

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

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JOHN HENRY DIAL, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002431

---

APPENDIX

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Appellate Defender

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	)	
County of Richland	)	2014-GS-40-03270
	)	
STATE OF SOUTH CAROLINA,	)	
	)	PARTIAL
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JOHN HENRY DIAL, JR.,	)	
	)	
DEFENDANT,	)	

September 9th, 2016  
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

KATHRYN CAVANAUGH, ASSISTANT SOLICITOR  
FOSTER MATTHEWS, ASSISTANT SOLICITOR  
Attorneys for the State

MEGAN EIGENBROT, ASSISTANT PUBLIC DEFENDER  
LUCAS HAWKS, ASSISTANT PUBLIC DEFENDER  
Attorneys for the Defendant

KAREN AMBROZIAK  
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. We're on the record  
2 in 2014-GS-40-3270, the State vs. John Dial, Jr. Will you  
3 please swear?

4 (The clerk complies.)

5 JOHN DIAL, JR., after being duly  
6 sworn, testified as follows:

7 THE COURT: All right. Mr. Dial, we've had some  
8 pretrial hearings on your case this morning. We actually  
9 picked a jury yesterday. I have some questions I'm going  
10 to ask you at this point in time.

11 Now, if you need to talk to your attorneys or consult  
12 with them or I think maybe -- were you able to talk to  
13 your father earlier?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. And they asked me for permission  
16 for you to do that. Was that granted? Were you allowed  
17 to talk to him?

18 THE DEFENDANT: Yes, sir. Thank you.

19 THE COURT: Okay. You're welcome. That's fine. You  
20 know, this is an important decision, and I understand that  
21 that is an important decision when people want to discuss  
22 those type of serious decisions with their family. I  
23 usually always let them do that. Especially if they're in  
24 custody because you're not seeing your family every single  
25 day, and you're usually only communicating with them

1 through jail phones or interactions at the jail which can  
2 be difficult. So did you have enough time to speak with  
3 your father?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. All right. Mr. Dial, you've been  
6 charged with manufacturing methamphetamine, and it's my  
7 understanding that you want to plead guilty under North  
8 Carolina vs. Alford; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Now, this is not a trick question,  
11 but explain to me in your own words what North Carolina  
12 vs. Alford means.

13 THE DEFENDANT: That I don't have to plead guilty;  
14 that there is enough evidence where I might be found  
15 guilty at trial.

16 THE COURT: Okay.

17 THE DEFENDANT: So I would be taking a chance.

18 THE COURT: All right. Let me back that up a little  
19 bit and come back. This -- the point of this is for you  
20 and I to have a conversation and me to convince myself  
21 that you understand what you're doing, okay. So it is a  
22 guilty plea. You just don't have to admit that you  
23 manufactured methamphetamine. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. It's still a guilty plea. Now,

1 I'm not going to ask you are you guilty. I'm not going to  
2 ask you did you manufacture methamphetamine on or about  
3 April 22, 2014. Do you understand that part of it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: It still goes on your record. Do you  
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: It still becomes part of your criminal  
9 history. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And in the course -- I have told -- told  
12 your attorneys that if you entered this plea, I would give  
13 you a probationary sentence. You would still be on  
14 probation, would still be subject to the same standard  
15 conditions of probation that everybody else is.

16 If you violate your probation -- you willfully and  
17 intentionally violate your probation, then you will be  
18 facing prison time in the discretion of some judge,  
19 probably not even me, if that happens. Do you understand  
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So just because it's a North Carolina vs.  
23 Alford plea doesn't mean that all those things don't  
24 happen. All those things could still happen. Do you  
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: So basically, what you're saying in a  
3 North Carolina vs. Alford plea is -- and I'm going to put  
4 this in my own words, okay, is: "Judge, I'm not saying  
5 I'm guilty, but I'm saying if we went forward with this  
6 trial in one way, shape or form, the State could produce  
7 enough evidence -- it's reasonable that the State could  
8 produce enough evidence to convict me, but I'm not saying  
9 I'm guilty." Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. And do you still want to go  
12 forward with the North Carolina vs. Alford plea?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay.

15 (Pause.)

16 Are you sure about that?

17 (Conferring with counsel.)

18 (Pause).

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. And again, out of anything -- I  
21 don't -- this isn't me attempting to rush you or force you  
22 or anything else. If you look at me and you say: "Judge,  
23 I need to talk to my lawyers," that's fine with me. I'm  
24 going to give you time to do that." Okay. Do you  
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you just -- you just did communicate  
3 with Mr. Hawks. Were you able to understand that  
4 conversation?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you need -- so if at any time during  
7 this, you say: "Judge, I need to talk to my lawyers. I'm  
8 not going to get mad. I'm not going to get upset. I'm  
9 not going to get frustrated." I'm going to give you the  
10 ability to do that, okay?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you follow me?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, are you under the influence  
15 of any alcohol or drugs today?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you ever been treated for any mental  
18 health issues?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Now, they tell me that you want to  
21 plead guilty under North Carolina vs. Alford to one count  
22 of manufacturing methamphetamine. That carries up to 15  
23 years in prison. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, do you also understand that this has

1 a designation by our legislature as a violent offense. Do  
2 you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Now, are you on probation or  
5 parole now?

6 THE DEFENDANT: No, sir.

7 THE COURT: When you plead guilty, even under North  
8 Carolina vs. Alford, you give up certain important  
9 Constitutional Rights. The first is your right to remain  
10 silent. Do you understand that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you want to give up that right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The second is your Constitutional Right  
15 to a jury trial. Now, do you understand what a jury trial  
16 is?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you were -- we actually started the  
19 process of a jury trial; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You've been present for all of that,  
22 right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If your jury trial were to continue, I  
25 would tell the jury this afternoon that you have a right

1 to remain silent. You don't have to prove anything. The  
2 burden of proof is upon the State of South Carolina. That  
3 burden of proof is proof beyond a reasonable doubt.

4 You don't have to say anything. Your lawyers don't  
5 have to ask a question because you don't have to prove  
6 anything at all. The sole burden of proof in this case is  
7 upon the State to prove your guilt to a jury unanimously  
8 beyond a reasonable doubt. Do you understand that that's  
9 what a jury trial would entail?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: During that trial, you would have the  
12 right through your lawyers to confront and cross-examine  
13 the witnesses the State would call against you. If you  
14 plead guilty even under North Carolina vs. Alford, that is  
15 not going to happen. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you further understand that during  
18 that trial, you would have the right to the subpoena power  
19 of the court to force or compel witnesses to come in and  
20 testify if you so choose.

21 You would also have the right to present any defense  
22 you may have, keeping in mind you don't have to do any of  
23 that because you don't hold the burden of proof, but if  
24 you wanted to or you and your lawyers agreed that was the  
25 best strategy, then you would have the right to those

1 powers of the court to compel people to come in and  
2 testify. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, your indictment says that you did  
5 manufacture methamphetamine on or about April 22, 2014 in  
6 Richland County. Do you understand the charge? I'm not  
7 saying are you guilty of the charge or how do you plead to  
8 the charge, but do you understand the charge that the  
9 State has brought against you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Now, I know that the State is  
12 making no recommendations, and it is marked on your  
13 sentencing sheet without negotiations or recommendations,  
14 but I have informed your counsel, and I have informed the  
15 State that if you go forward with a plea even under North  
16 Carolina vs. Alford, I'm going to give you a probationary  
17 sentence. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. And I think that's fair for me to  
20 put on the record that's part of the -- your basis in  
21 making the decision to go forward with this plea; is that  
22 right?

23 THE DEFENDANT: Correct, sir.

24 THE COURT: Do you understand that if you had gone  
25 forward with a trial whether it had been today or whether

1 it had been in the future, that if you were convicted at  
2 trial, you would be facing 15 years in prison. Do you  
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, besides what I have told your  
6 attorneys I would give you as a sentence, has anybody  
7 promised you anything to get you to plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anybody forced you or threatened you  
10 to get you to plead guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you pleading guilty freely and  
13 voluntarily?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you satisfied with your lawyers?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you had enough time to meet with  
18 them, talk about your case, discuss your case, had enough  
19 time to talk with them about this plea here today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And Ms. Cavanaugh is going to  
22 give me some facts. Just listen to what she says, okay.

23 Ms. Cavanaugh.

24 MS. CAVANAUGH: Thank you, Your Honor. This incident  
25 occurred April 22, 2014 at Mr. Dial's residence which is

1 located in Richland County at [REDACTED] Richland  
2 County Sheriff's Department was called to this location  
3 twice that night by the defendant's mother.

4 The first call was due to the fact that Mr. Dial had  
5 just assaulted his father. At that time, he did indicate  
6 that he wanted to press charges.

7 When Deputy Taylor with the Sheriff's Department went  
8 towards the back of the property where Mr. Dial resides,  
9 Mr. Dial's truck nor his person, nor was he on the scene.

10 There was a brown van that belongs to Mr. Dial's  
11 wife, Sarah Larsen, where they looked just in the front to  
12 see -- with their flashlight to see if he was hiding.  
13 They did not observe anything in the van at that time.

14 One-and-a-half hours later, the mom called 91 [sic]  
15 again because Mr. Dial was back at the property firing a  
16 gun in the backyard.

17 When the sheriff's department arrived, they did have  
18 their lights off and approached the backyard so as to make  
19 sure that Mr. Dial would not attempt to flee, as there is  
20 a wood line that he is known to leave the property  
21 whenever the sheriff's department does arrive.

22 Once they got close to Mr. Dial, they observed his  
23 truck there, and the van was still there. They identified  
24 themselves as law enforcement.

25 He refused to comply with their demands. He went

1 towards his white truck and threw an object in the back of  
2 his truck from his waistband. At that time, he was placed  
3 under arrest. After resisting for several minutes, he was  
4 placed under arrest for that previous assault and battery  
5 on his father.

6 Upon approaching the truck, they immediately observed  
7 a very distinctive smell that in their experience as law  
8 enforcement officers knew to be associated with the fresh  
9 cook of methamphetamine.

10 They looked in the truck where they observed him  
11 throw the object from his waistband. They located the  
12 gun, and in that bed of the truck beside the gun there was  
13 an open black container with drain cleaner along with an  
14 empty -- well, a plastic liter bottle with what appeared  
15 to be a cloudy liquid in -- in that bottle.

16 They immediately called the on-call meth investigator  
17 which at that point was Allison Rikard with the Sheriff's  
18 Department. Upon her arrival, she immediately read  
19 Mr. Dial his Miranda warnings.

20 For her safety -- he indicated that he wished to  
21 waive those rights. That was done verbally. For her  
22 safety, she began asking him questions about how recent  
23 the meth cook was in case -- because of the hazardous  
24 nature of the materials and equipment used in making  
25 methamphetamine.

1           He indicated that it was not a recent cook; that  
2 there was nothing in either the van or the truck that  
3 would blow up. As she went towards the van, which as  
4 previously stated an hour-and-a-half before, the deputies  
5 did not observe anything in that van.

6           Investigator Rikard observed white sludge material,  
7 as well as a mixing cup and a filter. That did -- these  
8 are items commonly associated with the cooking of meth.

9           He did indicate to her that he had just thrown that  
10 liter bottle into the van. The materials that were  
11 located in the bed of his truck did field test positive  
12 for methamphetamine.

13           Phillips Recovery, Incorporated which is a company  
14 that the Sheriff's Department contracts with in order to  
15 remove hazardous material and nonhazardous material from  
16 meth labs arrived.

17           They did conduct their own field test. Again, the  
18 items located at the residence in the truck -- excuse me,  
19 in the truck and in the van tested positive for  
20 methamphetamine.

21           As they were actually cleaning up the sludge from the  
22 van, the materials ignited in the bucket they were using  
23 to carry the materials away.

24           His girlfriend, Desiree Mayhew, did provide an  
25 affidavit to the Public Defender's Office that stated that

1 John Dial had nothing to do with the cooking of the  
2 methamphetamine that evening. However, she recanted  
3 her -- that story in writing to the Richland County  
4 Sheriff's Department at a later date and said that  
5 Mr. Dial coerced her into making that affidavit to the  
6 Public Defender's Office, and that he was, in fact,  
7 responsible for the methamphetamine found at the scene  
8 that night.

9 THE COURT: All right. And I've already heard his  
10 prior criminal history.

11 MS. CAVANAUGH: Yes.

12 THE COURT: All right. I will accept his plea. I  
13 find there is a substantial factual basis for the plea. I  
14 further find that his decision to plead guilty under North  
15 Carolina vs. Alford is made freely, voluntarily, knowingly  
16 and intelligently. He's had the advice of two very  
17 competent attorneys with whom he tells me he is satisfied.

18 Mr. Dial, do you understand that you have ten days  
19 from today's date to appeal this plea. If you choose to  
20 do so, you must do so in writing to this court. Do you  
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Who is talking?

24 MS. EIGENBROT: Your Honor, I'll speak.

25 THE COURT: Okay.

1 MS. EIGENBROT: Your Honor, I met Mr. Dial prior to  
2 these charges, and he was very -- he has always been very  
3 active in this case.

4 He has always shown a great interest in what the  
5 evidence was against him. In this case, Your Honor, he  
6 has denied from the beginning that he had any knowledge or  
7 anything to do with what was going on at his residence.

8 He had received some pretty bad news that morning.  
9 He tells me he had gone to his parents to kind of seek  
10 some solace and do some modest type work like washing his  
11 truck, building some things for his children.

12 He began drinking pretty heavily during the day. His  
13 father told me he drank several beers along with some  
14 Crown Royal. An incident ensued with his father. He  
15 tells me his memory is very shaky about what he saw and  
16 witnessed that night after he stumbled back out to his  
17 residence where the items were found in the alleged meth  
18 lab at that point in time.

19 He tells me that -- he has always told me his  
20 girlfriend, Desiree Mayhew, was the one that invited  
21 people over to the home; that they were the ones doing it.  
22 He learned this information from her.

23 As Ms. Cavanaugh said, she did come to my office  
24 alone. We spoke extensively about the situation. She  
25 then provided me the statement acknowledging that he had

1 no knowledge of what was going on or had anything to do  
2 with it. She did recant her statement later on. However,  
3 she recently has contacted me recanting her prior  
4 statement to the police, Your Honor.

5 He does have four children which he works very hard  
6 and diligently to support. He is a contractor. He has  
7 been doing work here in Columbia for a very long time.  
8 Your Honor, we just ask that you just sentence him to the  
9 sentence agreed upon.

10 THE COURT: All right. Anything you want to tell me?  
11 You don't have to.

12 THE DEFENDANT: No, sir.

13 THE COURT: Okay. All right. Let me say this. I'm  
14 going to say this one thing to you, and I'm not saying  
15 anything about you individually or personally, okay.

16 I'm going to give you a probationary sentence, okay.  
17 Number one because as part of your criminal history, there  
18 is virtually no major serious drug charges on there, okay.  
19 You've been on probation before.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You know how it works.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. And regardless of what side  
24 anybody in this case is on, I think everybody wants to see  
25 you succeed and hopes they never see you back in court

1 again, okay. Is that fair?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So any substance abuse problems that you  
4 may have -- I'm not saying you do because I don't know.  
5 Let Probation help you get those under control if you do  
6 have them, so you can be the kind of father that you want  
7 to be for your children. Fair enough?

8 THE DEFENDANT: Fair enough, sir.

9 THE COURT: Okay. The sentence of this Court is that  
10 you be committed to the State Department of Corrections  
11 for seven years. That's suspended upon probation for two  
12 years, credit for time served, substance abuse counseling,  
13 random alcohol and drug testing, \$500 to the Public  
14 Defender Fund. Have a nice day.

15 THE DEFENDANT: Thank you.

16 MS. EIGENBROT: Thank you, Your Honor.

17 MS. CAVANAUGH: Your Honor, he is -- there is a bench  
18 warrant in this.

19 THE COURT: All right. Let's vacate the bench  
20 warrant.

21 MS. CAVANAUGH: Thank you.

22 MS. EIGENBROT: And, Your Honor, I think his bond has  
23 actually been revoked on prior charges. I don't know if  
24 those will...

25 MS. CAVANAUGH: Yes, Your Honor. I meant to say at

1 the beginning of the recitation of the facts that he does  
2 have a CDV pending from August of 2013, as well as a  
3 harassment from December of 2013 that we are dismissing in  
4 exchange for his plea.

5 THE COURT: Okay.

6 MS. EIGENBROT: Thank you, Your Honor.

7 THE COURT: Have a nice day.

8 (Whereupon, the proceedings were concluded.)

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2015-CP-40-4284

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 John Henry Dial Jr. )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2015 JUL 16 10:20 AM  
 JEANETTE W. BISHOP  
 C.C.P. & DISTRICT CLERK  
 RICHLAND COUNTY  
 FILED

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 2100 Legrande Rd. # 55 Columbia, S.C 29223
2. Name and location of Court which imposed sentence Richland County 5<sup>th</sup> Circuit Court 1701 Main St Columbia, S.C 29202
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) GS2014A4010201457 (2014GS400327)
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 9/9/2014

- (b) 7 years suspended to 2 years probation
- (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 X
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) My appointed counsel Megan Igenbrot told me I had no legal issues to bring to the court of appeals.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Pursuant to Responsibilities of the Judge Standard 14-3.3, my 14 th Amendment rights were violated when Honorable Judge Hood became the chief arbiter of plea negotiations, after my appointed counsel Megan Igenbrot made a motion to dismiss prosecutor Kathryn Cavanaugh for prosecutorial misconduct. When the Judge offered the plea, I felt I didn't have any other options but to take the plea.

(b) My appointed counsel also stated to me that with a plea of Nolo Contendere that it could not be used against me in Family Court. Which it was at a later date. My appointed counsel also stated to me that the charge was non-violent, which upon research that I did plea to a violent crime.

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

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

(a) "The unequal positions of the judge and the accused, one with the power to commit to prison and the other deeply concerned to avoid prison, at once raise a question of fundamental fairness. When a judge becomes a participant in plea bargaining he brings to bear the full force and majesty of his office. His awesome power to impose a substantially longer or even maximum sentence in excess of that proposed is present whether referred to or not. A defendant needs no reminder that if he rejects the proposal, stands upon his right to trial and is convicted, he faces a significantly longer [\*\*\*12] sentence. One facing a prison term, whether of longer or shorter duration, is easily influenced to accept what appears the more preferable choice. Intentionally or otherwise, and no matter how well motivated the judge may be, the accused is subjected to a subtle but powerful influence. A guilty plea predicated upon a judge's promise of a definite sentence by its very nature does not qualify as a free and voluntary act. The plea is so interlaced with the promise that the one cannot be separated from the other; remove the promise and the basis for the plea falls. A judge's prime responsibility is to maintain the integrity of the judicial system; to see that due process of law, equal protection of the laws and the basic safeguards of a fair trial are upheld. The judge stands as the symbol of even handed justice, and none can seriously question that if this central figure in the administration of justice promises an accused that upon a plea of guilty a fixed sentence will follow, his commitment has an all-pervasive and compelling influence in inducing the accused to yield his right to trial. A plea [\*548] entered upon a bargain agreement between a judge and an accused cannot [\*\*\*13] be

Revised 3/2003

squared with due process requirements of the Fourteenth Amendment."

(b) Standard 14-3.2. Responsibilities of defence counsel. To the extent possible, defence counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.

(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. \_\_\_\_\_

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?
- No
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? \_\_\_\_\_

(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. Megan Igenbrot 1701 Main St. Columbia, S.C 29202

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

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

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

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

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

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

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

I ask that the disposition of the case be overturned or that I may withdraw my plea.

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

No

STATE OF SOUTH CAROLINA )

VERIFICATION

County of Richland )

I, John H. Dial Jr., 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.

*[Handwritten signature]*  
\_\_\_\_\_

SWORN to and subscribed before me this 16<sup>th</sup>  
day of July, 2015.

*[Handwritten signature]* (L.S.)  
\_\_\_\_\_  
Notary Public

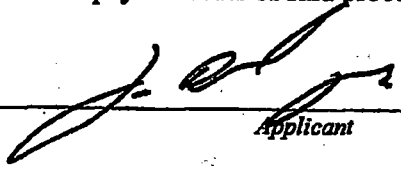
My Commission Expires: October 07, 2025

RICHLAND COUNTY  
FILED  
2015 JUL 16 PM 2:06  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

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

I, John H. Dial Jr. , 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.

  
 \_\_\_\_\_  
 Applicant

SWORN or affirmed to and subscribed before me this  
16<sup>th</sup> day of July, 2015.

  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: October 07, 2025

RICHLAND COUNTY  
 FILED  
 2015 JUL 16 PM 2:06  
 JEANETTE W. MCBRIDE  
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 )  
 John Henry Dial, Jr., )  
 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 OF THE FIFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-40-4284

RETURN

In response to Applicant's post-conviction relief application filed July 16, 2015, Respondent would show this Court:

I.

Applicant was previously incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted Applicant at the June 2014 term for manufacturing methamphetamine (2014-GS-40-3270). Megan Eigenbrot, Esquire, and Lucas Hawks, Esquire, represented Applicant.

Applicant entered a plea of guilty to the charge, as indicted, under North Carolina v. Alford. On September 9, 2014, the Honorable Robert E. Hood sentenced Applicant to seven (7) years imprisonment, suspended upon probation for two (2) years, credit for time served, substance abuse counseling, random alcohol and drug testing, and a \$500 fine to the Public Defender Fund. Prior charges of criminal domestic violence from August 2013 and harassment from December 2013 were dismissed in exchange for this plea. Applicant did not appeal his

conviction.

## II.

In his application for post-conviction relief, Applicant alleges he was previously held in custody for the following reasons:

1. Involuntary guilty plea.
2. Ineffective assistance of counsel.
3. Violation of due process under the 14<sup>th</sup> Amendment.

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

Attached to this return and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction and the records of this action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

## III.

Respondent submits that any allegation that Applicant's guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz, 338 S.C. at 363-64, 527 S.E.2d at 747 (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea

only by showing 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, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging 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. at 56. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

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

#### IV.

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

Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

## V.

Respondent submits Applicant's allegation of a violation of due process under the 14<sup>th</sup> Amendment is without merit. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

## VI.

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

*(remainder of page intentionally left blank)*

VII.

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

Respectfully submitted,

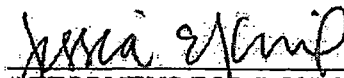
ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

JESSICA E. KINARD  
S.C. Bar #77889  
Assistant Attorney General

By:

  
ATTORNEYS FOR RESPONDENT  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

June 26, 2016

STATE OF SOUTH CAROLINA  
COUNT OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2015-CF-40-4284

JOHN HENRY DIAL,

Applicant,

vs.

AFFIDAVIT OF SERVICE BY MAIL

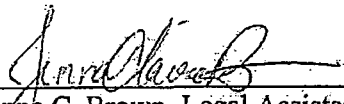
STATE OF SOUTH CAROLINA,

Respondent.

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

**Jonathan D. Waller, Esquire**  
Giese Law Firm  
1315 Blanding Street  
Columbia, SC 29201

DATED this 28<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Jenna C. Brown, Legal Assistant  
For Respondent

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COMMON PLEAS COURT

John Henry Dial, Jr.,  
Applicant,

TRANSCRIPT OF RECORD  
2015-CP-40-4284

-vs-  
The State.

August 31, 2016  
Columbia, South Carolina

B E F O R E :

HONORABLE JOCELYN NEWMAN, JUDGE

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

JONATHAN D. WALLER, ESQUIRE  
Attorney for the Applicant

RUSTON W. NEELY, ESQUIRE  
Attorney for the State

Linda D. Moffitt  
Circuit Court Reporter

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WITNESSES

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JOHN HENRY DIAL, JR. (AW)	
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No exhibits entered into evidence.

1 MR. NEELY: The next matter before the Court is the  
2 case of John Henry Dial, Jr. vs. the State of South  
3 Carolina, Case No. 2015-CP-40-4284.

4 Applicant was previously incarcerated with the South  
5 Carolina Department of Corrections pursuant to Richland  
6 County through Court's-ordered commitment. That was in  
7 June of 2014 term where the applicant was indicted for  
8 manufacturing methamphetamine under Indictment  
9 No. 2014-GS-40-3270. Megan Eigenbrot and Lucas Hawks  
10 represented the applicant at that time.

11 The applicant entered a plea of guilty as indicted  
12 under North Carolina vs. Alford on September 9th of 2014  
13 and was sentenced that same day to seven years imprisonment  
14 suspended upon probation for two years, credit for time  
15 served.

16 Part of the plea deal was also that prior charges of  
17 criminal domestic violence and harassment were dismissed as  
18 part of the plea. The applicant did not file a direct  
19 appeal, and he's here represented by Mr. Jonathan Waller.

20 THE COURT: All right. Mr. Waller.

21 MR. WALLER: Your Honor, the only correction, I guess,  
22 I have is Mr. Dial never went to the Department of  
23 Corrections. He received a probationary sentence, so he  
24 was able to leave that day.

25 THE COURT: Okay. All right. Are you ready to

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 proceed?

2 MR. WALLER: I am. I would call John Dial.

3 JOHN HENRY DIAL, JR., having  
4 been first duly sworn, testified as follows:

5 THE BAILIFF: State your full name for the record, and  
6 spell your last name.

7 THE WITNESS: John Dial, D-I-A-L.

8 THE COURT: Yes, sir.

9 MR. WALLER: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MR. WALLER

11 Q Good morning, Mr. Dial. How are you today?

12 A I'm good.

13 Q Mr. Dial, you were arrested for manufacturing meth, is  
14 that correct?

15 A Yes, sir.

16 Q Okay. Did you have some other pending charges at that  
17 time?

18 A Yes, sir.

19 Q Okay. what? what else was pending?

20 A Two counts of harassment and one count of C.V.

21 Q Okay. Those were not related to the -- the time you  
22 were -- the incident where you were arrested for the  
23 manufacturing methamphetamine, is that correct?

24 A No, sir.

25 Q Okay. who was your attorney on the -- on the

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 manufacturing charge?

2 A Megan Eigenbrot.

3 Q Okay. And how soon after you were arrested did she  
4 come to be your attorney?

5 A I think she was already my attorney on the two other  
6 cases.

7 Q Okay. So you were already familiar with her. Y'all  
8 had already met on the other cases?

9 A Yes.

10 Q Okay. After you picked up the new charge, how soon  
11 after that were you able to meet with her and discuss the  
12 new charge?

13 A Pretty quick.

14 Q Okay. Were you out on bond on the other charges?

15 A Yes, sir.

16 Q Okay. Were you able to make bond on the manufacturing  
17 charge?

18 A Yes, sir.

19 Q Okay. How many times do you think you met with Ms.  
20 Eigenbrot?

21 A Quite a bit. I'm not sure how many.

22 Q Related to the manufacturing charge or just all in  
23 general?

24 A Mainly the manufacturing charge.

25 Q Okay.

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 A I mean, all in -- all but -- was concerned about the  
2 manufacturing charge.

3 Q Okay. Now, were -- did you stay out on bond the  
4 entire time?

5 A No, sir. I violated my bond conditions somehow  
6 another and got locked back up.

7 Q Okay.

8 A I think my bond was revoked when I went to -- to the  
9 trial.

10 Q Okay. Before your -- and we'll get to your trial in  
11 just a second. Before the trial was scheduled to start had  
12 the state moved to revoke your -- your bond?

13 A That's correct.

14 Q Okay. Did you have a hearing on that?

15 A Yes.

16 Q Did you have more than one hearing on that?

17 A Yes, sir.

18 Q Okay. How many do you think you had?

19 A I'm not sure. I want to say two.

20 Q Two. Okay. Do you recall who the judges were for  
21 your bond revocation hearings?

22 A Judge Hooper.

23 Q Judge Hooper. Both of them?

24 A I believe so. I know he was -- I know for a fact one.  
25 I believe it was both.

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 Q Okay. Now, you -- you were going to trial in this  
2 case, is that right? You had picked the jury and had done  
3 some pretrial motions before you ultimately pled.

4 A Yes.

5 Q Okay. At what point did you make the decision to go  
6 to trial?

7 A From day one.

8 Q Okay. Were you and Ms. Eigenbrot able to discuss some  
9 defenses that you might have?

10 A Yes, sir.

11 Q Okay. What did y'all talk about?

12 A Expert witness and pretty much that I hadn't had time  
13 to do it. And witnesses.

14 Q Okay. What -- what was your expert witness going to  
15 testify to if you know?

16 A I believe I didn't have time to do it or I didn't -- I  
17 didn't have the time to do it.

18 Q Okay. What other witnesses did you have?

19 A My mom, my dad, Desiree who was actually doing it at  
20 the time, stating that she was doing it.

21 Q Okay. Now, who -- who is Desiree?

22 A My exgirlfriend.

23 Q Okay. Did she actually give a statement to someone?

24 A Yes, sir.

25 Q Okay. Do you recall who she gave the statement to?

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 A To Megan.

2 Q Okay. Do you recall, I guess, the contents of the  
3 statement?

4 A Pretty much admitted what she done.

5 Q Okay. Now, at some point she had recanted that  
6 statement to law enforcement or the solicitor's office, is  
7 that right?

8 A That's correct.

9 Q Okay. And getting back to your parents, your parents  
10 were actually -- or either your mother or your father --  
11 was actually who called the police, is that right?

12 A Right.

13 Q Okay. Did you and Ms. Eigenbrot discuss what would  
14 take place, kind of the procedures of how the trial would  
15 go?

16 A Yes.

17 Q Okay. Were you familiar with the trial process? Have  
18 you ever been on trial before?

19 A No, sir.

20 Q Okay.

21 THE COURT: Mr. Dial, let me ask you.

22 Can you pull that microphone a little bit closer to  
23 you?

24 THE WITNESS: Yes, ma'am.

25 Q Okay. So you -- after speaking with her you were

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 aware of what was going to take place?

2 A The proceedings, yes, sir.

3 Q Yeah. At some point you made the decision to plead  
4 under North Carolina vs. Alford, is that right?

5 A Yes, sir.

6 Q Okay. What -- how did that decision come about? You  
7 had picked the jury and you'd done some pretrial motions.  
8 How -- what changed?

9 A Ms. Eigenbrot put in a motion to dismiss the  
10 prosecutor, and the judge said my case would start all back  
11 over so I'd go back to jail and I could stay in there a  
12 year with no bond.

13 Q Okay. So there was a motion to -- explain that to me  
14 a little bit.

15 A A motion to, I guess, get the prosecutor off the case.

16 Q Okay. Just that particular prosecutor or the whole  
17 solicitor's office? Do you know?

18 A I think it was just that particular prosecutor.

19 Q Okay. Was that motion ever heard?

20 A No, sir.

21 Q Okay.

22 A I mean, it was heard, but it wasn't ruled on, I guess.

23 Q Okay.

24 A Before he ruled on it he gave me the opportunity to --  
25 to plead to -- to that.

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 Q Okay. Well, we're going to get back to that in just a  
2 second.

3 You mentioned earlier that your case would start all  
4 over -- what do you mean by that -- if the motion was ruled  
5 on?

6 A It'd go back from the beginning, like it'd just start  
7 back over. I'd get a new prosecutor, new everything and  
8 they'd just -- way back over. So it'd be -- start from the  
9 beginning just like I just -- you know, just got the  
10 charge.

11 Q So you understood that a new prosecutor -- if the  
12 motion was granted and a new prosecutor came in, it would  
13 have to -- there would be some delay of them getting up to  
14 speed and getting prepared to try your case.

15 A Right.

16 Q Okay. And you were locked up at this time?

17 A That's correct.

18 Q Okay. So after, after that, what changed? And what  
19 conversations did you and Ms. Eigenbrot have about what you  
20 were going to do?

21 A It was two choices. I mean, just -- well, my case  
22 would start all over back over again or for me to take that  
23 deal and go home and see my kids that day.

24 Q Okay. And how did the sentence come about? You knew  
25 what you were going to get before you ever pled, is that

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 right?

2 A Yes, sir.

3 Q Okay. How did you know what you were going to get?

4 A Because Judge Hood told Megan and Megan's boss,  
5 offered them a deal, and they brung it to me.

6 Q Okay. So you were aware of what you were going to  
7 get. And it's your understanding that it came directly  
8 from Judge Hood.

9 A That's correct.

10 Q Okay. What did you think was going to happen if you  
11 went forward with your trial that day?

12 A I -- I believed -- and I believe other people in the  
13 courtroom believed -- that Judge Hood was going to grant  
14 that motion and I wasn't going to go forward with my trial.

15 Q Okay. You talked about Judge Hood hearing previous --  
16 previous motions and presiding over previous hearings.

17 What was your understanding of -- of -- of Judge Hood  
18 hearing your trial? Did he want to hear your trial?

19 A Right. I was told by Megan that Judge Hood would be  
20 hearing my trial, that he wanted to be on my -- my trial.

21 Q Whether it was that day or at a later date?

22 A That's correct.

23 Q Okay. What did you think would happen if you  
24 ultimately went forward and didn't -- didn't accept the  
25 offer or the sentence that Judge Hood had said he was going

John Henry Dial, Jr.  
Direct examination by Mr. Waller

1 to give? what did you think was going to happen if he  
2 presided over the case and you were convicted?

3 A I would have got the full 15.

4 Q Okay. You thought you were going to get the maximum  
5 sentence?

6 A Yes, sir.

7 Q Okay. Is that why you pled guilty or pled under North  
8 Carolina vs. Alford?

9 A Yes, sir.

10 Q Okay. And you understood. Judge Hood went over with  
11 you on the record that a plea to North Carolina vs. Alford  
12 is counted as a guilty plea by everybody else except that  
13 you don't have to stand in the courtroom and admit your  
14 guilt. Did you understand that?

15 A Yes, sir.

16 Q Okay. Mr. Dial, if -- is the reason that you pled  
17 guilty because of Judge Hood telling you what you were  
18 going to receive if you pled?

19 A Kind of, I mean, yes.

20 Q Okay. Did you -- did you until then want to go  
21 forward with a trial?

22 A Yeah.

23 Q Okay. Mr. Dial, I think I've asked you all of the  
24 questions that I have. Is there anything that you think  
25 I've left out that the Court needs to be aware of of

John Henry Dial, Jr.  
Cross-examination by Mr. Neely

1 Ms. Eigenbrot's representation of you?

2 A No, sir.

3 Q Okay. Please answer any questions the attorney  
4 general's office has.

5 MR. NEELY: Thank you. May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. NEELY

9 Q Mr. Dial, do you remember being sworn in before you  
10 pled guilty?

11 A Yes, sir.

12 Q And the judge asked you a bunch of questions once you  
13 were sworn in and you were preparing to plead guilty, isn't  
14 that right?

15 A Yes, sir. I do remember telling Megan that I could  
16 not plead guilty to that because I didn't do it. And  
17 that's why I was pleading no contest, so I didn't have to  
18 lie to the judge.

19 Q You pled State vs. Alford, but it's still considered a  
20 guilty plea. So the judge asked you a bunch of questions  
21 whenever you're in front of the judge for a guilty plea,  
22 isn't that right?

23 A Yes, sir.

24 Q Okay. And one of the questions he asked you was were  
25 you happy with your attorney, did they do a good job. Do

John Henry Dial, Jr.  
Cross-examination by Mr. Neely

1 you remember that?

2 A Yes, sir.

3 Q And do you remember saying yes, that she did a good  
4 job?

5 A Yes, sir.

6 Q Do you today think she did a good job?

7 A Yes, sir.

8 Q Now, just kind of going back to something Mr. Waller  
9 spoke about. And you kind of hesitated a little bit. You  
10 said kind of when -- why did you plead? Did you plead  
11 because Judge Hood was going to give you probation, and you  
12 said kind of, yeah. Sounds like you pled because the risk  
13 of going into trial was too great. Would that be right?

14 A No, sir.

15 Q No?

16 A No, sir. I pled because I didn't want to get my stuff  
17 started back from the beginning all over again.

18 Q Okay. Did you ask Ms. Eigenbrot to go forward with  
19 that motion for prosecutorial misconduct?

20 A At that point the judge offered that deal to me.

21 Q Right.

22 A It was either take that deal or to start back over.

23 Q Okay. And so your understanding was it would start  
24 back over if the motion was granted for prosecutorial  
25 misconduct.

John Henry Dial, Jr.  
Cross-examination by Mr. Neely

- 1 A That's correct.
- 2 Q Okay. But then you didn't -- you didn't push Ms.  
3 Eigenbrot to go forward with the motion for misconduct at  
4 that time, is that correct?
- 5 A That's correct.
- 6 Q Okay. And you spoke about some witnesses that -- that  
7 you were going to have potentially at trial.
- 8 A That's correct.
- 9 Q Is it your understanding that Ms. Eigenbrot  
10 interviewed those witnesses or spoke to them on the  
11 phone --
- 12 A I'm sure she did.
- 13 Q -- in preparation for the trial?
- 14 A I'm sure she probably met with them in person also.
- 15 Q And she went over all of your -- all of your rights  
16 for a plea or a trial thoroughly with you?
- 17 A Yes.
- 18 Q And you said she met with you quite a bit. So you had  
19 a pretty good relationship with Ms. Eigenbrot?
- 20 A That's correct.
- 21 Q Okay. Do you know how soon after your bond was  
22 revoked that this case was set for trial?
- 23 A I'm not sure. I know I sat in there for a while.
- 24 Q Okay. I mean, I know you said -- I mean, that's like  
25 an exact number of days.

John Henry Dial, Jr.  
Redirect examination by Mr. Waller

1 A I'm not sure.

2 Q But, basically, as soon as you got your bond revoked  
3 and you couldn't get -- couldn't get back out on bond Ms.  
4 Eigenbrot was kind of pushing for a trial for you?

5 A That's correct.

6 Q Because you were sitting in the county, right?

7 A That's correct.

8 Q And you said that she represented you on your two  
9 prior charges as well?

10 A Yes, sir.

11 Q And she had gotten you bond on those charges? And you  
12 were out on bond for those charges when you picked up the  
13 manufacturing charge?

14 A Yes, sir.

15 Q Okay.

16 MR. NEELY: I believe that's all the questions I have.

17 THE COURT: Any redirect?

18 MR. WALLER: Just very briefly.

19 REDIRECT EXAMINATION

20 BY MR. WALLER

21 Q Mr. Dial, you -- you aren't a lawyer, are you?

22 A No, sir.

23 Q You've never been to law school?

24 A No, sir.

25 Q Okay. You -- you testified that you're satisfied with

John Henry Dial, Jr.  
Redirect examination by Mr. Waller

1 Ms. Eigenbrot. Have you -- do you know every duty the  
2 lawyer has?

3 A No, but I believe -- I mean, she could have -- an  
4 attempt. I mean, at that time it was my decision, but it  
5 was like forced into it, as this. It's two options.

6 Q Okay.

7 MR. WALLER: I have no further questions. Thank you.

8 THE COURT: All right. You can -- Mr. Dial, you can  
9 go back and sit next to your lawyer.

10 MR. WALLER: No other witnesses, Your Honor.

11 MR. NEELY: Judge, at this time I'd ask for this  
12 application to be dismissed. I'm not sure of any  
13 allegation of -- any allegation's been made that could  
14 uphold the application. I don't think the applicant has  
15 made any statement of fact or put anything on the record  
16 that would indicate that Ms. Eigenbrot didn't follow the  
17 professional norms representing her client.

18 THE COURT: Mr. Waller.

19 MR. WALLER: Your Honor, I believe the testimony was  
20 that he -- that the plea was involuntarily made. Mr. Dial  
21 testified that he wanted to go forward with the trial and  
22 felt pressured to accept the plea because he felt that --  
23 he felt that he was going to get the -- the maximum if  
24 he -- if he went forward with the trial.

25 I believe that there was a pending motion to recuse

1 the prosecutor for prosecutor -- prosecutorial misconduct.  
2 I certainly don't know the complete allegations surrounding  
3 that. I don't know the allegations and what would have  
4 happened, whether it would have been granted or not  
5 granted.

6 I think it was error to not pursue that farther, and I  
7 think that Mr. Dial was under the impression that he would  
8 be convicted. He was under the impression that Judge Hood  
9 would retain jurisdiction over his case and that if he were  
10 convicted he would receive the maximum.

11 MR. NEELY: Your Honor, just addressing briefly.

12 I think all -- the pressure that was mentioned by  
13 Mr. Dial, I think very intelligently spoke, very  
14 intelligent well-spoken man -- all the pressure that was  
15 spoken of was the pressure that every person faces when  
16 they go to trial of the fear of getting a bigger sentence  
17 or, you know, adversely getting the benefit of a plea as  
18 opposed to getting punished at trial.

19 I don't think that he testified that it was to such a  
20 degree that it made it involuntary. He sounded like he  
21 knew exactly what he was doing and weighed the pros and  
22 cons of a trial and a plea, very intelligently and with the  
23 intelligent advice of counsel.

24 THE COURT: I'll give you one last little shot,  
25 Mr. Waller.

1 MR. WALLER: Your Honor, I would -- I will direct you  
2 to Mr. Dial's application and ask that you review the --  
3 the standards. A judge is not allowed to interject  
4 themselves into plea negotiations.

5 I think that Ms. Eigenbrot had a duty to -- a duty to  
6 object to that if Mr. Dial did not want to plead guilty.  
7 Obviously, he was ready to go to trial. And when Judge  
8 Hood interjected himself into it, I don't think that was --  
9 that's proper. And I think she should have objected to  
10 that and we wouldn't -- we would not be addressing --  
11 that's -- this is our issue. We wouldn't be addressing  
12 that here today if she had objected.

13 THE COURT: All right. Unfortunately, Mr. Waller, I  
14 just don't see it.

15 Your client seems to indicate that he was satisfied  
16 with the representation of Ms. Eigenbrot.

17 And my understanding of the testimony was simply, as  
18 the attorney general said, that Mr. Dial had certain  
19 options, that he waived those options.

20 I don't know that Judge Hood necessarily infused  
21 himself or that there's sufficient testimony to suggest to  
22 me that he infused himself in plea negotiations. I think  
23 he simply offered an additional alternative.

24 Not every judge will accept a plea pursuant to North  
25 Carolina vs. Alford. And it sounds to me like he was

1 making all parties aware that he would entertain such a  
2 plea, which is -- was simply another option for Mr. Dial.

3       Certainly, I don't think there's been any showing of  
4 prejudice to Mr. Dial. Even assuming that there was some  
5 demonstration that there was some error, I don't think  
6 there's been any showing of prejudice. So I'm going to  
7 grant the state's motion to dismiss. Thank you.

8           END OF REQUESTED TRANSCRIPT OF RECORD

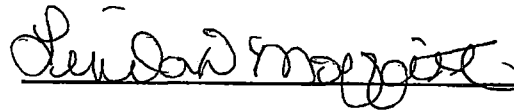
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 31st day of August 2016.

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

December 12, 2016



Linda D. Moffitt  
Circuit Court Reporter

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

John Henry Dial, Jr., )

Case No.: 2015-CP-40-4284

Applicant, )

ORDER OF DISMISSAL

v. )

State of South Carolina, )

Respondent. )

RICHLAND COUNTY  
FILED  
2016 NOV 14 PM 3:34  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

This matter comes before the Court by way of an application for post-conviction relief filed July 16, 2015. Respondent made a timely Return on August 1, 2016. The Court convened an evidentiary hearing into the matter on August 31, 2016, at the Richland County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. The Court had before it a copy of the guilty plea transcript, the records of the Richland County clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

The Richland County Grand Jury indicted Applicant at the June 2014 term for manufacturing methamphetamine (2014-GS-40-3270). Megan Eigenbrot, Esquire, represented Applicant. Applicant entered a plea of guilty to the charge, as indicted, under N. Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (U.S. 1970.) On September 9, 2014, the

Honorable Robert E. Hood sentenced Applicant to seven (7) years imprisonment, suspended upon probation for two (2) years, credit for time served, substance abuse counseling, random alcohol and drug testing, and a \$500 fine to the Public Defender Fund. Prior charges of criminal domestic violence from August 2013 and harassment from December 2013 were dismissed in exchange for this plea. Applicant did not appeal his conviction.

## II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges his plea and sentence were unconstitutional for the following reasons:

1. Involuntary Guilty Plea.
2. Ineffective Assistance of Counsel.
3. 14<sup>th</sup> Amendment Right to Due Process Was Violated by Judicial Participation

At the evidentiary hearing, Applicant proceeded on all three grounds.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe the witness who testified at the hearing, and closely assess his credibility. The 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.

### A. Involuntary Guilty Plea

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had

a full understanding of the consequences of his plea and the charges against him." Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). "[T]he accuracy and truth of an accused's statements at a Rule 11 proceeding in which his guilty plea is accepted are "conclusively" established by that proceeding unless and until he makes some reasonable allegation why this should not be so." Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975.)

This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty and, therefore, waived any challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements made at the plea hearing. The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court

has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." *Id.* (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Id.* After a full review of the record, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made, and this allegation must be dismissed.

#### B. Ineffective Assistance of Plea Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

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

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. *Id.* Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden to show that trial counsel was ineffective. There was no testimony presented that plea counsel failed to advise Applicant on any of the collateral consequences of his plea. Applicant testified that he met with plea counsel many times and understood all his rights before pleading guilty. Applicant testified that plea counsel was ready for trial and had done everything he asked of plea counsel. Applicant testified that plea counsel's representation was satisfactory and he thought she put forth "a valiant attempt." After a full review of the record, this Court finds that plea counsel's representation sufficient and reasonable. Therefore, this allegation must be dismissed.

**C. Applicant's 14<sup>th</sup> Amendment Right to Due Process Was Violated by Judicial Participation**

The Court finds Applicant failed to meet his burden to show trial counsel was ineffective by failing to object to the plea judge's involvement. The Court finds that the plea judge did not infuse himself into the plea negotiation. No testimony was elicited that indicated the plea judge behaved in an objectionable manner. The plea judge told plea counsel what sentence he would be inclined to give if Applicant pleaded guilty. "A trial judge may participate in the plea bargaining process if he follows guidelines to minimize the fear of coercion." *Medlin v. State*, 276 S.C. 540,

541, 280 S.E.2d 648, 648 (1981.) The federal case cited by Applicant in his application, United States v. Gilligan, 256 F.Supp. 244 (1966), was raised by the dissent in Medlin, but the South Carolina Supreme Court chose not to adopt that standard.

After a full review of the record, this Court finds the trial judge took steps to minimize the fear of coercion and Applicant could not reasonably have felt coerced by the participation of the trial judge in the guilty plea. Further, there was no evidence that Applicant was prejudiced by the participation of the plea judge. Therefore, this allegation must be dismissed.

#### D. All Other Allegations

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

#### IV. CONCLUSION

After the completion of Applicant's case, this Court finds that the Applicant's case at the evidentiary hearing presented the Applicant no right to relief. This Court finds, and the Applicant's testimony at the evidentiary hearing echoes, plea counsel did an admirable job of representing the Applicant. Applicant's manner and testimony at the evidentiary hearing indicated that his decision to take the plea deal was due to his fear of a higher penalty at trial, which is a valid consideration and not a ground for relief.

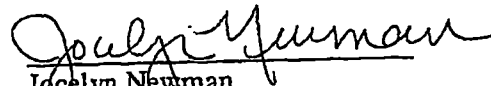
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, the State's Rule 41(b) motion at the end of Applicant's presentation of evidence must

be granted. This application for post-conviction relief must be denied and summarily dismissed under Rule 41(b) with prejudice.

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

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and summarily dismissed with prejudice.

  
Jocelyn Newman  
Presiding Judge, 5<sup>th</sup> Judicial Circuit

AND IT IS SO ORDERED THIS 9<sup>th</sup> DAY OF November, 2016.

**WITNESSES**

(S) Inv. A. Ricard  
- RCSD

**ARREST WARRANT NUMBER**

2014A4010201457

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date:

JUN 11 2014

**VERDICT**

**CERTIFIED TRUE COPY  
OF ORIGINAL FILED**

Foreperson of Grand Jury  
Date:

*John W. B. B. B.*  
C.C.C.P.&G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

**DOCKET NO. 2014-GS-40-03270**

**The State of South Carolina**

County of

**Richland**

**COURT OF GENERAL SESSIONS**

**JUNE TERM 2014**

116

**THE STATE  
vs.**

**John Dial, Jr.**

**Indictment for  
MANUFACTURING  
METHAMPHETAMINE**

SC Code: 44-53-0375 (B) (1)  
CDR Code: 3198

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.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

INDICTMENT

At a Court of General Sessions, convened on June 11, 2014, the Grand Jurors of Richland County present upon their oath:

**MANUFACTURING METHAMPHETAMINE**

That John Dial, Jr. did in Richland County, on or April 22, 2014 manufacture, or did aid, abet, attempt or conspire to manufacture, a quantity of Methamphetamine, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, (1976, as amended), such manufacturing not having been authorized by law, to wit: in that he was in possession of materials, chemicals, and ingredients used in the manufacturing of Methamphetamines at Lee Road in violation of Section 44-53-375(B), S. C. 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.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland  
STATE VS.  
John Dial Jr

AKA: \_\_\_\_\_

Race: WHITE Sex: M Age: 37

DOB: 77 SS# [REDACTED]

Address: \_\_\_\_\_

City, State, Zip: Columbia, SC

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was TO: Manufacture Methamphetamine

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4003270

A/W#: 2014A4010201457

Date of Offense: 4/22/2014

S.C. Code § : 44-53-0375 (B) (1)

CDR Code #: 3198

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3198

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

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Kathryn Cavanaugh 77690 [Signature] [Signature]  
Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant 101190  
SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 7 ~~days~~ months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 2

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

Set by SCDPPPS \_\_\_\_\_

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

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

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

\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: Vacate Bench Warrant

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

CERTIFIED TRUE COPY OF ORIGINAL FILED  
Jeanette McBride  
C.C.C. P&G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

Clerk of Court/ Deputy Clerk Jeanette McBride  
Court Reporter: [Signature]  
SCCA/217 (03/2011)

Presiding Judge [Signature]  
**ORIGINAL**  
Re Hood  
2/64  
9/9/14

18

2014A4010201457

STATE OF SOUTH CAROLINA

County/  Municipality of

Richland Bond Court

THE STATE 1494038022 R6  
against

John Dial, Jr

Address:   
Columbia, SC

Sex: M Race: W Height: 5 11 Weight: 170

DL State: SC DL #:   
DOB:   
Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: A Ricard -1627

Offense: Manufacture Controlled Substance

Offense Code: 3198  
Code/Ordinance Sec: 44-53-0375(B)(1)

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant John Dial Jr on 23 April 2014

Signature of Constable/Law Enforcement Officer

RETURN WARRANT CERTIFIED TRUE COPY  
Richland County General Sessions  
1701 Main Street  
P O Box 199  
Columbia, SC 29202  
G.C.P.&G.S.  
RICHLAND COUNTY  
ORIGINAL SOUTH CAROLINA

County/  Municipality of )  
Richland Bond Court )

AFFIDAVIT

ORIGINAL  
S.C. Attorney General  
April 21, 2003  
SCCA 518

Personally appeared before me the affiant A Ricard who being duly sworn deposes and says that defendant John Dial, Jr did within this county and state on or about 4/22/2014 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Richland Bond Court ) in the following particulars:

DESCRIPTION OF OFFENSE: Manufacture Controlled Substance

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 4/22/14 while at [redacted] in the Blythewood Magisterial District of Richland County, it is believed the defendant did commit the crime of Manufacture Controlled Substance because officers responded to [redacted] in regards to an assault. Officers attempted to arrest Dial. Dial ran to a white truck where various chemicals and equipment were located in Dial's truck consistent with manufacturing methamphetamine. Post Miranda, Dial admitted throwing the plastic bottle when officers arrived. Affiant and others witness to prove same.

Signature of Affiant

Signature of Affiant

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
Richland Bond Court

Affiant's Address [redacted] Columbia 29225-  
Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/22/2014 defendant John Dial, Jr did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Richland Bond Court ) as set forth below:

DESCRIPTION OF OFFENSE: Manufacture Controlled Substance

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 4/23/2014

Signature of Issuing Judge  
Kirby D Shealy Jr  
Judge Code: 5019

(L.S.)

Judge's Address 1400 Huger Street  
Columbia, SC 29202  
Judge's Telephone (803)748-4745

Issuing Court:  Magistrate  Municipal  Circuit

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JEANETTE W. MORRIS  
D.C.P. & G.S.  
MAY 12 AM 9:31  
RICHLAND COUNTY

BAIL set by

Judge Shealy  
on 4/23/14  
Type and Amount: 25,000.00  
Name of Surety: conc.

**PRELIMINARY HEARING held by**

Judge \_\_\_\_\_  
on \_\_\_\_\_  
Defendant Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_  
\_\_\_\_\_

**DISPOSITION before**

Judge \_\_\_\_\_  
on \_\_\_\_\_  
by \_\_\_\_\_  
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_  
Sentence: \_\_\_\_\_

**JURORS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITNESSES**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
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Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**CODEFENDANTS**

\_\_\_\_\_  
\_\_\_\_\_

