

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Charleston County

Honorable Perry H. Gravely, Circuit Court Judge

DEANGELO MITCHELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000777

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	
THE STATE OF SOUTH CAROLINA,)	CASE NO. 2012-GS-10-1680,
)	2012-GS-10-1818
)	
PLAINTIFF,)	
)	
VS.)	TRANSCRIPT OF RECORD
)	
DEANGELO MITCHELL,)	
)	
DEFENDANT.)	
)	

September 16, 2013

Charleston, South Carolina

B E F O R E:

The Honorable Kristi Lea Harrington

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

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Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: Call your case.

2 MR. KIDD: The State calls Deangelo Mitchell.

3 THE COURT: Are you Deangelo Mitchell? Are you ---

4 MR. MITCHELL: Ma'am?

5 THE COURT: --- Deangelo Mitchell?

6 MR. MITCHELL: Yes, ma'am.

7 THE COURT: All right. If you will come to the podium.

8 (WHEREUPON, the witness was duly sworn.)

9 THE COURT: Mr. Peper, do you represent Mr. Mitchell?

10 MR. PEPER: I do, Your Honor.

11 THE COURT: And you have advised your client of the
12 charges that he is facing, the possible punishment as well
13 as the consequences of his plea?

14 MR. PEPER: Yes, ma'am, I have.

15 THE COURT: And do you agree with his decision to plead
16 guilty today?

17 MR. PEPER: Wholeheartedly, yes, ma'am.

18 THE COURT: Mr. Kidd, I have four indictments. Are you
19 dismissing two; is that my understanding?

20 MR. KIDD: Yes, it is, Judge. I will be dismissing the
21 trafficking cocaine. And there is a prior possession with
22 intent to distribute cocaine that is unrelated to this
23 offense that I will be null prossing as well.

24 THE COURT: And that is your understanding, Mr. Peper?

25 MR. PEPER: Yes, ma'am, it is.

1 THE COURT: And this is a negotiated sentence?

2 MR. PEPER: Yes, ma'am.

3 THE COURT: Mr. Mitchell, if after hearing the facts
4 and your prior record I cannot accept this negotiation I
5 will allow you to withdraw this plea. Do you understand
6 that?

7 MR. MITCHELL: Yes, ma'am.

8 THE COURT: That means I can't give you any more time
9 but I also cannot give you any less time. Do you understand
10 that?

11 MR. MITCHELL: Yes, ma'am.

12 THE COURT: You are here to plead guilty under
13 Indictment 2012-GS-10-1818 and 1680. 1818 is a true billed
14 indictment for involuntary manslaughter. I can sentence you
15 up to five years in the Department of Corrections. Do you
16 understand that is a violent -- classified as a violent
17 offense?

18 MR. MITCHELL: Yes, ma'am.

19 THE COURT: Knowing that do you still wish to go
20 forward here today?

21 MR. MITCHELL: Yes, ma'am.

22 THE COURT: You are -- there is a true billed
23 indictment for 1680 which is possession with intent to
24 distribute or distribution of cocaine second offense. It is
25 a mandatory minimum of five years, up to thirty years. Do

1 you understand that is the possible punishment?

2 MR. MITCHELL: Yes, ma'am.

3 THE COURT: And there is a fine up to \$50,000. Do you
4 understand that?

5 MR. MITCHELL: Yes, ma'am.

6 THE COURT: Knowing that do you still wish to go
7 forward here today?

8 MR. MITCHELL: Yes, ma'am.

9 THE COURT: Mr. Peper, have you explained to your
10 client what the classification as serious means with respect
11 to the distribution?

12 MR. PEPER: Yes, ma'am, we have discussed that in
13 detail.

14 THE COURT: And have you explained to your client what
15 the classification of violent means with respect to
16 involuntary manslaughter?

17 MR. PEPER: I have, Judge.

18 THE COURT: Mr. Mitchell, do you understand what those
19 two mean for you as far as the length of your incarceration
20 as well as the classification of your status as well a what
21 we call a strike?

22 MR. MITCHELL: No, I am trying to see -- I don't
23 understand the percent of it, how much time it carries at
24 you know at 65 and 85 percent sentencing.

25 THE COURT: All right, sir, the involuntary

1 manslaughter is considered a violent crime. That would
2 affect the length of time that you are in. But you should
3 assume that you are going to do day for day, all right.
4 There is no one right now that can tell you how much, how
5 many days you are going to do. That is on a variety of
6 different classifications, and that -- it is not for this
7 court to tell you or to calculate. I cannot do that. Do
8 you understand?

9 MR. MITCHELL: Yes, ma'am.

10 THE COURT: There is no one in this room that can
11 calculate that for you. You should assume that you are
12 going to do the maximum day for day of the sentence.

13 MR. MITCHELL: Yes, ma'am.

14 THE COURT: Knowing that do you still wish to go
15 forward here today?

16 MR. MITCHELL: Yes, ma'am.

17 THE COURT: Mr. Peper, you advised your client that
18 no one -- that I don't work for the Department of
19 Corrections and there is a variety of factors that
20 influences but that he should assume that he is going to
21 do -- because I am assuming the way that these are to run
22 concurrent, Mr. Kidd, ---

23 MR. KIDD: That is correct, Your Honor.

24 THE COURT: --- there will be a five-year sentence on
25 this one and run concurrent with the other.

1 MR. MITCHELL: That's correct.

2 THE COURT: So you should assume that you are going to
3 do the five years on this sentence. Do you understand that?

4 MR. MITCHELL: Yes, ma'am.

5 THE COURT: All right. Mr. Mitchell, I'm asking you
6 all of these questions because sometimes what happens is
7 people come back later and they say I didn't understand this
8 and I want to set aside my plea. It is very important to
9 this court that you understand what we are doing here today.
10 Do you understand?

11 MR. MITCHELL: Yes, ma'am.

12 THE COURT: Do you have any questions before we go any
13 further?

14 (WHEREUPON, Mr. Mitchell confers with counsel.)

15 THE COURT: Counsel approach.

16 MR. PEPER: Yes, ma'am.

17 (WHEREUPON, off-the-record bench conference was had with
18 counselors.)

19 THE COURT: Do you need just a second, Mr. Peper?

20 MR. PEPER: Yes, ma'am.

21 (WHEREUPON, Mr. Peper confers with client.)

22 MR. PEPER: Thank you, Judge.

23 THE COURT: Mr. Mitchell, there was a Scribner's error.
24 And I think it always good to over-advise of the penalties
25 and so that you are adequately aware of what could happen or

1 might happen. But there was a Scribner's error in the wrong
2 box was checked. I have made the notation this is not
3 classified as a violent offense. Do you understand that,
4 sir?

5 MR. MITCHELL: Yes, ma'am.

6 THE COURT: So that -- but again, that has to do with
7 how long you are going to be in your classification when you
8 get to the Department of Corrections. Do you understand the
9 drug offense is a serious offense and that is the strike
10 which will affect you once you are released; do you
11 understand that, sir?

12 MR. MITCHELL: Yes, ma'am.

13 THE COURT: Knowing that do you still wish to go
14 forward here today?

15 MR. MITCHELL: Yes, ma'am.

16 THE COURT: Do you need any additional time to meet
17 with Mr. Peper?

18 (WHEREUPON, Mr. Mitchell confers with counsel.)

19 THE COURT: Sir, you do not have to plead guilty
20 here today. By pleading guilty you are giving up certain
21 rights. You are giving up your right to a jury trial, your
22 right to have a jury determine your guilt beyond a
23 reasonable doubt based upon the evidence the State presents
24 as well as any evidence you may introduce, your right
25 against self-incrimination, your right to say nothing at

1 all, your right to confront and be confronted by the
2 witnesses against you, as well as the right to call
3 witnesses on your behalf. By pleading guilty here today you
4 give up any defense you have to this charge. Do you
5 understand those rights?

6 MR. MITCHELL: Yes, ma'am.

7 THE COURT: And do you waive all of those rights at
8 this time?

9 MR. MITCHELL: Yes, ma'am.

10 THE COURT: Understanding the charges that you are
11 facing, the possible punishment as well as the consequences
12 of this plea, how do you plead to involuntary manslaughter?

13 MR. MITCHELL: Guilty.

14 THE COURT: How do you plea to distribution of cocaine
15 second offense?

16 (WHEREUPON, Mr. Mitchell confers with counsel.)

17 MR. PEPER: It is possession with intent to distribute,
18 correct.

19 THE COURT: Just it is just the way it is classified.
20 So it is just the title we call it.

21 MR. MITCHELL: Oh, yes, ma'am.

22 THE COURT: Do you have a favorite book?

23 MR. MITCHELL: Huh?

24 THE COURT: Do you have a favorite book; do you like to
25 read?

1 MR. MITCHELL: No, ma'am.

2 THE COURT: All right. Books go by different names
3 sometimes. It is just what we call it. It is just a
4 different title, okay?

5 MR. MITCHELL: Yes, sir.

6 THE COURT: Do you like Coke or Pepsi?

7 MR. MITCHELL: Pepsi.

8 THE COURT: All right. So people call it Pepsi; some
9 people call it soda pop. Same thing, right?

10 MR. MITCHELL: Yes, ma'am.

11 THE COURT: All right. Just same thing. Okay.
12 Possession with intent to distribute or distribution. Same
13 offense. Same penalty. Do you understand?

14 MR. MITCHELL: Yes, ma'am.

15 THE COURT: All right. Knowing that do you still wish
16 to go forward here today?

17 MR. MITCHELL: Yes, ma'am.

18 THE COURT: Do you understand we are ready to call this
19 case. I have jurors downstairs ready to go forward. You do
20 not have to plead guilty. Do you still wish to plead guilty
21 here today?

22 MR. MITCHELL: Yes, ma'am.

23 THE COURT: All right. Are you pleading guilty because
24 you in fact are guilty?

25 MR. MITCHELL: Yes, ma'am.

1 THE COURT: Has anybody promised you anything,
2 threatened you, forced you to plead guilty here today?

3 MR. MITCHELL: No, ma'am.

4 THE COURT: Have you been satisfied with the services
5 of Mr. Peper?

6 MR. MITCHELL: Yes, ma'am.

7 THE COURT: Any complaints about the way he has handled
8 this case?

9 MR. MITCHELL: No, ma'am.

10 THE COURT: You have the right to appeal this plea and
11 the sentence I impose here today, but you must do so within
12 10 days. Do you understand that, sir?

13 MR. MITCHELL: Yes, ma'am.

14 THE COURT: Have you understood all of my questions and
15 everything that we have done here today?

16 MR. MITCHELL: Yes, ma'am.

17 THE COURT: Please listen to the facts and your prior
18 record.

19 Mr. Kidd.

20 MR. KIDD: Thank you, Your Honor. May it please the
21 court. This occurred on November 30th, 2011. The defendant
22 was riding in a vehicle with his younger brother, the
23 deceased Wayne Mitchell, and a co-defendant named Shalon
24 Beaufort who was the driver of the vehicle.

25 They rode past Officer Bailey and Brown. The vehicle

1 had some front-end damage so it only had one headlight which
2 was the reason for the traffic stop. The entire incident is
3 on video.

4 When police officers pulled behind the vehicle you can
5 see in the video a lot of movement amongst the parties
6 inside the car, ducking down as the officers approached.
7 The deceased, Wayne Mitchell, had his hands underneath the
8 backseat of the vehicle.

9 For officer's safety fearing it might be a weapon that
10 he was hiding under the seat they pulled Deangelo Mitchell,
11 his brother Wayne Mitchell, and Ms. Beaufort from the
12 vehicle, detained them, pat them down, searched them. Did
13 not find anything.

14 They then placed Deangelo Mitchell and Wayne Mitchell
15 in the back of Officer Bailey's patrol car and then searched
16 under the seat where they saw Wayne Mitchell's hands.

17 Under the seat they found approximately two ounces of
18 cocaine. Based on that they placed everyone under arrest.
19 Deangelo Mitchell and Wayne Mitchell in the back of Officer
20 Bailey's patrol car. Shalon Beaufort in the back of Officer
21 Benzant's (ph) patrol car.

22 The videotape from inside the patrol vehicle is about
23 30 minutes long. Through that you can hear conversation
24 between Deangelo and Wayne Mitchell. It becomes clear that
25 Deangelo has additional cocaine on his person. He then

1 hands it to his brother who then ingests it orally and
2 within 30 minutes -- not within 30 minutes; excuse me.
3 Within five or ten minutes goes into convulsions and full
4 body seizures and is pronounced dead within about thirty to
5 forty-five minutes from ingestion.

6 Judge, his prior record starts in 2005 with a -- one
7 moment. He has a 2005 possession of crack cocaine; 2006
8 disorderly conduct, possession of marijuana; another
9 possession of crack cocaine in 2006; another possession of
10 crack cocaine in 2007. He has a parole revocation in '07,
11 another possession of crack cocaine in '07. And he has
12 possession with intent to distribute or manufacturing in
13 2010. I believe the conviction was actually in 2011. So
14 this would all be tried as thirds would we go to trial.

15 I think it is prudent to put on the record, Judge, that
16 originally Mr. Mitchell was represented by Mr. Howe. He did
17 have a slightly better offer. He rejected that on the
18 record in front of Judge Dennis. He then since retained Mr.
19 Peper. I extended that same offer to him another time.
20 Brought him over to court. He rejected that offer. And
21 since, the offer has gotten a little bit worse.

22 But I just find it necessary to put that on the record
23 considering we are on the eve of trial, should he not have
24 pled guilty today. And I believe that is all the facts
25 necessary for Your Honor today.

1 THE COURT: Is that what you did, Mr. Mitchell?

2 MR. MITCHELL: Ma'am?

3 THE COURT: Is that what you did?

4 MR. MITCHELL: Yes, ma'am, but I ain't never -- I --
5 the only reason why I didn't go with the offer from Mr. Howe
6 is he ain't never -- he was ---

7 THE COURT: I am not worried about Mr. Howe. I am
8 worried about the cocaine that you had in the backseat with
9 your brother.

10 MR. MITCHELL: Oh, yes, ma'am.

11 THE COURT: Is that what you did?

12 MR. MITCHELL: Yes, ma'am. But they -- they are saying
13 that -- the news people said that I told him to eat the
14 drugs. And on the video I told him not to eat it and what
15 would have happened ---

16 THE COURT: I am not ---

17 MR. MITCHELL: --- if he ate it.

18 THE COURT: I am a court of law, okay. I am not
19 concerned about what the newspapers say.

20 MR. MITCHELL: Yes, ma'am.

21 THE COURT: I am concerned about what you did. What
22 did you do?

23 MR. MITCHELL: I handed him the drugs.

24 THE COURT: And what type of drug was it?

25 MR. MITCHELL: Cocaine.

1 THE COURT: And how much cocaine did you have?

2 MR. MITCHELL: I ain't know.

3 THE COURT: Can you take a guess?

4 MR. MITCHELL: I don't know -- I -- to give -- to give
5 an exact I mean I don't know. Probably like ---

6 THE COURT: Mr. Mitchell, do you sell drugs?

7 MR. MITCHELL: Ma'am?

8 THE COURT: Do you sell drugs?

9 MR. MITCHELL: I use drugs.

10 THE COURT: You use drugs. On that particular day, Mr.
11 Mitchell, where did you get those drugs; did you buy them?

12 MR. MITCHELL: Ma'am?

13 THE COURT: Did you buy those drugs?

14 MR. MITCHELL: No, I didn't have ---

15 THE COURT: Someone just gave them to you?

16 MR. MITCHELL: No, I didn't have -- my brother had the
17 drugs and I was trying to help him conceal the drugs. But I
18 just couldn't help him conceal all. He stuffed the
19 remaining he had in the back of the police car in the back
20 of the car we were sitting in. The only thing he did is I
21 tried to help him ---

22 THE COURT: Okay.

23 MR. MITCHELL: --- conceal some of the drugs.

24 THE COURT: Was it a little bit of drugs, or was it a
25 lot of drugs?

1 MR. MITCHELL: It was a little bit. It wasn't no big
2 amount. Or like it probably wasn't even a quarter ounce. I
3 don't know exact -- only he knows exactly what he had in the
4 bag. Only he knows.

5 THE COURT: Mr. Mitchell, what are you doing with
6 cocaine -- what were you doing with cocaine?

7 MR. MITCHELL: I was helping him conceal the drugs. I
8 ain't had -- it -- it was never my drugs.

9 THE COURT: But you knew it was cocaine?

10 MR. MITCHELL: Yes, ma'am.

11 THE COURT: All right. What were you doing with drugs
12 the previous times?

13 MR. MITCHELL: I was selling them.

14 THE COURT: 2010, 2007, 2005?

15 MR. MITCHELL: I was selling them.

16 THE COURT: I find a substantial factual basis for your
17 plea. Your decision to plead guilty has been freely,
18 voluntarily, knowingly and intelligently made. You have
19 indicated to the court you have had the advice and counsel
20 of a competent attorney with whom you have told the court
21 you are satisfied. I hereby accept your plea of guilt.

22 MR. PEPPER, I would be happy to hear from you. I
23 don't -- I don't know how you did it, but this is an
24 incredible deal for your client. He is facing at a minimum
25 just in front of me he is facing 35 years; and potentially a

1 third offense would be facing how much, Mr. Kidd?

2 MR. KIDD: On the third trafficking a minimum 25.

3 THE COURT: Minimum mandatory 25.

4 MR. PEPER: Thank you, Judge. It has been an uphill
5 battle, Judge, both getting the prosecutor's office to
6 resend their plea offer and also encouraging my client that
7 it is clearly in his best interest to accept it. And I am
8 pleased to report we have done so.

9 Judge, he is 24 years of age. He is a lifelong
10 resident of Charleston. He got his GED in 2004. He is
11 working on and off jobs, in and out of jail. And he has
12 two children, Judge, a six-year-old daughter Angel and a
13 six-year-old son Deangelo, Junior. He also has a mother and
14 a girlfriend. His mother Joyce is in the courtroom with me
15 today as well as Karema (ph) Wright. And all of them have
16 been integral in assisting me in relaying to my client that
17 this is clearly in his best interest.

18 It is a tough case, Judge, because the theory is that
19 he possessed the cocaine and distributed it to his brother.
20 This is not a typical PWID that you see before you where
21 there is a CI involved and it is a hand-to-hand transaction.
22 This incident occurred after they were stopped and placed in
23 the back of the vehicle and in an attempt to assist his
24 brother he agreed to take roughly an ounce, half ounce, on
25 his person.

1 When it became very clear that all of the individuals
2 were in jeopardy of being charged he made the decision to
3 hand the drugs over to his brother not knowing ---

4 THE COURT: Did his brother have a prior criminal
5 history, drug charges?

6 MR. PEPER: Lengthy, Judge. Lengthly, yes. Yes,
7 ma'am.

8 MR. KIDD: Would you like it, Judge?

9 THE COURT: No thank you.

10 MR. PEPER: While I can't -- I don't know for a fact
11 what Deangelo was thinking, but based on my relationship
12 with him over the last three or four months I feel confident
13 in saying that he certainly was not trying to induce his
14 brother to dispose of the drugs. That was not the reason he
15 handed them to him. I think the reason he handed them to
16 him is because he was concerned that he would be charged
17 with possessing the remaining drugs in the car and that if
18 his brother would take responsibility for them that only one
19 of the two would have charges as opposed to both.

20 Unfortunately as soon as his brother got it he
21 immediately ingested it, which brings us here today. I
22 think the elements of the crimes go along with the fact that
23 he did distribute it to his brother and knew or should have
24 known that his brother could possibly ingest it, it could
25 cause great bodily injury. So I think the facts fit the

1 charges, Judge.

2 Your Honor, I have at length discussed with my client
3 that both of these are nonviolent offenses. He comes to
4 Your Honor asking you to accept negotiated 15 knowing that
5 it is possible that he could spend every day of those 15
6 years in prison.

7 I have not made any promises to him in regard to those
8 regards other than explain to him that it is considered a
9 nonviolent offense.

10 So we are asking, Judge, that you accept the negotiated
11 sentence that the State and I have worked out whereby he
12 would receive 15 years on the PWID second and five years
13 concurrent on the involuntary manslaughter.

14 THE COURT: Mr. Mitchell, what do you wish to tell me?
15 (WHEREUPON, Mr. Mitchell confers with counsel.)

16 MR. PEPER: Your Honor, he doesn't have anything to say
17 at this point. He is all choked up.

18 THE COURT: Anything further from the State, Mr. Kidd?

19 MR. KIDD: Nothing further.

20 THE COURT: So order of the court on 2012-GS-10-1680
21 that you be committed to the State Department of Corrections
22 for a term of 15 years. It is so order of the court on
23 2012-GS-10-1818 that you be committed to the State
24 Department of Corrections for a term of five years. They
25 are to run concurrent and give you credit for time served.

1 Good luck to you, sir.

2 MR. PEPER: Your Honor, may it please the court. I
3 apologize. It may be that he is still on probation for the
4 2011 charge. We would ask that that just be terminated.

5 THE COURT: I can't do that without probation here.

6 MR. PEPER: Okay. All right.

7 THE COURT: I would be more than happy to do that --
8 where is proba- -- I need her -- where is probation?

9 THE DEPUTY: Four Delta.

10 THE COURT: Mr. Ferguson, can you go get probation for
11 me. Thank you.

12 MR. FERGUSON: Yes, Your Honor.

13 MR. PEPER: I'm sorry, Judge.

14 THE COURT: All right. Mr. Mitchell, what are you on
15 probation for?

16 MR. MITCHELL: I think distribution -- distribution of
17 crack cocaine.

18 THE COURT: In the 2010?

19 MR. MITCHELL: Yeah.

20 THE COURT: Is that a yes?

21 MR. MITCHELL: Yes, ma'am.

22 MR. PEPER: There is some discrepancy, Judge, as to
23 when he was -- I can't tell if he was sentenced to 10 or 11
24 so ---

25 THE COURT: Mr. Mitchell, do you agree that you were on

1 probation ---

2 MR. MITCHELL: Yes, ma'am.

3 THE COURT: --- when this --- and so this would violate
4 the terms and conditions of your probationary sentence?

5 MR. MITCHELL: Yes, ma'am.

6 THE COURT: And I don't know how much time you have
7 left. I do not have probation here. Do you allow --
8 because I am going to send you on back. I don't know how
9 long it will take probation. Can we handle your probation
10 matter in your absence? I am just inclined to revoke your
11 probation and run it concurrent. Do you agree that you have
12 violated the terms and conditions of your probation?

13 MR. MITCHELL: Yes, ma'am.

14 THE COURT: Then we are just going to do the formality
15 on a piece of paper outside of your presence. Do you agree?

16 MR. MITCHELL: Yes, ma'am.

17 THE COURT: All right.

18 Any objection, Mr. Kidd?

19 MR. KIDD: No ma'am.

20 THE COURT: All right.

21 Good luck to you, Mr. Mitchell.

22 MR. PEPER: Judge, will -- I apologize if I didn't hear
23 this, but will he receive time served for the time he has
24 been in jail on those charge?

25 THE COURT: He will receive credit for the time served.

1 MR. PEPER: Yes, I'm sorry, credit for time served.

2 THE COURT: Thank you.

3 MR. PEPER: Yes, ma'am.

4 THE COURT: Thank you.

5 (WHEREUPON, the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on September 16, 2013.

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

PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: November 12, 2015

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AW
9

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

DEAN GELO MITCHELL Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA Defendant(s)

CIVIL ACTION COVERSHEET

2014-CP-10 5358

(Please Print) DEANGELO MITCHELL
Submitted By: Senior Assistant

Address: Deputy
RIDGEVILLE, S.C. 29472

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

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- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

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- | | | | |
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| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | 20__-CP-__ | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice/ File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |
-
- | | | | |
|--|---|---|--|
| <input checked="" type="checkbox"/> Inmate Petitions | <input type="checkbox"/> Judgments/Settlements | <input type="checkbox"/> Administrative Law/Relief | <input type="checkbox"/> Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Reinstate Driver's License (800) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Transcript Judgment (740) | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> SCDOT (950) |
| | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Worker's Comp (960) |
| | <input type="checkbox"/> Other (799) | | <input type="checkbox"/> Zoning Board (970) |
-
- | | |
|---|--|
| <input type="checkbox"/> Special/Complex /Other | <input type="checkbox"/> Pharmaceuticals (630) |
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Unfair Trade Practices (640) |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Out-of-State Depositions (650) |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Sexual Predator (510) |

Submitting Party Signature: D. Mitchell

Date: 9-27-2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)

IN THE COURT OF COMMON PLEAS

2014-CP-10-5358

DEANGELO MICHEL 322456)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2014 SEP -3 AM 6:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence CHARLESTON COUNTY COURT
of GENERAL SESSION FOR THE NINTH CIRCUIT
3. Name(s) of co-defendant(s) (if any) SHALOW BEAUFORT
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) _____

(b) _____

(c) _____

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

(a) 9/16/13 15 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Counsel fail to ADVISE THE APPLICANT of the RESULT

(b) _____

(c) _____

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

(a) Ineffective Assist. of Counsel

(b) Ineffective Assist. of Counsel

(c) _____

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

(a) PLEAs Based upon erroneous Advice of Counsel

(b) Counsel fail to Advise the petitioner right to Appeal

(c) _____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. _____

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

- (a) First intent
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (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. Bobby Howe P.O. Box 807 Charleston, S.C. 29402
- ii. Mark A. PEPER 1637 Savannah Hwy. Ste. 202 Charleston, S.C. 29407
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. pre trial
- ii. pre trial, PLEA, sentencing
- iii. _____

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

Invalidating of Guilty Plea and Remand to the Court of General Sessions for further proceedings.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of CHARLESTON)

I, Deangelo Mitchell, 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.

D. Mitchell

SWORN to and subscribed before me this 29th day of August, 2014.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2016

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

I, Deangelo Mitchell, 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.

D. Mitchell
Applicant

SWORN or affirmed to and subscribed before me this
29th day of August, 2014.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2026

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
)	2014-CP-10-5358
)	
Deangelo Mitchell, #322456,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 3, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the March 2012 term of the Charleston County Grand Jury for distribution of cocaine-second offense (2012-GS-10-1680) and involuntary manslaughter (2012-GS-10-1818). The Applicant was represented by Mark Peper, Esquire.

On September 16, 2013, the Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced the Applicant to confinement for a period of fifteen years for distribution of cocaine and five years for involuntary manslaughter. The sentences are to be served concurrent to a probation violation on indictments 2010-GS-10-7618, -7621. The Court revoked probation for five years.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to advise Petitioner of the right to appeal.
2. Involuntary guilty plea.
 - a. Plea based on erroneous advice of counsel.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its

"reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant also alleges that he did not plead guilty freely and voluntarily. The Respondent submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such

a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Respondent submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such. Accordingly, this allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: AL P. WILSON
ATTORNEYS FOR RESPONDENT

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

March 20TH, 2015.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 DEANGELO MITCHELL, #322456)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

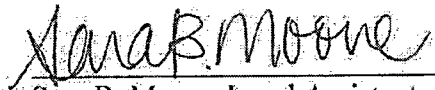
2014-CP-10-5358

AFFIDAVIT OF SERVICE BY MAIL

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

James K. Falk, Esquire
 3 Broad Street, Suite 450
 Charleston, SC 29401


DATED this 26th day of March, 2015



 Sara B. Moore, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Deangelo Mitchell)
) Plaintiff)
 vs.)
)
 State of South Carolina)
) Defendant,)
 _____)

IN THE COMMON PLEAS COURT
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-10-05358
 AMENDED PCR APPLICATION

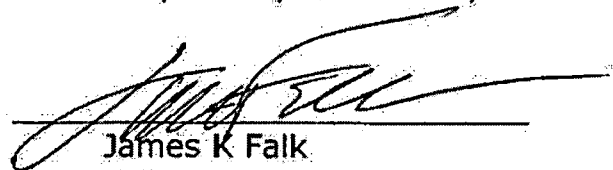
FILED
 2015 DEC -4 PM 4: 24
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY 

To: Rutledge Johnson, Office of the South Carolina Attorney General, PO Box 11549, Columbia, SC 29211.

Applicant by and through counsel hereby amends the original PCR application to now include the following grounds of in effective assistance of counsel.


1. Counsel failed to communicate a plea offer to Applicant which called for an active sentence for less time than the sentence Applicant now serves.
2. Counsel failed to advise Applicant of the consequences of pleading guilty to an offense classified as *serious* under S.C. Code Ann § 17-25-45(B).

Respectfully Submitted,



 James K Falk
 Falk Law Firm
 Po Box 1058
 Charleston, SC 29402
 (843) 606 6007
 (843) 972 9005 fax

Undersigned certifies that a copy of the above was mailed this December 4, 2015 to Rutledge Johnson, Esq. at the above address.



 James Falk

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
DeAngelo Mitchell,)	
)	
Applicant,)	
)	
vs.)	Case No. 14-CP-10-5358
)	
State of South Carolina,)	
)	
Respondent.)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 20, 2016, in Courtroom 3E of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

James Falk, Esq.
Appearing for Applicant

Rutledge Johnson, Assistant Attorney General
Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

DeAngelo Mitchell v State of South Carolina
Case No. 14-CP-10-05358
Hearing of Janaury 20, 2016
Before The Honorable Perry H. Gravely

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DeAngelo Mitchell v State of South Carolina

3

Case No. 14-CP-10-05358

Hearing of January 20, 2016

Before The Honorable Perry H. Gravely

1

(APPLICANT PRESENT)

2

THE COURT: I'll be glad to hear

3

from you. This is DeAngelo

4

Mitchell?

5

MR. JOHNSON: The Honorable

6

Kristie Harrington sentenced the Applicant

7

to confinement for a period of fifteen (15)

8

years for the distribution of cocaine second

9

offense; and five (5) years concurrent for

10

the involuntary manslaughter; and the court

11

revoked probation of five (5) years.

12

He filed no appeal.

13

However, he filed a timely PCR

14

application on August 3, 2014.

15

The State filed its return on March

16

16th, 2015.

17

He is represented here today by Mr.

18

Jim FALK, who has a matter for the Court.

19

MR. FALK: Your Honor, may I have

20

a moment with my client?

21

THE COURT: Yes.

22

MR. FALK: I just spoke with him,

23

(conferring with client) -- one moment, Your

24

Honor.

25

THE COURT: All right. Do you

DeAngelo Mitchell v State of South Carolina

4

Case No. 14-CP-10-05358

Hearing of January 20, 2016

Before The Honorable Perry H. Gravely

1 need a minute?

2 MR. FALK: If I could just have a
3 second, Your Honor.

4 THE COURT: All right.

5 (COURT AT-EASE)

6 MR. FALK: Your Honor, we're
7 ready to go forward.

8 THE COURT: All right. You need
9 to give me a summary of the issues.

10 MR. FALK: My client, in effect,
11 entered an involuntary or unknowing guilty
12 plea because he was under the impression that
13 what he was being -- what he was pleading to
14 was going to be sixty-five percent time as
15 opposed to eighty-five percent time. And, of
16 course, as pled, this is a serious offense,
17 which makes it an eighty-five percent
18 offense.

19 Had he known that he was going to
20 have to serve that extra time, it's his
21 position that he would have not have wanted
22 to go forward with the plea at that time and
23 would have tried to get something more in the
24 ten-year range. So I call my client.

25 THE COURT: All right.

DeAngelo Mitchell v State of South Carolina
Case No. 14-CP-10-05358
Hearing of January 20, 2016
Before The Honorable Perry H. Gravely

5

1

2

MR. FALK: How do we want to do this?

3

4

THE COURT: Yes, I'll be glad to
swear him in.

5

(WITNESS TAKES STAND)

6

7

8

DEANGELO MITCHELL, having been duly sworn
to tell the truth, and nothing but the truth,
testified as follows:

9

DIRECT EXAMINATION

10

BY MR. FALK:

11

Q. Mr. Mitchell, can you ---

12

13

14

MR. FALK: Your Honor, can I go
from here? Do you want me to go to the
podium?

15

16

THE COURT: Yeah. However you
need to do it.

17

DIRECT EXAMINATION CONTINUED

18

BY MR. FALK:

19

20

Q. Mr. Mitchell, who was your original
attorney in this case?

21

A. Bobby Howe.

22

Q. I beg your pardon?

23

A. Bobby Howe.

24

Q. H-O-W-E?

25

A. Yeah.

DeAngelo Mitchell v State of South Carolina

6

Case No. 14-CP-10-05358

Hearing of January 20, 2016

Testimony of Applicant - Direct Examination

1 Q. Okay. And at some course in this
2 proceeding you hired Mark Peper; is that
3 correct?

4 A. Yes.

5 Q. Okay. Were there ever any plea
6 negotiations that had gone on between -- was
7 it your understanding that there was a plea
8 negotiation going on between the State and
9 Mr. Howe?

10 A. Yes.

11 MR. JOHNSON: Objection to anything
12 concerning Mr. Howe. This is about Mr.
13 Peper's representation, not Mr. Howe, Your
14 Honor.

15 THE COURT: All right. So noted.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. FALK:

18 Q. What did you think the original plea
19 deal was?

20 A. Fifteen years at sixty-five percent,
21 was the letter that Mark Peper mailed out to
22 me, to the county jail that says that the
23 fifteen years would have been done at sixty-
24 five percent.

25 MR. FALK: May I approach, Your

DeAngelo Mitchell v State of South Carolina

7

Case No. 14-CP-10-05358

Hearing of January 20, 2016

Testimony of Applicant - Direct Examination

1 Honor?

2 THE COURT: Yeah.

3 MR. FALK: We'll make this an
4 exhibit to this PCR.

5 COURT REPORTER: Applicant's
6 Exhibit Number 1.

7 (SO MARKED AS APPLICANT'S EXHIBIT 1)

8 DIRECT EXAMINATION CONTINUED

9 BY MR. FALK:

10 Q. I'm handing you a letter. Have you
11 ever seen that letter before?

12 A. Yes.

13 Q. Can you describe that letter?

14 A. (No verbal response).

15 Q. Who sent you the letter or who's the
16 letter from?

17 A. Mark Peper.

18 Q. And that's the letter that you had
19 received?

20 A. Yes.

21 Q. And after reading that letter, what
22 did you think that your sentence was going to
23 be?

24 A. Fifteen years non-violent at sixty-
25 five percent.

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Case No. 14-CP-10-05358

Hearing of January 20, 2016

Testimony of Applicant - Direct Examination

1 Q. So the real issue here is that you
2 thought you were going to have to do sixty-
3 five percent of the sentence; is that ---

4 A. Right.

5 Q. Did he make any -- so based on that
6 letter, how long did you think was the
7 maximum you'd wind up serving?

8 A. Eight or nine years.

9 Q. Okay. And knowing that you were
10 going to have serve eighty-five percent of
11 the time, would you have taken the plea in
12 this case?

13 A. No.

14 Q. Why is that?

15 A. Because that ain't what he told me
16 that him and the solicitor negotiated.

17 Q. Okay. And again, had you known that
18 you were going to have to do eighty-five
19 percent, would you have entered a plea?

20 A. No.

21 Q. What would your plan have been?

22 A. To try to get a lesser number, under
23 the ten range.

24 Q. Okay.

25 A. If it would have been eighty-five

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Case No. 14-CP-10-05358

Hearing of January 20, 2016

Testimony of Applicant - Direct Examination

1 percent.

2 Q. Yeah. Okay.

3 MR. FALK: At this time we'd like
4 to offer this letter of Mr. Peper's exhibit.

5 THE COURT: All right. Any --

6 MR. JOHNSON: No objection from the
7 State, Your Honor.

8 MR. FALK: No further questions.

9 THE COURT: Mr. FALK, as we're
10 doing this, I would note that as part of the
11 record is the transcript. And the most
12 detailed discussion I have ever read by a
13 judge talking about the classification of
14 sentences and what he's going to be getting
15 and whether it's serious, and eighty-five
16 percent. And that he's assumed that he
17 should be serving day for day. So ---

18 MR. FALK: Your Honor ---

19 THE COURT: I'm just saying. I've
20 never seen one that detailed by a judge. But
21 we'll let you go forward. I just wanted to
22 point that out.

23 MR. FALK: No further questions.

24 THE COURT: All right. Anything
25 from the State?

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Case No. 14-CP-10-05358

Hearing of January 20, 2016

Testimony of Applicant - Direct Examination

1 MR. JOHNSON: Based on those
2 comments, Your Honor, that was my question to
3 Mr. Mitchell so I have no questions.

4 THE COURT: Anything else from the
5 applicant.

6 MR. FALK: Let me just talk about
7 that.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. FALK:

10 Q. So you were there at the sentencing
11 hearing; is that right? Obviously.

12 A. Yeah.

13 Q. And did the court advise you that
14 you were going to be serving eighty-five
15 percent of the time?

16 A. No. I asked him what percentage it
17 would have been, sixty-five or eighty-five.
18 She said no, that anytime a judge is supposed
19 to sentence, you should look at all the
20 sentence as you have to serve all the time,
21 day for day.

22 Q. Right. But the judge didn't
23 represent to you that it was going to be an
24 eighty-five percent sentence; is that
25 correct?

1 A. No.

2 Q. Are you aware of the fact that some
3 people serve sentences and have to only serve
4 eighty-five percent of the time or sixty-five
5 percent of the time?

6 A. Yes. But Mr. Peper, he stated -- he
7 said that I ain't -- my lawyer when he was in
8 the courtroom, he said the deal was enhanced.

9 I don't how Bobby Howe bring me a plea
10 deal for fourteen years as a first offense
11 when ---

12 MR. JOHNSON: Objection to anything
13 Mr. Howe did, Your Honor.

14 APPLICANT: Fourteen years for a
15 first offense level, which would have carried
16 -- well, you always required to do sixty-five
17 percent at the first offense level.

18 But anything after first offense, you're
19 required to do eighty-five percent, which he
20 never exposed that deal to me.

21 He brought the sentencing sheet to me.
22 He brought me in -- back, I want to say it
23 was between July and August 2013. And he
24 brought me a plea for fifteen years, like I
25 said. All right?

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Hearing of January 20, 2016

Testimony of Applicant - Cross Examination

1 When you said that you could get me under
2 fifteen years, that's the reason why I hired
3 you. So he wrote ten years down and said he
4 would see if Mr. Kidd would accept a ten-year
5 plea, which Mr. Kidd denied the ten-year
6 plea.

7 So then he came back in September. I
8 never knew or had no knowledge of me having
9 to go to trial or nothing. He came back and
10 then he was, like, 'well, he won't take the
11 ten-year plea so the same offer is still on
12 the table for the fifteen years, non-violent
13 at sixty-five percent.'

14 I said, 'Well, why you saying second
15 offense now? When in the first deal,
16 everything was saying first offense?'

17 Then Mr. Kidd say the deal enhanced.
18 This deal ain't never been exposed (sic) to
19 me.

20 MR. FALK: No further questions.

21 MR. JOHNSON: Just follow up.

22 CROSS EXAMINATION BY

23 BY MR. JOHNSON:

24 Q. Mr. Mitchell, do you remember
25 pleading guilty?

1 A. Yeah.

2 Q. And that was on September 16th, 2013
3 before Judge Harrington?

4 A. Yes.

5 Q. And do you remember when she states
6 to you that "Your drug charge is a serious
7 offense and that strike will affect you once
8 you're released. Do you understand that?"

9 To which you replied, "Yes, ma'am."

10 Do you remember that?

11 A. Yes. She told me that.

12 Q. And do you remember that she also
13 said that it has to do with how long you're
14 going to be in classification for when you
15 get to the Department of Corrections;
16 correct?

17 A. Correct.

18 Q. And that you should be prepared to
19 do the maximum day for day; correct?

20 A. Right. She said -- when she exposed
21 any sentence, she never said where it was a
22 Serious or Most Serious offense.

23 Q. Okay. But would you agree with me
24 that day for day means a hundred percent of
25 your sentence?

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Testimony of Applicant - Cross Examination

1 A. A hundred percent, (affirmative
2 nod).

3 Q. Which is more than eighty-five
4 percent?

5 A. Right.

6 Q. Which is more than sixty-five
7 percent?

8 A. Right.

9 Q. That you should be prepared to do a
10 hundred percent of your sentence; correct?

11 A. Correct.

12 Q. And do you also remember when she
13 asked Mr. Peper, your counsel, has he
14 explained what classification of a serious
15 meant with respect to distribution?

16 To which he replied, "Yes, ma'am. We
17 discussed that in detail."

18 Was that in your plea?

19 A. Yeah. He said that, he said -- he
20 told that to me too. The letter I received
21 at Lieber. And he said it was a serious
22 offense because it carried over twenty years.
23 'Now you're required to do eighty-five
24 percent.'

25 A first offense carries zero to fifteen

1 which you're required to do sixty five
2 percent because it don't carry over twenty
3 years incarcerated in prison.

4 Q. And this is not your first drug
5 offense; is it?

6 A. No.

7 Q. By a long shot; correct?

8 A. No.

9 Q. This could actually be tried as a
10 third?

11 A. Right.

12 Q. Which is twenty-five years minimum;
13 right?

14 A. (Affirmative nod).

15 Q. And you never once stopped Judge
16 Harrington and said, 'I don't understand.
17 I don't want to plead to a Serious drug
18 offense.' Did you?

19 A. No. Because last time when I was
20 trying to say is that Mr. Peper -- I was
21 trying to explain that for drug charges when
22 it's like a second offense you're required to
23 do eighty-five percent. He said he had it
24 under control and no, it was sixty-five
25 percent. He keep telling me sixty-five

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Testimony of Applicant - Redirect Examination

1 percent.

2 Q. But you realize ---

3 A. So when I get in front of Judge
4 Dennis with Bobby Howe, you remember Judge
5 Dennis tell me one day, made a comment, he
6 said, *'Did you went to law school? Why
7 didn't you tell me you went to law school?
8 Your lawyer know what he told me. You don't
9 know what you talking about.'*

10 Q. But like I said, this is not your
11 first run with prison, with the law, with
12 drug charges; correct?

13 A. (Negative gesture).

14 Q. Is that a "no"?

15 A. (Affirmative nod).

16 Q. Well, that's correct isn't it?

17 A. Yeah. Correct.

18 Q. Okay.

19 MR. JOHNSON: No further questions, Your
20 Honor.

21 MR. FALK: One question on
22 redirect.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MR. FALK:

1 Q. You've had a prior prison sentence?

2 A. Sir?

3 Q. Have you been in prison before?

4 A. Yeah. On a YOA sentence.

5 Q. Did you serve day for day on that?

6 A. No, that's automatic ten months and
7 you come home after ten months.

8 Q. But you didn't serve the full
9 sentence?

10 A. No.

11 MR. FALK: No further questions.

12 THE COURT: All right. Thank you.

13 (WITNESS STEPS DOWN)

14 THE COURT: Anything from the ---

15 MR. FALK: I'm going to call Mr.
16 Peper to the stand.

17 THE COURT: All right.

18 (WITNESS TAKES STAND)

19 MARK PEPER, having been duly sworn to
20 tell the truth, and nothing but the truth,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. FALK:

24 Q. Mr. Peper, you were not the first
25 lawyer on this case; is that correct?

DeAngelo Mitchell v State of South Carolina

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Hearing of January 20, 2016

Testimony of Mark Peper - Direct Examination

1 A. No, sir.

2 Q. You were actually the second lawyer?

3 A. I was not the first. I don't know
4 how many before ---

5 Q. In order to prepare for the case,
6 did you review the file?

7 A. Yes, sir.

8 Q. And did you note whether or not
9 there were any discussion of prior pleas in
10 the case?

11 A. Yes. I recall I was actually
12 brought in specifically because the defendant
13 had turned down the last and final plea offer
14 on the record in front of Judge Dennis. And
15 it was set for trial.

16 And the Defendant was uncomfortable with
17 his current attorney and hired me to the
18 alternative that I could not get the plea
19 placed back on the record or any plea to come
20 in, to be the trial attorney for this matter.

21 Q. Okay. Did you ever meet with him
22 and hand him a plea agreement that said ten
23 years on it, that he was pleading to ten
24 years?

25 A. Not that I recall.

1 Q. Did you ever represent to him that
2 you could have gotten him ten years?

3 A. Not that I recall.

4 Q. Okay. Exhibit Number 1 there ---

5 A. Uh-huh.

6 Q. --- do you recall sending that
7 letter to my client?

8 A. Give me one second to review it.

9 (Upon review), okay. Yes, sir.

10 Q. Okay. And in your review of that,
11 is the information in there accurate?

12 MR. JOHNSON: And what's the date on
13 that if you don't mind?

14 WITNESS PEPER: September 5, 2013.

15 THE COURT: Okay. Thank you.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. FALK:

18 Q. Does it say that this would be a
19 sixty-five percent offense?

20 A. It does say that.

21 Q. Okay. And did you not then sort of
22 make a rough calculation of how much time he
23 would have to serve?

24 A. Yes.

25 Q. Okay. And that was less than years;

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Testimony of Mark Peper - Direct Examination

1 right?

2 A. That's correct.

3 Q. Okay. Did you ever -- prior to when
4 he went into the plea, did you ever tell him
5 that you were mistaken about whether or not
6 that charge was a sixty-five percent or an
7 eighty-five percent?

8 A. Yes.

9 Q. Prior to the plea?

10 A. Correct.

11 Q. So he knew prior to going into the
12 plea it was going to be an eighty-five
13 percent charge?

14 A. Yes. And if I can elaborate a
15 little bit. Because as I was reviewing the
16 file and listening to the testimony of the
17 defendant, it was always my position -- and I
18 readily admit this -- that this charge was a
19 nonviolent offense and, therefore, would be
20 classified as a sixty-five percent crime.

21 Q. Okay.

22 A. I relayed that to my client both in
23 writing and verbally. Prior to the plea
24 hearing when we were given the sentencing
25 sheets, the prosecutor and I had a lengthy

1 discussion about the fact that it was going
2 to be classified as serious. Now, that was
3 not checked on the sentencing sheet per my
4 review of the file.

5 And, so, the Defendant and I met back
6 here in the conference room and went over it.
7 And at the time, to be quite candid, I was
8 frustrated, as the Defendant was, because
9 being classified as nonviolent, I was under
10 the impression that it was a sixty-five
11 percent crime.

12 What I was unaware of when I arrived at
13 the courthouse, was that it was also
14 classified as a serious offense, which as we
15 know now, and we knew -- we learned prior to
16 going into court, that would then essentially
17 bump him up into the eighty-five percent
18 category because of its classification as a
19 serious offense carrying twenty or more
20 years.

21 We went over that at length. Neither the
22 Defendant nor I were happy about it at all.
23 I tell you that to tell you this. The
24 original offer, as I understand it was a
25 first offense, nonviolent, non-Serious

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Testimony of Mark Peper - Direct Examination

1 classification. And after he turned it down
2 on the record and hired me, I was
3 unsuccessful in getting the State to put that
4 back on the table for us. They did finally
5 put fifteen back on the table, but at the
6 second level, which again, was classified as
7 nonviolent, and I relayed that to the client.

8 Q. Were you on the trial docket that
9 day?

10 A. We were on the trial docket for the
11 week following.

12 Q. Okay. So that day that you walked
13 in there, thirty minutes before he went
14 before the judge, was the first time you
15 found out that this was going to be eighty-
16 five percent?

17 A. That's correct.

18 Q. And that if he had ---

19 A. Well, let me, let me -- it's the
20 first time that we realized it could
21 potentially be eighty-five percent.

22 Q. And that he was set to go -- so then
23 his choice was that or go to trial the next
24 week?

25 A. Yes. In his mind, the third choice

1 was, 'Mr. Peper you can do better. You need
2 to get back in there and negotiate.' And I
3 explained to him, you know, that I had spent
4 the last two weeks every single day begging
5 and pleading to get the State to put the
6 original offer back on the table. And that
7 this was the absolute best we were ever going
8 to get prior to swearing a jury.

9 Q. Were you prepared for trial that
10 next week?

11 A. I was. I was not happy about it
12 because I felt very strong about the fact
13 that there was a very strong likelihood that
14 he would be convicted at trial and face the
15 minimum of twenty-five years.

16 MR. FALK: No further questions.

17 MR. JOHNSON: No questions from the
18 State, Your Honor.

19 THE COURT: All right. Thank you.

20 MR. JOHNSON: I'm going to ask that
21 this witness be released from his subpoena.

22 THE COURT: Any objection to him
23 being released? Mr. FALK, any objection to
24 him being released?

25 MR. FALK: No, Your Honor.

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Testimony of Mark Peper - Direct Examination

1

2

THE COURT: Okay. Have a good day.

3

MR. PEPPER: Thank you, Judge.

4

(WITNESS STEPS DOWN)

5

6

THE COURT: All right. Anything else from the Applicant?

7

8

MR. FALK: One moment, Your Honor.

9

(COURT STANDS AT-EASE)

10

11

MR. FALK: Your Honor, may I recall my client for one question.

12

13

THE COURT: Yeah. I'll allow that.

14

15

MR. FALK: Is this okay (defendant at table)?

16

17

THE COURT: Yeah, that's fine.

18

Why don't you sit there. You're still under oath.

19

20

DEANGELO MITCHELL, having been previously sworn, testified as follows:

21

EXAMINATION RESUMED

22

BY MR. FALK:

23

24

Q. Did Mr. Peper ever preview you the same offer of the fifteen years nonviolent?

25

A. No. He just said it on the stand

1 there that the State never put the original
2 offer that they was supposed to put in Judge
3 Dennis. He just said that on the stand. So
4 he couldn't even bring to me. And in the
5 transcript it says that I rejected it. So
6 how could I reject if they never put it back
7 on the table?

8 Q. So you never went to court and
9 rejected that second offer?

10 A. No.

11 Q. The only time was when you rejected
12 the first offer but not the second one?

13 A. Yes.

14 MR. FALK: No further questions.

15 THE COURT: All right. Anything
16 else from the State?

17 MR. JOHNSON: I just have a couple
18 of cases to cite, Your Honor, which will kind
19 of clear this entire issue up.

20 MR. FALK: Your Honor, if I could
21 just bring the Court's attention to one
22 section. If you would look at Page 13 on the
23 plea transcript.

24 THE COURT: Okay.

25 MR. FALK: We have a disparity in

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Hearing of January 20, 2016
Closing Argument of Counsel

1 the testimony of Mr. Peper. And if you
2 look at Lines 15 through 21, the State says
3 that they made that same offer to him. That
4 they re-extended the original offer which was
5 the fifteen years, first offense, which would
6 have made it a sixty-five and not an eighty-
7 five and that he rejected it on the record.
8 But there is no record where he rejected that
9 second offer.

10 THE COURT: Okay.

11 MR. FALK: And Mr. Peper said he
12 didn't communicate any other offer to my
13 client. My client just said that he never
14 received the second offer.

15 THE COURT: All right. Anything
16 else?

17 MR. FALK: No, Your Honor.

18 MR. JOHNSON: Your Honor, may I
19 response. Just briefly.

20 THE COURT: Yes, sir.

21 MR. JOHNSON: First, he provided no
22 evidence whatsoever that this second offer
23 even existed. It's his burden of proof.
24 He's got to bring, you know, whether the
25 solicitor had an offer, whether Mr. Peper in

1 his file had an offer. Mr. Mitchell has
2 failed to establish that the second offer
3 even existed.

4 As to the advice or the mis-advice on the
5 sixty-five, eighty-five percent, while
6 counsel testified that originally he said
7 sixty-five, right before the hearing or a
8 week before, he advised him it would be an
9 eighty-five percent. And when counsel
10 engages in parole eligibility as far as
11 sentencing is concerned, he must do it
12 correctly. However, even where counsel
13 misadvises a defendant regarding sentencing
14 range, the error is cured when the trial
15 during the guilty plea properly advised the
16 defendant about the matter in question. That
17 is *Moorhead v State*, 329 S.C. 329. It's a
18 1998 case.

19 This Court clearly told him that he
20 should expect to serve day for day, which is
21 higher than sixty-five and higher than
22 eighty-five percent. So he clearly knew what
23 he was facing and he pled. He chose to plead
24 even knowing that. So I would hope this
25 Court would find his testimony not credible,

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Hearing of January 20, 2016

Ruling of the Court

1 Your Honor.

2 MR. FALK: Your Honor, if I could
3 just address the burden of proof issue.

4 THE COURT: Yeah.

5 MR. FALK: In the transcript we
6 have a member of the bar who has testified
7 before the court saying that there was a
8 second offer. I think that that should carry
9 the burden of proof.

10 THE COURT: All right. You know,
11 I'm looking at the transcript. Like I said
12 before, there's a detailed discussion about
13 how it was classified, about six pages worth.
14 And then they actually -- admittedly there
15 was -- the wrong box was checked and the
16 Court came back and said there was a
17 scrivener's error. In the discussion, it was
18 said "You're aware that the wrong box was
19 checked and that it is now classified as a
20 violent offense. Do you understand that?
21 Do you understand that a serious offense, a
22 violent offense that a strike that will
23 affect your classification as to the amount
24 that you serve in the Department of
25 Corrections."

1 I think regardless of whatever
2 discussions about previous offers and what
3 he was advised, whether correctly or
4 incorrectly, I think that was very clearly
5 corrected by the plea judge in going through
6 that with Mr. Mitchell; and his responding to
7 the questions that he understood what the
8 judge was telling him. So I believe in light
9 of that, that the petitioner's application is
10 denied.

11 MR. FALK: For clarification,
12 Your Honor. Is your decision based on
13 whether or not there is South Carolina case
14 law that when trial counsel does not
15 communicate an offer and the person will end
16 up serving a worst sentence for that, that
17 that's a second grounds for relief. And that
18 is what -- that ground was raised in his
19 amended PCR application.

20 THE COURT: All right. My finding
21 is that any incorrect statements by the
22 attorney were corrected by the trial judge.

23 MR. FALK: Thank you.

24 THE COURT: And the PCR is denied.

25 (COURT IN RECESS)

CG
AG
AT
GS
SOL

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Deangelo Mitchell, #322456,

2014-CP-10-5358

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2016 MAR 30 PM 4:02
JULIE A. BROWN
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 3, 2014. Respondent made its Return on March 26, 2015. An evidentiary hearing into the matter was convened on January 20, 2016, at the Charleston County Courthouse. James K. Falk, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Mark Peper, Esquire, also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the March 2012 term of the Charleston County Grand Jury for distribution of cocaine- second offense (2012-

GS-10-1680) and involuntary manslaughter (2012-GS-10-1818). Applicant was represented by Mark Peper, Esquire.

On September 16, 2013, Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced Applicant to confinement for a period of fifteen years for distribution of cocaine and five years for involuntary manslaughter. The sentences are to be served concurrent to a probation violation on indictments 2010-GS-10-7618, 2010-GS-10-7621. The Court revoked probation for five years. Applicant did not appeal his convictions or sentence.

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

- 1. Ineffective assistance of counsel.
 - a. Counsel failed to advise Petitioner of the right to appeal.
- 2. Involuntary guilty plea.
 - a. Plea based on erroneous advice of counsel.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he

burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”

Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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

Applicant testified that Counsel told him his sentence would be fifteen years non-violent and that he would serve a 65% sentence. Applicant then testified if he had known that his sentence would be 85%, he would not have pled guilty. Upon questioning by the Court, Applicant admitted that the plea judge explained that Applicant should expect to serve the sentence “day for day.”

Plea counsel testified that he was the second lawyer on this case and that he reviewed the entire file and prior plea discussions with Applicant. Plea counsel stated that prior to the guilty plea, he was brought in because Applicant had turned down the last plea offer on the record and the case was scheduled for trial. Plea counsel testified he was prepared for trial. Plea counsel also testified that he could not recall a ten year offer or presenting this ten year offer to Applicant. Plea counsel testified he sent a letter to Applicant on September 5, 2013, stating that this offense would carry a 65% sentence; however, he corrected this advice prior to the plea and explained to Applicant that this

charge would in fact be an 85% sentence. Plea counsel corrected this mistake after reviewing the sentencing sheet and prior to Applicant's plea. The case was scheduled for trial the next week. Plea counsel then stated it was Applicant's choice whether to pursue a trial or accept a plea. Plea counsel testified that Applicant wanted him to go back to the State and get a better offer and he told Applicant that it was not possible.

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. Plea counsel testified he reviewed with Applicant that he was facing a charge that carried a possible twenty-five year sentence. This Court finds this testimony is credible. This Court finds the plea counsel initially advised Applicant that he would have to serve 65% of his sentence; however, upon reviewing the sentencing sheet and prior to Applicant pleading guilty, he corrected this advice and explained to Applicant prior to the plea that he would have to serve 85% of his sentence. This court also finds that the plea judge advised Applicant that he should expect to serve his sentence "day for day." This Court finds Applicant was aware of the sentences he could receive if he pled guilty and received lawful sentences. This Court finds the guilty plea transcript refutes Applicant's assertion that he was led to believe he would serve only 65% of his sentence. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). While Applicant may have wished that he would only have to serve 65% of his sentence, he was clearly advised of the potential sentence he could receive. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citation omitted) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). Additionally, this Court finds Applicant made this decision freely and voluntarily without

any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty. This Court finds Applicant failed to meet his burden of proving plea counsel was deficient.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

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

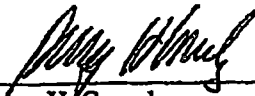
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the

appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 14th day of March, 2016.



 Perry H. Gravely
 Presiding Judge
 Ninth Judicial Circuit

Charleston, South Carolina.

CDD20111208674

DOCKET NO. 2012GS1001818

WITNESSES

The State of South Carolina

North Charleston Police Department

County of Charleston

AGENCY CASE NUMBER

COURT OF GENERAL SESSIONS

2011044611A

March Term 2012

ARREST WARRANT NUMBER

M995386

DATE OF ARREST

November 30, 2011

ACTION OF GRAND JURY

THE STATE

vs.

TRIAL

DEANGELO MITCHELL

DOB: 1988

B/M

Foreperson of Grand Jury
Date: MAR 06 2012

Indictment for

Involuntary Manslaughter

VERDICT

Foreperson of Petit Jury

Date:

INDICT

FILED

3/21/2012 2:49:27 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 5, 2012 the Grand Jurors of Charleston County present upon their oath:

Involuntary Manslaughter

That in Charleston County, South Carolina, on or about November 30, 2011, the Defendant, DEANGELO MITCHELL, did act in a criminally negligent manner to wit: distributed a quantity of cocaine to his brother, Wayne Joshu Mitchell, for him to ingest, in reckless disregard for his safety, and Wayne Mitchell did die in Charleston County as a result of the Defendant's actions. All in violation of Section 16-3-60 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.



CULVER KIDD
ASSISTANT SOLICITOR

CDD20111208674

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011044611A

ARREST WARRANT NUMBER

M995387

DATE OF ARREST

November 30, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date:

MAR 6 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1001680

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2012

THE STATE

vs.

DEANGELO MITCHELL
DOB: 1988
B/M

Indictment for

Distribution of Cocaine

FILED

3/21/2012 2:49:27 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

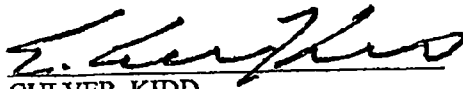
INDICTMENT

At a Court of General Sessions, convened on March 5, 2012 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine

That in Charleston County, South Carolina, on or about November 30, 2011, the Defendant, DEANGELO MITCHELL, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: cocaine; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


CULVER KIDD
ASSISTANT SOLICITOR