir.

10 Q Okay, and that's what we are talking about really isn't  
11 it with Judge Alford, he is talking about presumption of  
12 regularity?

13 A Yes, sir.

14 Q And how is he applying that presumption of of  
15 regularity to Judge Hayes?

16 A Well, in a way that everything that is required to a  
17 person Judge Hayes will automatically give that person what is  
18 required.

19 Q So why can't we apply to you the fact that you waived  
20 counsel?

21 A Because it didn't require. It wasn't required. It  
22 didn't apply.

23 Q So actually in your case the presumption of regularity  
24 would say what?

25 A Well, we assume that Spratt never waives his right

1 because he never possessed the right because his right to  
2 counsel would not get recognized by law.

3 Q So, if your case was sent down and it was?

4 A Yes, sir.

5 Q By Supreme Court for a determination that you waived  
6 counsel?

7 A Then that is what would have been his job to determined  
8 whether or not I waived my right to counsel.

9 Q Could it have been presumed by regularity that you  
10 waived?

11 A Not by law.

12 Q Okay. All right. Now, Eric, as I was talking earlier  
13 the facts of this case are simple but the conclusions are  
14 complicated.

15 A Yeah, I understand.

16 Q They are complicated, and you and I have sat down for a  
17 period of time to talk about this.

18 How do you think your plea counsel could have handled this  
19 differently? Why do you think she was ineffective?

20 A Well, I feel that she was ineffective in not addressing  
21 particularly what we are addressing now. That, you know, I  
22 never was required to receive the right to counsel, you know.  
23 It therefore shouldn't be part of the presumption of that I ever  
24 waived my right to counsel if my right to counsel was not  
25 recognized in 1998 due to the conviction and plea that I was

1 given.

2 Q And Judge Alford really basis his opinion on what?

3 A The presumption of regularity assuming that it all took  
4 place.

5 Q Based upon his opinion?

6 A Based upon his knowledge and opinion of what this  
7 hearing was based off of I guess.

8 Q All right, and also based upon the testimony of EB  
9 Springs?

10 A Off of EB Springs and his knowledge of, you know, Judge  
11 Hayes' standard procedures that are required by law.

12 Q Okay. Now, so you believe that the issue presented  
13 basically at your hearing was the wrong issue?

14 A Exactly. Being actually incarcerated it raised a lot  
15 of assumptions that may be not have been raised if it would have  
16 been addressed under Alabama versus Shelton, Tally versus State  
17 and even in Burgett versus Texas where the Gideon and Wainwright  
18 the right to counsel had not yet shifted from Federal to State,  
19 but he raised objections to one of his priors and the prior took  
20 place before 1963; Gideon versus Wainwright and presumed that  
21 the defendant had not waived the right he did not possess  
22 because the right to counsel had not yet been extended to state  
23 defendants. And I feel, you know, it could have been argued in  
24 my favor in the way of actually imprisonment was not -- well, my  
25 sentence in 1998 was not an actually imprisonment being imposed

1 and therefore I didn't possess the right to counsel, but years  
2 later the right to counsel extended to a person who received a  
3 sentence that I did receive in 1998.

4 Q And the thing that makes this case unique I guess is  
5 the fact that the Alabama case was applied retroactively?

6 A It's applied retroactively in relief I am guessing that  
7 of a person that falls under the category.

8 Q And that retroactive application is actually set forth  
9 pretty clearly in Tally versus State.

10 A Tally versus State the PCR judge dismissed. 2007 they  
11 dismissed his 1995, '96 prior uncounseled convictions that ended  
12 in suspended sentences. But the South Carolina Supreme Court  
13 under Jean Toal overturned the PCR judges determination that it  
14 couldn't be used because he was only given suspended sentences  
15 upon fines and a -- upon fines. Suspended sentence upon fine  
16 would not ever trigger a person ever being incarcerated. So  
17 they stated that any suspended sentence before 2002 that could  
18 not end up in actual deprivation of a person's liberty could be  
19 used to enhance.

20 Q What raises an interesting issue is that had Alabama  
21 not come along and standard had been actual imprisonment under  
22 the '98 situation it could have been used to enhance, couldn't  
23 it?

24 A Yes, I could never have waived the 6th and 14th  
25 amendment right to counsel.

1 Q Because you didn't have one?

2 A I didn't have one. I couldn't raise it.

3 Q So therefore absent the Alabama case it would have been  
4 improper to use to enhance?

5 A It would have been considered as all the rest, to use  
6 for enhancement.

7 Q But for Alabama?

8 A It was discovered that a person given a suspended  
9 sentence upon probation may be triggered to it being  
10 incarcerated which actually I was incarcerated under probation  
11 violation once later after I was given the probationary  
12 sentence, but that's where the error came under Melissa's  
13 argument actual imprisonment. Because she argued under actual  
14 imprisonment and not under the way that Alabama and Shelton  
15 really stood for that led to State versus Payne and presumption  
16 of regularity. Presumption that I was within those rights  
17 because actually imprisonment was raised by her and led to where  
18 we ended up at in front of Alford.

19 Q Because the issue of actual imprisonment is not really  
20 necessary in your case, is it?

21 A No, sir.

22 Q And the reason it's not necessary is why?

23 A Because Alabama versus Shelton.

24 Q Changed it?

25 A Changed it.

1 Q Okay. Now, Eric, I know that you have been waiting a  
2 long time for this hearing. I am not saying that I left  
3 anything out or that I missed anything, but this is your  
4 opportunity to address the Court. Is there anything else that  
5 you think you need to bring to the Court's attention?

6 A Well, I mean it's basically all there, in a way I took  
7 it for understanding myself if I am allowed to read it.

8 Q Go ahead, very briefly.

9 A Okay. Well, in 2007, I, Eric Spratt was brought before  
10 the Honorable Judge Newman and sentenced to a sentence -- a  
11 sealed sentence of thirty years and fine of \$50,000 for third  
12 offense, trafficking. My attorney then was Melissa Inzerillo  
13 and she moved for motion to dismiss the use of my prior  
14 uncounseled 1998 conviction because it was later incarcerated  
15 for violation of probation and there was no waiver in the  
16 record. She argued that because I actually -- I was actually  
17 incarcerated and there was no waiver and because I said I did  
18 not recall waiving my right to counsel it should not be used for  
19 enhancement. Honorable Judge Newman ruled in our favor that my  
20 prior uncounseled conviction was unconstitutional because I was  
21 not represented by counsel.

22 The State appealed because my case was argued and in this  
23 manner it was presumed I waived my right to counsel and all  
24 other requirements that were due under actual imprisonment. In  
25 controlling in 1998 was Scott versus Illinois where the only

1 cases that possessed the right to counsel was where there was  
2 actual imprisonment being imposed. On appeal the State cited  
3 State versus Payne where the defendant represented himself and  
4 was actually incarcerated to 15 days of imprisonment, and in  
5 1995 he was charged with DUI once again but argued his 1998  
6 conviction should not be used for enhancement because he was not  
7 warned of Faretta warnings. The Appeal Court stated however our  
8 case law has a long history of embracing the presumption of  
9 regularity that attaches to final judgement. See Parker versus  
10 State Highway.

11 Upon conviction there is no longer a presumption of  
12 innocence. There is then arises a legal presumption that the  
13 conviction is just. Because Payne received actual imprisonment  
14 he possessed the right to counsel and the rights within the  
15 Faretta warning requirements. Therefore those requirements  
16 could be presumed to have been just.

17 I, Eric Spratt, plead guilty in exchange of probation and  
18 received five years suspended to three years probation. By law  
19 and control under Scott versus Illinois I did not possess the  
20 right to counsel in 1998 conviction. In 1992 State versus --

21 MR. JOHNSON: Your Honor, first of all this is  
22 cumulative testimony. Second of all, he is making  
23 legal argue. Because he does have counsel it needs to  
24 go through counsel. He's already had his testimony  
25 and I ask you to strike this as cumulative.

1           THE COURT: To the extent that he is making a  
2           legal argument that was in the form of testimony I  
3           will say he does have counsel to allow him to do that  
4           and some of it is cumulative. So if there is  
5           something different that hasn't been discussed so far  
6           I will be happy to hear.

7           THE WITNESS: Okay.

8           THE COURT: I will sustain the objection.

9           Q     Eric, what you need to do is just approach it from the  
10          question that I asked; is there anything else that you want to  
11          bring to the attention of the Court that you feel that is  
12          important in regards to you, not necessarily case law?

13          A     Well, I was addressing it because it pertained to the  
14          situation, which was I was going to State versus Wickerhouser  
15          (phonetic) where the defendant prior to 1985 uncounseled  
16          conviction --

17          MR. JOHNSON: Objection. It's the same objection.  
18          He is going back into case law, Your Honor.

19          THE COURT: Mr. Spratt, if you would just look  
20          through the information that you have and if there  
21          something in there that hasn't been discussed in terms  
22          of the questions that were asked or the information  
23          given. It may be in a different form than what you've  
24          written down, but as long as you have already  
25          discussed it, we are looking for something that you

1 have not already discussed.

2 THE WITNESS: Okay.

3 THE COURT: And Mr. Thomas will give me the case  
4 law.

5 MR. THOMAS: And we have, Your Honor. All the  
6 cases he is talking about is in the packet that we  
7 have submitted to the Court.

8 BY MR. THOMAS:

9 Q Eric, in summary let me just ask you this.

10 A Okay.

11 Q We talked about why you felt you were entitled to post  
12 conviction relief action or relief, in regards to the law in the  
13 cases that have been cited I know you are not an attorney but  
14 why do you feel like counsel was ineffective?

15 A Well, I feel like had these issues and arguments been  
16 brought forth before the Honorable Judge Alford I would have  
17 received -- well, the outcome would have been different.

18 Q Okay. And that based upon that you feel she was  
19 ineffective and you feel like you would be entitled to relief  
20 from this Court?

21 A Yes, sir.

22 Q So you feel you were prejudiced as a result?

23 A I feel like I was seriously prejudiced because  
24 everything that has been stated actually applied to me and it  
25 wasn't, you know, brought forth in my defense.

1 Q And what is the difference in years between the  
2 sentence you got from Judge Newman and the sentence you received  
3 from Judge Alford?

4 A Twenty-five years -- it was a 15-year difference.

5 Q Yes, sir,

6 MR. THOMAS: Your Honor I have no further  
7 questions.

8 THE COURT: Any cross.

9 MR. JOHNSON: Yes, ma'am.

10 CROSS EXAMINATION

11 BY MR. JOHNSON:

12 Q Mr. Spratt, you are aware that if you do win this  
13 hearing, or this PCR, you just go back and get another  
14 sentencing hearing, right, under a second offense?

15 A Yes, sir.

16 Q You don't get a whole new trial. You just get the  
17 sentencing hearing, correct?

18 A That's all I get, sentencing hearing.

19 Q You get to go back and be sentenced under a second  
20 offense not a third. Does that make sense?

21 A Yes, sir.

22 Q You understand that?

23 A Yes, sir.

24 Q Okay, and you understand that the exposure for that is  
25 seven to thirty years. So you could receive thirty years?

1 A I understand.

2 Q Okay, and you have quoted Gillian version Waynewright  
3 are you aware that case came out in 1963?

4 A Yes, sir.

5 Q Okay, and that guaranteed the right to counsel for  
6 everybody in a criminal prosecution?

7 A Yes, sir.

8 Q Okay. And you also aware that Faretta came out in  
9 1975?

10 A Exactly.

11 Q Okay. So that would have applied to you in 1998?

12 A It would have applied to applied to a person who  
13 possessed the right of counsel in 1998. Because of Gillain  
14 versus Waynewright was held in 1963 didn't mean when 1988  
15 arrived I applied to the right of counsel. That was changed  
16 under Argersinger versus Hamlin. It was changed within -- and  
17 Scott, that the only person that possessed that right due to  
18 Court reasons that the person only applied the right to counsel  
19 was actual imprisonment being imposed.

20 MR. JOHNSON: I will leave that for argument,

21 Your Honor.

22 Q So when you went in front of Judge Alford back in 2011,  
23 would you agree we me that he found your testimony not credible?

24 A Yeah.

25 Q Okay. And that he stated that you failed to prove by

1 the preponderance by a preponderance of the evidence that you  
2 weren't advised to a right to an attorney? That was his  
3 finding?

4 A Exactly.

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

6 MR. THOMAS: Your Honor, just one question.

7 THE COURT: I'm sorry.

8 MR. THOMAS: Your Honor, if it please the Court  
9 just one question.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. THOMAS:

13 Q Mr. Spratt, when you had the hearing in front of Judge  
14 Alford you were truthful?

15 A Yes, sir.

16 Q All right, and it had been how long since you had  
17 entered that plea in 98?

18 A 2006 --

19 Q A long time?

20 A Yes, it was 2011 -- till like 13 years. I guess about  
21 that.

22 Q All right, and you told him you were honest and you  
23 told him what you did remember?

24 A Yes, sir.

25 Q And what you did remember was that you were not offered

1 an attorney nor did you waive an attorney?

2 A Yes, sir.

3 Q Actually you told him that if you had been offered an  
4 attorney you would have accepted an attorney?

5 A Exactly.

6 Q All right.

7 MR. THOMAS: Your Honor, I have no further  
8 questions.

9 MR. JOHNSON: One follow up, Your Honor.

10 THE COURT: Yes, sir.

11 RECROSS EXAMINATION

12 BY MR. JOHNSON:

13 Q And HE still found you not credible, right?

14 A I mean he believed -- what he believed about Judge  
15 Hayes.

16 Q That's not my question. He found you not credible,  
17 correct?

18 A Yes, sir.

19 MR. JOHNSON: No further questions.

20 THE COURT: You may step down. Thank you.

21 (Whereupon, the witness was excused.)

22 THE COURT: Any further witnesses Mr. Thomas?

23 MR. THOMAS: Beg the Court's indulgence just one  
24 second.

25 Your Honor, if it please the Court that is the

1 applicant's case.

2 MR. JOHNSON: The State calls Melissa Inzerillo,  
3 Your Honor.

4 MELISSA INZERILLO, called as a witness, having  
5 been duly sworn by the clerk, was examined and  
6 testified as follows:

7 THE COURT: State your full name for the record  
8 please.

9 THE WITNESS: Melissa Ann Inzerillo.

10 DIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q Good afternoon Miss Inzerillo.

13 A Good afternoon.

14 Q Do you remember become involving in Mr. Spratt's case?

15 A I do.

16 Q And at what point did you become involved?

17 A I became involved at the trial portion of this case.

18 Q So you were his trial counsel?

19 A Yes.

20 Q And he was not there for trial?

21 A He was not.

22 Q And who was the judge?

23 A Judge Cole.

24 Q And what happened to his sentence?

25 A It was sealed.

1 Q And was it ever unsealed?

2 A It was. Judge Newman unsealed it.

3 Q And what was that sentence?

4 A Thirty years.

5 Q And did you file any motions?

6 A I did a motion to reconsider.

7 Q And what was the result of that?

8 A Judge Newman granted the motion to reconsider. The  
9 basis of the motion was it should not have the been a third  
10 offense, trafficking. It should have been a second offense  
11 based on uncounseled plea from 1998. Similar arguments were  
12 made in that hearing as was made in this hearing and he granted  
13 the motion. Found it should have been a second and resentenced  
14 to Mr. Spratt to a ten year sentence.

15 Q So you made the Shelton versus Alabama or Alabama  
16 versus Shelton argument?

17 A Yes, sir. I made arguments that essentially under  
18 Shelton and the subsequent line of cases, I believed on Sosbee  
19 as well, that Mr. Spratt's 1998 conviction was uncounseled  
20 because he was sentenced to probation from his 1998 conviction  
21 but was later revoked six months from that probation and because  
22 he did not have benefit of counsel I argued that would trigger  
23 the -- under the enhancement case law that could not be  
24 considered. Judge Newman agreed and did reduce down to a second  
25 and resentenced him.

1 Q And what happened in reference to that decision?

2 A The State appealed that decision.

3 Q And the Court of Appeals overturned it?

4 A They did.

5 Q And then the Supreme Court granted Cert and dismissed  
6 as improperly granted?

7 A That's correct.

8 Q And then it came back here for a hearing in front of  
9 Judge Alford?

10 A It did. Essentially the State argued in front of Judge  
11 Newman that that just the fact that it was uncounseled plea was  
12 not enough. That Judge Newman also had to take into  
13 consideration whether he waived his right to Faretta and Judge  
14 Newman disagreed with that and found for the defense. So when  
15 it went up on appeal in State v Spratt they argued -- the found  
16 that for reconsideration purposes it needed -- the trial Court  
17 needed to find whether Mr. Spratt waived his right to counsel  
18 under Faretta in the 1998 conviction.

19 Q And so that's how we got to the 2011 hearing in front  
20 of June Alford?

21 A That's correct.

22 Q And what arguments did you make in that hearing?

23 A I made two motions in that hearing. The first motion  
24 was to have the case put back before Judge Newman as he was the  
25 judge that heard the original motion to reconsider on May 25,

1 2007. The Order from the Court of Appeals was silent on that  
2 but I cited Cox v -- sorry, I lost the case. Cox v Fleetwood  
3 Homes of Georgia -- and as Judge Alford offered to have Judge  
4 Newman rehear the case, Judge Alford denied that motion and so I  
5 made a second motion essentially renewing the arguments that we  
6 had made in front of Judge Newman in the original motion. That  
7 it should be a second offense and not a third. Following the  
8 scriptures laid out by the State v Spratt case as outlined by  
9 the Court of Appeals.

10 Q And who all testified at that hearing?

11 A Two people did; Mr. Spratt testified on our behalf and  
12 Mr. Springs testified on behalf of the State.

13 Q And one allegation is that you failed to object to Mr.  
14 Springs' testifying. Is there a reason that you would not have  
15 objected?

16 A I did not object because I felt like Mr. Springs  
17 testimony didn't hold much water. We had put up Mr. Spratt.  
18 Mr. Spratt was the only person that was there that day. He was  
19 the only that could actually testify as to what happened. I  
20 understood that Court of Appeals in the State v Spratt Order --  
21 or opinion, had held there would be a presumption of regularity,  
22 but certainly Mr. Spratt on cross examination had to admit that  
23 he was for the there for Mr. Spratt's hearing. He did not know  
24 what Judge Hayes had actually done on that day and I felt like  
25 that testimony would be -- that the judge I thought would take

1 that into consideration and so I did not object to his motion.

2 Q And then other allegation that you failed to object to  
3 the Court expressing his own experience with Judge Hayes. Is  
4 there a reason why you did not object to that?

5 A It was clear that those thoughts were in Judge Alford's  
6 head. He said it twice in the hearing. You can tell we had a  
7 little bit of a break in the hearing. Judge Alford saying that  
8 on the record obviously it would be there for Appellant review,  
9 and we did appeal the finding -- the finding and the sentence in  
10 this hearing. And certainly if the Appellant Court felt it was  
11 improper it would be on the record for them to make that finding  
12 and so I did not object to that.

13 Q In your professional experience please explain to the  
14 Court what your opinion of -- or your reading of Alabama versus  
15 Shelton holds?

16 A Alabama versus Shelton is a case that allows us in so  
17 many words and it is progeny allows us to access whether a prior  
18 conviction is enhanceable or not. It does not go back and undo  
19 any prior conviction.

20 Essentially a defendant, anyone in this country has a right  
21 to counsel through the 6th and 14th Amendment. At any point  
22 that they are involved in criminal matters and substantial  
23 stages of criminal matters and then there has been a lot of  
24 cases that have been sort of figuring out what that means over  
25 the last two hundred years.

1 Alabama versus Shelton came along when there was a question  
2 about whether essentially in the contents of Magistrate cases  
3 whether people who got fines or no incarceration that it could  
4 be an applied in whether those charges could be used to enhance.  
5 So Alabama versus Shelton and State v Tally -- or Tally v State  
6 in those lines of cases gives us guidelines as to whether a  
7 person prior conviction as it stands could be used to enhance  
8 and the parameters in which those cases can be used to enhance.  
9 The actual imprisonment sort of prong -- underlying component of  
10 those cases come in to play when as in Mr. Spratt's case he was  
11 sentenced to probation which normally without benefit of counsel  
12 that would be used to enhance. Because he was actually revoked  
13 on that and there was actual imprisonment component then because  
14 of those progeny of cases we can then go back and use that to  
15 argue that he did serve actual imprisonment and that should not  
16 be allowed to use to enhance the current charge that he has.

17 So it's a way to use looking at the context of the charge he  
18 has now, which in Mr. Spratt's case a trafficking third, to see  
19 whether it should be a third offense based on his prior record.  
20 But it does not go back and undo anything the prior charge.  
21 That's where the State v Payne presumption of regularity  
22 phraseology comes in that the Court relies on in State v Spratt  
23 which is the idea that the prior convictions are essentially  
24 okay as they stand unless the defense can prove a problem with  
25 it and that is what we intended to do in this hearing. By

1 putting Mr. Spratt on the stand he explained under oath he did  
2 not get his Faretta warnings and had he gotten those Faretta  
3 warnings he would have requested an attorney. That is why we  
4 put up that testimony because we had to show there was some sort  
5 of constitutional defect in that prior -- in that prior charge  
6 that he had on his record and in order to do that that's how we  
7 can only show that it shouldn't have been enhanced because he  
8 did serve -- he did serve the actual imprisonment and that's  
9 what State v Spratt and the Court of Appeals told us to do for  
10 the second prong. That we had to show that there was a problem.  
11 Not only that he it was an uncounseled plea which is essentially  
12 the Alabama v Shelton and it is progeny prong but also along  
13 with that did he have -- was he given those Faretta warnings,  
14 was there an issue with that which is why we went through his  
15 testimony on that.

16 Q And Mr. Spratt is claiming that he did not have the  
17 right to Faretta warnings in this case because he did not --  
18 because of his charge. Can you explain your opinion on that?

19 A I disagree with that. Faretta came down in '75.  
20 Faretta warnings are, I think, were required in 1998. I think  
21 for the reasons that we have seen here certainly the danger of  
22 self-representation as explained in Faretta and the reason why  
23 the judges give pro se defendants Faretta warnings are not just  
24 that a defendant would have accepted probation had they had an  
25 attorney and the attorney would have told them probation, but

1 attorneys do much more than than. An attorney may have told Mr.  
2 Spratt at that time that he had a possible defense to the case.  
3 What would have been the inherent dangers of a plea. Certainly  
4 could that plea have been used against him 15 years later in the  
5 case of trafficking.

6 It would have been those advisements and those things that  
7 attorneys routinely and generally do. That is the reason why  
8 Faretta warnings are given because without benefit of an  
9 attorney he may not have known that. So it is much more than  
10 just an attorney telling him he what the offer was and he would  
11 gone in and gotten it. So my belief is at the time of 1998  
12 Faretta warnings would have been given and certainly that would  
13 have been a crucial issue and it was a central issue as to  
14 whether Judge Hayes gave those Faretta warnings or not. And as  
15 I pointed out to Judge Alford in our hearing we didn't have any  
16 -- the only way to know that was through Mr. Spratt. We didn't  
17 have any written documentation of that. There was no  
18 transcript. We didn't have any documentation or any notation on  
19 the sentencing sheet and so the only person -- Judge Hayes never  
20 came in and testified, and we certainly had no idea who the  
21 solicitor was. And so the only person who could provide any  
22 insight and indication of that was Mr. Spratt and he was the  
23 only one who testified.

24 Q And to reiterate, Judge Alford found his testimony not  
25 credible because he had a selected memory?

1 A That's what Judge Alford said on the record, yes.

2 Q At this time of this 1998 plea would Mr. Spratt have  
3 had the right to counsel?

4 A Yes, he would have.

5 Q How so?

6 A He would have had it through the 6th and 14th  
7 Amendment. He would have had it because a plea is a substantial  
8 part of a criminal trial, criminal proceedings as would have  
9 been given to him under the 6th and 14th Amendments. He would  
10 have had it under Gideon.

11 I believe a judge would have admonished him under Faretta of  
12 the rights and the dangers of going forward pro se, and I know  
13 there are other cases in there. I am just giving you the  
14 hi-lights.

15 Q Just to sum things up, his whole argument revolves  
16 around the Shelton case and from what I take his opinion is that  
17 because his was prior to Shelton he never had the right to  
18 counsel. He didn't have the right to Faretta warnings because  
19 it didn't exist. What is your take on that?

20 A Alabama versus Shelton doesn't give you right to  
21 counsel. Alabama versus Shelton gives the ability to determine  
22 whether a prior uncounseled plea and parameters of that plea can  
23 be used in your current case to enhance.

24 In Alabama versus Shelton in particular it addressed an issue  
25 that was prevalent across the country of whether essentially

1 people going in to lower level courts like in our State which  
2 would be the Criminal Magistrate Court and they were paying  
3 fines and then those cases were being used later on to enhance.  
4 Whether that could be used to enhanced, Alabama versus Shelton  
5 does use the term actual imprisonment, but you can see under the  
6 facts of that case the -- the -- Mr. Shelton, or whoever was the  
7 petitioner in that case actually only served probationary  
8 sentence and which was not the way a lot of states do it. And  
9 so under the particular facts of that case they did hold it was  
10 not enhanceable. There is some distinction. That's why the  
11 progeny of case is actually what many trial attorneys look at  
12 because in Talley v State and a lot of the subsequent cases is  
13 when you get the more specific law that we look at especially  
14 here in South Carolina about actual imprisonment, if you pay a  
15 fine versus a bond forfeiture. In those particular situations  
16 can the prior cases be used to enhance your current case. It  
17 does not -- it does not give you the right to counsel. It just  
18 outlines the parameters of whether a prior case can be used to  
19 enhance the current case that you have.

20 Q Is there anything you like to add to your testimony  
21 before I turn this over to Mr. Thomas?

22 A Not that I can think of.

23 MR. JOHNSON: That is all I have at this time,  
24 Your Honor.

25 THE COURT: Yes, sir, Mr. Thomas.

1 MR. THOMAS: Your Honor, if it please the Court I  
2 will refer to the case of Talley State of South  
3 Carolina.

4 THE COURT: Yes, sir.

5 MR. THOMAS: I just want to try to give the Court  
6 some indication as to where I was in the case, Your  
7 Honor.

8 Your Honor, may I approach?

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. THOMAS:

12 Q All right. I am going to ask you if you would please  
13 look at this paragraph eight and this is the case of Talley  
14 versus VSouth Carolina and if you would just read that to  
15 yourself.

16 THE COURT: All right. Mr. Thomas the one that  
17 you provided to me I do not have any clean numbers  
18 next to my paragraph.

19 MR. THOMAS: Page four of eight at the bottom, see  
20 the small numbers Your Honor.

21 THE COURT: I see. Which paragraph?

22 MR. THOMAS: Starts with although the Supreme  
23 Court in Shelton found --

24 THE COURT: Okay, I see.

25 Q What does our Supreme Court say about the law prior to

1 Shelton?

2 A According to that paragraph it says that precedent  
3 prior to Shelton established that a defendant was entitled to  
4 the constitutional right to counsel when the defendant received  
5 a sentence, quote, that ends up in the actual deprivation of a  
6 person's liberty end quote, citing Argensinger.

7 Q Okay, so the Court is saying there that it -- you would  
8 be entitled to counsel if you got a sentence that actually ended  
9 up in incarceration.

10 Did Mr. Spratt get a sentence that ended up in actual  
11 incarceration at the time of his plea? He wasn't put in jail  
12 was he?

13 A He received probation but after that he was revoked on  
14 his probation.

15 Q At a later time. All right. What does that same  
16 paragraph -- what does our Supreme Court say about post Alabama  
17 versus Shelton?

18 A Later says, however the Shelton decision required  
19 counsel to be appointed when an indigent defendant received a  
20 sentence that quote, may end up in the actual deprivation of a  
21 person's liberty, citing Shelton.

22 Q Which would have applied to Mr. Spratt because he may  
23 have ended up in incarceration because of the probationary  
24 sentence?

25 A Yeah. I mean -- yeah, at the time of Shelton.

1 Q Okay. So the fact that this Court, Supreme Court is  
2 not saying that Mr. Spratt would have been entitled to  
3 representation at the time of his plea prior to Alabama versus  
4 Shelton?

5 A I'm sorry, can you ask it again?

6 Q All right. This Court summarizes or states what the  
7 precedent prior to Shelton is and what the law is after Shelton?

8 A They are citing Shelton, right.

9 Q All right, and they say that prior to Shelton you had  
10 to have the actual deprivation of a person's liberty?

11 A They cite that, okay.

12 Q At the time that he did his plea in 1998 he did not  
13 have actual deprivation of liberty?

14 A He was placed on probation.

15 Q Okay. Post Shelton they say that he is entitled to  
16 counsel if he receives a sentence that may end up in the actual  
17 deprivation of liberty?

18 A Right.

19 Q So clearly after Shelton he would have been entitled to  
20 counsel?

21 A He -- I think he -- he has -- I mean, he has a right to  
22 counsel under the constitution. Is that what you are asking me?

23 Q Well, he had a right to have counsel appointed to  
24 him --

25 A Right.

1 Q -- after Alabama versus Shelton?

2 A Okay.

3 Q So if he we assume from the language that we are  
4 looking at tin his South Carolina Supreme Court decision it says  
5 that prior to Shelton he would not have been entitled to  
6 appointed counsel because he didn't have a sentence that ended  
7 up in the actual deprivation of a person's liberty?

8 MR. JOHNSON: I would have to object because I  
9 believe counsel is misquoting this case, Your Honor,  
10 and may I make an argument on that? I know that we  
11 are in the middle of testimony and I can save it for  
12 argument, but I object to him quoting and injecting  
13 his thought of what it means.

14 THE COURT: You know all this is opinion  
15 testimony, so I'll allow him to ask the questions.  
16 You can ask different questions on redirect, but the  
17 bottom line is it doesn't make any difference what the  
18 opinions are of the folks. It's going to be whatever  
19 the legal interpretation is. That is established by  
20 the Court and not by the opinions of the attorneys.

21 MR. THOMAS: Your Honor, if it please the Court I  
22 will move on.

23 THE COURT: Yes, sir.

24 MR. THOMAS: Your Honor, I will make reference to  
25 Alabama versus Shelton and in the copies that I

1 provided counsel and the Court this says at the bottom  
2 of page one, and it's actually the last sentence and  
3 it goes over on to page two.

4 THE COURT: It starts on page one?

5 MR. THOMAS: Yes, ma'am, at the very bottom of the  
6 page.

7 CONT'D EXAMINATION

8 BY MR. THOMAS:

9 Q We are talk being about Faretta rights in regards to  
10 warning that you -- the danger of self representation. All  
11 right that Shelton case would you look at the bottom of that?

12 A Right.

13 Q And in the Shelton case do they make comments that this  
14 individual was given Faretta rights?

15 A They do.

16 Q And they said that the Court had warned him about self  
17 representation?

18 A That's correct.

19 Q Okay. But Shelton goes on to make a determination that  
20 despite the warnings that he was still -- that he would have  
21 been entitled to representation, right?

22 A I'm sorry, ask me that question again.

23 Q Okay. That despite the fact that he was given Faretta  
24 warnings --

25 A Right.

1 Q -- the Court doesn't ignore that, but the Court takes  
2 that into consideration in making a decision in Alabama versus  
3 Shelton to say that to extend the right to appointed counsel in  
4 a case where you have possibility of going to jail?

5 A I don't know that they referenced that in any of the  
6 holdings, but I know that at the beginning they do say the Court  
7 repeatedly warned Shelton about the problems of self  
8 representation but at no time offered him assistance of counsel.

9 Q Thank you. And I think to simplify my question is that  
10 we can't just -- we can't just use Alabama versus Shelton to say  
11 in Mr. Spratt's case that because he was given Faretta warnings  
12 that he waived his right to counsel?

13 A I think that is generally what Faretta warnings are  
14 used for. I mean, I think Faretta warnings are generally given  
15 to make sure they understand the right to counsel and at the end  
16 of the Faretta warnings in my experience it depends on the judge  
17 and certainly I will defer to Judge Lee on this, but in my  
18 experience having been in front of a lot of judges, some judges  
19 will ask them to affirmatively waive. Many judges will just  
20 make a finding on the record finding that they waived, but that  
21 it's generally an admonishment to defendants so that the Court  
22 can make a finding or affirmatively ask a person if they wish to  
23 waive. I have seen in my experience I have seen several  
24 defendants upon hearing the admonition and hearing the warnings  
25 request an attorney, and I have seen several defendants elect to

1 go forward pro se.

2 Q Well, what would have happened in Mr. Spratt's case if  
3 the law at the time in 1998 was the fact that he wasn't entitled  
4 to counsel because he didn't -- he wasn't going to jail?

5 A Okay.

6 Q So if we look at that and we say, okay, at that point  
7 in '98 he didn't have a right to appointed counsel, what would  
8 be the benefit of Faretta warnings because if he didn't have a  
9 right to counsel we could warn him all day long, but if he  
10 didn't have the money to pay for an attorney the Court would  
11 still have to say, well, I don't have any obligation to appoint  
12 you an attorney?

13 MR. JOHNSON: Objection to the form of the  
14 question. It was testimony and no question asked,  
15 Your Honor.

16 MR. THOMAS: I think there is a question.

17 A But I think and my confusion comes in to how the --  
18 Alabama versus Shelton goes to the enhanceability of the  
19 conviction.

20 Q Right.

21 A And so if Mr. Spratt is now arguing that he -- because  
22 essentially in his case especially in front of Judge Newman he  
23 got the benefit of Alabama versus Shelton. What Alabama versus  
24 Shelton does for us now under a progeny of cases, not just  
25 Alabama versus Shelton in a vacuum --

1 Q Right.

2 A -- is it gives the benefit of being able to go back for  
3 some of these guys who are young and they don't realize they  
4 have a right to an attorney and they go in front of a judge and  
5 they take as you see some times in Mr. Spratt's case a  
6 probationary sentence and they don't understand that 20 years  
7 down the road or 15 years down the road they will be looking at  
8 25 to 30, or 7 to 30, or however much time they are looking at.  
9 And so what Alabama versus Shelton and its progeny allows us to  
10 do is go back and say, you know, this was not -- you know --  
11 because he was uncounseled and as State v Spratt now instructs  
12 us to do if it was uncounseled, any that wasn't given the  
13 warnings it wasn't a knowing waiver of a plea then it shouldn't  
14 be used against him now. Then I guess my confusion comes in he  
15 got the benefit of Alabama versus Shelton and the progeny so why  
16 now if he's saying he's not falling under Alabama versus  
17 Shelton.

18 Q Yeah, I think that he is. The difficulty with this  
19 case is that Alabama versus Shelton is applied retroactively?

20 A Right.

21 Q Okay. So at the time of the '98 plea Alabama versus  
22 Shelton didn't exist?

23 A Right.

24 Q Okay, so if we use the thing that in regards to  
25 enhancement in using the '98 plea against him to enhance it in

1 this case a third offense, then in -- if Alabama versus Shelton  
2 had not come along then he would have been -- it would have  
3 clearly been able to be used?

4 A Which would made this a third offense.

5 Q But the thing is that Alabama versus Shelton does come  
6 along, but it's applied retroactively. So the law at the time  
7 in regards to enhancement and his representation in '98 is  
8 different then it is now because we are interjecting a case that  
9 is being applied retroactively?

10 MR. JOHNSON: Your Honor, I am going to object.  
11 He is making argument and not asking any questions.  
12 Those are statements. I would ask you to strike that  
13 questioning.

14 THE COURT: If you can get a question in there or  
15 move on.

16 MR. THOMAS: All right, I will Your Honor.

17 Q Did the comments made by Judge Alford did you have any  
18 -- did you make objection to those?

19 A I did not.

20 Q Okay, and do you feel they were objectionable?

21 A I felt like those were his thoughts and if he was  
22 placing them on the record then I would prefer they be on the  
23 record.

24 Q Okay, and were those -- was any objection preserved for  
25 appeal?

- 1 A To those statements?
- 2 Q Yeah.
- 3 A No.
- 4 Q Okay. And this case was sent back to determine whether  
5 or not there was a waiver?
- 6 A Yes.
- 7 Q Okay. And his statements made about what he knew about  
8 Judge Alford were directly related to the issue before the  
9 Court, is that correct?
- 10 A Whose statement?
- 11 Q Alford's statements?
- 12 A Judge Alford's statement about Judge Hayes.
- 13 Q Yes.
- 14 A They were directly related to -- ask me that again.
- 15 Q They were directly related to the practice of what he  
16 thought of the practice of Judge Hayes?
- 17 A Yes, they were.
- 18 Q And those practices included waiver?
- 19 A That's correct.
- 20 Q Questions regarding waiver?
- 21 A That's correct.
- 22 Q And that was just his opinion, Judge Alford's opinion?
- 23 A I think they were his opinion and he was describing  
24 what he had seen in transcripts in his personal dealings with  
25 Judge Hayes.

1 Q And EB Springs was brought in to testify?

2 A Yes, he was.

3 Q And EB also testified in relation to what Judge Hayes,'  
4 practice would have been in the past?

5 A Yes, he did.

6 Q And he also implied that Judge Hayes' practice would  
7 have included questions regarding waiver?

8 A That's correct.

9 Q And was an objection made to EB's testimony?

10 A No, it was not.

11 MR. THOMAS: Your Honor, I beg the Court's  
12 indulgence.

13 I have no further questions.

14 MR. JOHNSON: Just one question for clarification.

15 REDIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q Will you look at Talley versus State where Mr. Thomas  
18 was referencing down where the paragraph starts off "Although  
19 the Supreme Court in Shelton found."

20 Q Yes.

21 Q And the quote, "Precedent prior to Shelton" would you  
22 read that again aloud to the Court.

23 A Read it out loud.

24 Q Please.

25 A "Precedent prior to Shelton established that a

1 defendant was entitled to the constitutional right to counsel  
2 when the defendant received a sentence, quote, that ends up in  
3 the actual deprivation of a person's liberty, quoting  
4 Argersinger.

5 Q Okay. Anywhere in there is the word only contained,  
6 only when the defendant receives a sentence?

7 A No.

8 Q And what was your opinion as to the right to counsel  
9 prior to this case, prior to Alabama v Shelton? Would he have  
10 been entitled to -- Mr. Spratt been entitled to counsel prior to  
11 this?

12 A Yes.

13 Q And he would have been entitled to counsel at the '98  
14 plea?

15 A Yes.

16 Q And then Judge Alford found that he -- would you agree  
17 with me that Judge Alford found that he did not meet his burden  
18 that he was not advised of a right to an attorney?

19 A That is what Judge Alford found, yes.

20 MR. JOHNSON: No further questions Your Honor.

21 THE COURT: You may step down. Thank you.

22 THE WITNESS: Thank you.

23 (Whereupon, the witness was excused.)

24 THE COURT: Any further testimony?

25 MR. JOHNSON: None from the State, Your Honor.

1 THE COURT: Anything further from the applicant?

2 MR. THOMAS: Nothing further Your Honor.

3 THE COURT: Counsel, what I would suggest to you  
4 in light of the weighty matters which we are  
5 discussing in the interpretation -- various legal  
6 interpretations of the cases that have been discussed,  
7 I would encourage proposed orders which would  
8 incorporate those legal arguments in lieu of reciting  
9 them on the record at this particular time for several  
10 reasons; one, given the hour, also the opportunity to  
11 be able to have some reflection and to set forth the  
12 legal arguments and then to have -- and to give me the  
13 benefit of the doubt of being able to refer to your  
14 legal argument in the form of written documents so I  
15 don't have to rely strictly upon the notes that I  
16 take, to make sure that I have captured all of your  
17 arguments since I won't have the benefit of the actual  
18 transcript or record at this time. I will be happy to  
19 give you ample opportunity to be able to write those.

20 It's a very interesting subject. One that I think  
21 this will require me to read a lot of cases and do a  
22 lot of my own interpretation of what I think the law  
23 says and then I would like to have the benefit of your  
24 argument at the time that I read the law. So I can  
25 just ask for proposed orders in lieu of closing

1 arguments at this time.

2 Is that satisfactory to the parties?

3 MR. THOMAS: That is fine Your Honor.

4 MR. JOHNSON: May we have 60 days.

5 THE COURT: Sure. That is fine.

6 MR. THOMAS: I was going to ask for 60 as well,  
7 Your Honor.

8 THE COURT: I have no problem with that.

9 I would just ask you that submit it to me  
10 electronically and if you think you really need to  
11 have have a reply to the argument let me know, but I  
12 think, you know, if you set forth your various  
13 arguments then we can go from there to see if we  
14 really need to have have a rebuttal on the proposed  
15 orders. But I am not going to say that I am going to  
16 preclude you from having rebuttal if you see something  
17 in there that actually needs a response.

18 MR. JOHNSON: Thank you. Your Honor.

19 THE COURT: Thank you.

20 MR. THOMAS: Thank you.

21

22 (END OF TRANSCRIPT)

23

24

25

## C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 20th day of November, 2014.

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

August 15, 2016

Aileen Butler

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 Eric Antonia Spratt, #257899, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-46-00952

**ORDER OF DISMISSAL**

DAVID HAMILTON  
 C.C. S. & GS  
 YORK COUNTY, SC

2016 APR 27 PM 1:52

FILED-RECEIVED

*Handwritten initials*

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 27, 2014. The State of South Carolina ("Respondent") made its Return on June 24, 2014. A hearing was convened on November 20, 2014, at the Moss Justice Center in York, SC. Applicant was present at the hearing and was represented by counsel, Tommy A. Thomas, Esquire ("Thomas"). Respondent was represented by Assistant Attorney General J. Rutledge Johnson, Esquire.

At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcripts from the hearing on June 6 and 7, 2011, and the transcript of the May 25, 2007, hearing.

**PROCEDURAL BACKGROUND**

Applicant was indicted by the York County Grand Jury in 1998 for possession of crack cocaine (Indictment No. 98-GS-46-2715). He pled guilty to the charge as indicted on September 22, 1998, before Judge John C. Hayes, III, and was sentenced to five years' incarceration and a \$5,000 fine suspended upon three years of probation. Applicant was not represented by an attorney during the plea. Subsequently, on April 26, 1999, Applicant waived presentment to the grand jury and pled guilty to possession with intent to distribute crack cocaine before Judge Thomas W. Cooper, Jr., on Indictment No. 99-GS-46-1028. He was sentenced to four years imprisonment. At the same time, Applicant's probation on the possession of crack cocaine conviction was revoked for six months, and he was incarcerated; probation was to continue upon his release. Applicant was represented by counsel from the Public Defender's office during the plea and the probation revocation hearing.

*Handwritten initials and mark*

In 2006, Applicant was indicted by the May 2006 term of the York County Grand Jury for

Trafficking in ice, crank or crack cocaine (Indictment No. 2006-GS-46-1625) and Possession of Marijuana, 2<sup>d</sup> offense (Indictment No. 2006-GS-46-1626). Melissa Inzerillo, Esquire, represented Applicant at trial. On June 6, 2006, Applicant proceeded to a jury trial *in absentia* pursuant to which he was found guilty of both charges. Judge J. Derham Cole issued a sealed sentence. On May 25, 2007, Applicant appeared before Judge Clifton B. Newman for the unsealing of the sentence. Judge Newman sentenced Applicant to confinement for thirty (30) years for Trafficking Crack Cocaine and one (1) year, concurrent, for Possession of Marijuana. Applicant immediately moved for a reconsideration of the sentence on the basis that the conviction should not be treated as a third offense. Judge Newman granted the motion and reduced the Applicant's sentence to ten (10) years, finding the convictions to be a second offense rather than a third offense.

The State filed a notice of appeal on June 4, 2007. The South Carolina Court of Appeals reversed Judge Newman and remanded the case for additional proceedings with respect to the issue of waiver of counsel during Applicant's 1998 guilty plea. State v. Spratt, 383 S.C. 212, 678 S.E.2d 266 (Ct. App. 2009). Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court, which was granted. Following submission of briefs and oral argument by the parties, the South Carolina Supreme Court issued an order denying the Petition for Writ of Certiorari as improvidently granted. State v. Spratt, 2011 WL 11748261, at \*1 (Jan. 31, 2011).

On June 6-7, 2011, Applicant appeared before Judge Lee S. Alford for a hearing consistent with the remand from the South Carolina Court of Appeals. Judge Alford determined Applicant failed to meet his burden of showing that he was not advised of, and did not waive, the right to counsel at his 1998 guilty plea. Judge Alford used the 1998 conviction to enhance Applicant's trafficking conviction from a second offense to a third offense and sentenced Applicant to twenty-five (25) years with credit for time served.

Applicant appealed Judge Alford's decision and sentence. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Spratt, 2013 WL 8508095, at \*1 (Ct. App. May 8, 2013). The Remittitur was issued on June 4, 2013. Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment.

At the PCR hearing, Applicant set forth three grounds for his PCR application. Applicant argues that his trial counsel, Melissa Inzerillo ("Inzerillo"): (1) was ineffective in her argument of

aw  
#2

waiver before Judge Alford; (2) failed to object to the testimony of Assistant Solicitor Eli Springs and Judge Alford's opinion; and (3) failed to obtain a transcript of the 1998 plea before Judge Hayes.

**SUMMARY OF TESTIMONY PRESENTED AT THE PCR HEARING**

Applicant testified he was sentenced to confinement for 25 years for Trafficking in Crack Cocaine, 3<sup>rd</sup> offense. He stated he has prior drug convictions from 1998 and 1999. Applicant also testified that he served a six-month sentence in 1998 as a result of a probation violation. Applicant claimed in 1998, he did not have a right to counsel because he was not sentenced to imprisonment. Applicant testified Alabama v. Shelton, 535 U.S. 654 (2002), extended the right to counsel to a person who received probation and that this rule was applied retroactively under Talley v. State, 371 S.C. 535, 640 S.E.2d 878 (2007). Applicant then claimed Inzerillo was ineffective for not arguing that he did not have a right to counsel until Alabama v. Shelton was issued in 2002, and that because he did not possess this right, he could not waive it. Applicant testified Inzerillo failed to properly argue this issue because the right to counsel did not apply to him. Applicant also testified Judge Hayes, the presiding judge on the 1998 guilty plea, could not be presumed to have properly warned Applicant about his right to counsel if Judge Hayes was, at that time, not required to do so pursuant to 1998 case law. Applicant further claimed the right to self-representation under Faretta v. California, 422 U.S. 806 (1975), did not apply to him in 1998 because he did not have a right to counsel. Moreover, Applicant testified that Judge Alford, the presiding judge over Applicant's sentencing hearing in 2011, could not have applied a presumption of regularity because Applicant did not possess the right to counsel in 1998.

On cross-examination, Applicant admitted he knew that Gideon v. Wainwright, 372 U.S. 335 (1963), which requires states to provide counsel to defendants who cannot afford to pay for a private attorney, applied to all criminal cases, including Applicant's case. He then admitted he knew Faretta was published in 1975. Lastly, Applicant admitted that Judge Alford, during the sentencing hearing, found his testimony not credible concerning whether Judge Hayes warned him against the dangers of self-representation.

Inzerillo testified concerning the procedural history of Applicant's 2006 case. Inzerillo stated she filed motions in limine and arguments were heard concerning whether the 2006 case should be a second or third offense. Inzerillo testified she did not object to Assistant Solicitor Eli Springs' testimony because she did not believe it "held much water." Inzerillo also testified she did not object

aw  
#3

to Judge Alford's comments regarding his experience with Judge Hayes' plea colloquy. Inzerillo stated her understanding of Alabama v. Shelton was that all defendants have a right to counsel. Inzerillo testified that the "actual imprisonment" prong came into play in Applicant's case through a probation revocation. Inzerillo stated she disagreed with Applicant's assertion that he did not have a right to counsel in 1998 because Faretta was required in 1998 and she advised Applicant of the same. Inzerillo testified that, in 1998, the right to counsel existed through the 6<sup>th</sup> and 14<sup>th</sup> Amendments as well as Gideon. Inzerillo then stated Alabama v. Shelton did not suddenly give defendants the right to counsel and that Talley v. State specified when the "actual imprisonment" prong of an uncounseled guilty plea can be used to enhance a later conviction.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcripts and records provided. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

"In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief." Lomax v. State, 379 S.C. 93, 100, 665 S.E.2d 164, 167 (2008). "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction . . . has two components." Strickland v. Washington, 466 U.S. 668, 687 (1984). "To satisfy the first prong, a defendant must show counsel's performance fell below an objective standard of reasonableness." Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 146 (2014) (internal quotation marks omitted). Under the second prong, "an applicant must show that there is a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different." Id. (internal quotation marks omitted). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Morris v. State, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006). "The two-part test adopted in Strickland also applies to challenges to guilty pleas based on ineffective assistance of counsel." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (internal quotation marks omitted). To prove prejudice in the context of a guilty plea, an applicant must show that but for counsel's errors, there is a reasonable probability the applicant "would not have pled guilty and would have insisted on going to trial." See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

and  
#4

Applicant argues that Inzerillo was ineffective in her argument before Judge Alford for not arguing that the presumption of regularity was not applicable in this matter. Applicant argues Inzerillo should have objected to Judge Alford's finding that Judge Hayes, as the plea judge, routinely advised *pro se* defendants of their right to counsel. This argument is premised on Applicant's contention that the law in place at the time of his guilty plea did not require appointment of counsel where a defendant would be sentenced to probation. See Talley v. State, 371 S.C. 535, 543, 640 S.E.2d 878, 881-82 (2007) ("Precedent prior to Shelton established that a defendant was entitled to the constitutional right to counsel when the defendant received a sentence 'that end[s] up in the actual deprivation of a person's liberty.' However, the Shelton decision required counsel to be appointed when an indigent defendant received a sentence that 'may end up in the actual deprivation of a person's liberty.'") (internal citations omitted). Applicant states that Inzerillo's argument was defective because she failed to argue that because Applicant had no constitutional right to counsel at the time of the plea, Judge Hayes would not be required to advise him of such a right or inform him of the dangers of self-representation.

Applicant's argument misapprehends Judge Alford's findings. Judge Alford made an affirmative finding that the plea judge did advise Applicant of the right to counsel and required Applicant to waive the right prior to accepting the plea. Judge Alford's finding was not based on a normal presumption of regularity that such was required. Instead, it was based on testimony from an assistant solicitor about the plea judge's practices during the time period in question, as well as, Judge Alford's own personal knowledge of the plea judge's practices based upon his review of Judge Hayes' plea colloquies.

The assistant solicitor testified that in 1998, Judge Hayes, in all guilty pleas, advised *pro-se* defendants of the right to have an attorney and also advised them of the dangers of self-representation under Faretta. Judge Alford found that Applicant's testimony that he was never advised of the right to counsel at the underlying plea was not credible. This Court agrees that the testimony of Applicant was not credible on this issue. The fact the law at the time may not have required such a warning is irrelevant to a finding that such a warning was, nonetheless, routinely given. Although Applicant argues Inzerillo should have raised the fact that the law regarding the right to counsel changed after the underlying plea, he failed to articulate how such an argument would have overcome the assistant solicitor's testimony and Judge Alford's personal observations of

ml  
#5

the plea judge's interaction with *pro se* defendants. Therefore, Applicant's argument that Inzerillo failed to properly argue to Judge Alford that the plea judge would not have advised Applicant of the right to counsel must fail. Further, Applicant's assertion that he did not possess the right to counsel and therefore, could not waive a right he did not have is erroneous. While appointed counsel may not have been required under the law at that time, there was no prohibition to appointing counsel for a defendant who could not afford one and desired to have the benefits of attorney representation. This Court agrees with Inzerillo's testimony that under the 6<sup>th</sup> and 14<sup>th</sup> Amendments and Gideon, Applicant possessed the right to counsel in 1998. Because Applicant presented no credible evidence that Judge Alford's findings would have been different had Inzerillo argued differently on his behalf, Applicant has failed to meet his burden of proving Inzerillo was ineffective.

As discussed, in part above, Inzerillo was not ineffective in failing to object to the testimony of Assistant Solicitor Springs and failing to further challenge Judge Alford's comments relating to his own personal experience regarding Judge Hayes' practice. At the PCR hearing, Inzerillo testified that she did not believe Springs' testimony "held much water". Springs' testimony provided evidence on the issue of regularity and the advice of rights provided to *pro-se* defendants during 1998 by Judge Hayes. Additionally, Inzerillo did not object to Judge Alford's comments because she believed it formulated his reasoning for the decision which would be available for appellate review. Judge Alford's comments certainly form part of his reasoning and enabled him to determine if Springs' testimony was credible. It was not unreasonable that Inzerillo would want the record to contain that testimony of Springs and the reasoning of Judge Alford for appellate review. Applicant failed to meet his burden of showing why Inzerillo's actions were ineffective.

Finally, Applicant argues that Inzerillo was ineffective for failing to obtain a transcript of the 1998 plea before Judge Hayes. Specifically, he asserts that Counsel should have requested that the record be reconstructed in light of the fact that no transcript was available. During the hearing before Judge Alford, Inzerillo said she made the following attempts to obtain a transcript from the 1998 plea: (a) she reviewed all of the documents in the York County Clerk of Court's office to locate a transcript; (b) she contacted the court reporter assigned at the time to try to obtain a transcript; and (c) she contacted court administration to verify that the court reporter's retention-period of only five years for her tapes and records was appropriate. Further, at the hearing before Judge Alford it was revealed that the Assistant Solicitor who prosecuted the 1998 charge of PWID crack cocaine had

and  
8/6

moved and was not available to testify. An attempt to reconstruct the record would not have provided any more information than what was before Judge Newman or Judge Alford. Applicant has not provided any evidence of what Inzerillo should have done to obtain a transcript or reconstruct the record of the proceeding. Applicant, thus, failed to prove Inzerillo provided ineffective assistance of counsel.

### CONCLUSION

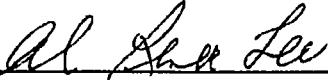
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. 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 the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### **IT IS THEREFORE ORDERED:**

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

#### **AND IT IS SO ORDERED.**

  
 \_\_\_\_\_  
 ALISON RENEE LEE  
 Presiding Circuit Court Judge  
 Sixteenth Judicial Circuit

Columbia, South Carolina  
 April 22, 2016

*and #1*

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Eric A. Spratt #257899, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SECOND JUDICIAL CIRCUIT

2014-CP-46-0952

**CERTIFICATE OF SERVICE**

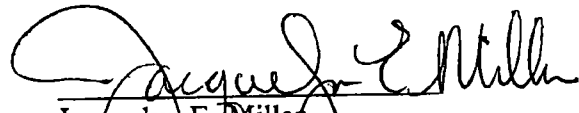
I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of a Notice of Motion and Motion to Alter or Amend the Judgment, with postage prepaid and the return address clearly shown on said envelope to Joshua L. Thomas, Esq. of the Attorney General's Office and The Honorable

Alison Renee Lee, at:

J. Rutledge Johnson, Esq.  
 Attorney General's Office  
 P.O. Box 11549  
 Columbia, SC 29211-1549

The Honorable Alison Renee Lee  
 1701 Main Street, Room 324  
 P.O. Box 192  
 Columbia, SC 29202-0192

2016 JUN -1 PM 12:14  
 RECEIVED  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC



Jacquelyn E. Miller  
 Secretary to Tommy A. Thomas  
 Attorney for Applicant  
 P.O. Box 88  
 Irmo, SC 29063  
 (803) 732-5507

Irmo, SC  
 May 12, 2016

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Eric A. Spratt #257899, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SECOND JUDICIAL CIRCUIT

2014-CP-46-0952

**NOTICE OF MOTION AND  
 MOTION TO ALTER OR  
 AMEND THE JUDGMENT**

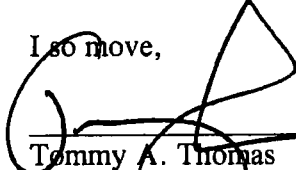
DAVID HAMILTON  
 CLERK  
 2016 JUN - 1 PM 12: 14  
 FILED

PLEASE TAKE NOTICE that the Applicant, through his undersigned attorney will move before the Honorable Alison Renee Lee to alter or amend the judgment entered in this action on April 27, 2016. A copy of the Order of Dismissal was received by the undersigned attorney on May 2, 2016.

The Motion is filed to preserve the right of the Applicant to present evidence as to why the Court's Order of Dismissal should be altered or Amended to properly address the issues at trial. Due to the incarceration of the Applicant it has been difficult for Counsel to consult with the Applicant within the ten (10) day time limitation to file this motion. A more detailed statement of the reasons to support this Motion will be filed after consultation with the Applicant.

THEREFORE, based upon the foregoing the Applicant prays that the Court alter or amend the Order of Dismissal.

I do move,

  
 \_\_\_\_\_  
 Tommy A. Thomas  
 Attorney for the Applicant  
 7588 Woodrow Street  
 Irmo, SC 29063

May 12, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Eric Antonia Spratt, #257899,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

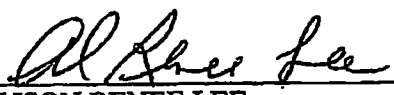
CASE NO. 2014-CP-46-00952

**ORDER**

This matter comes before the Court on Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP. This matter came before the Court on November 20, 2014, for a hearing on an Application for Post-Conviction Relief ("PCR Application") filed by Applicant on March 27, 2014. On April 22, 2016, the Court denied and dismissed Applicant's PCR Application with prejudice. Applicant filed this motion on May 16, 2016.

After careful consideration of the motion made, memoranda submitted, and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Applicant's Motion to Alter or Amend Judgment. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
May 24, 2016

FILED-RECEIVED  
2016 MAY 31 PM 3:31  
DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

DOCKET NO. 2006-GS-46 01625

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

160

**WITNESSES**

Cashier

**The State of South Carolina**

County of York.

Defendant

COURT OF GENERAL SESSIONS

May 18, Term 2006

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

ARREST WARRANT NUMBER

20

Defendant

THE STATE

vs.

Witness:

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

41

ACTION OF GRAND JURY

ERIC ANTONIO SPRATT

TRUE BILL

*ma J. J. J.*  
Person of Grand Jury

5-18-06

VERDICT

*guilty*

Indictment for

Drugs / Trafficking in ice, crack or crack cocaine

*John O. Hughes*  
Person of Petit Jury

6/8/06

SC Code: 44-53-0375(C)(2)(c)  
CDR Code:0349

123

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on May 18, 2006 the Grand Jurors of York County present upon their oath:

**Drugs / Trafficking in ice, crank or crack cocaine**

That on or about January 19, 2006, in York County, South Carolina, the Defendant, Eric Antonio Spratt, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of more than 10 grams of Crack Cocaine, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976) as amended

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

  
ASSISTANT SOLICITOR

DOCKET NO. 2006-GS-46-01626

The State of South Carolina  
County of York

COURT OF GENERAL SESSIONS

April 13, Term 2006

THE STATE

vs.

ERIC ANTONIO SPRATT

Indictment for

POSSESSION OF MARIJUANA

SC Code: § 44-53-370  
CDR Code: 182

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.

WITNESSES

Cashier

ARREST WARRANT NUMBER

21

ACTION OF GRAND JURY

Person of Grand Jury

VERDICT

guilty

Madra O. Hughes  
Person of Petit Jury  
6/8/06

126162

VV

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on April 13, 2006, the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA

That on or about January 19, 2006, in York County, South Carolina, the Defendant, Eric Antonio Spratt did knowingly or intentionally possess a quantity of marijuana, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

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

Jwana A. Bullock  
ASSISTANT SOLICITOR