

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

BRANDON GOLDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002034

APPENDIX

KATHRINE H. HUDGINS  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

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

ATTORNEYS FOR RESPONDENT

RECEIVED  
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S.C. SUPREME COURT

**INDEX**

INDEX..... i

GUILTY PLEA TRANSCRIPT DATED FEBRUARY 26, 2014 ..... 1

INDICTMENTS AND SENTENCE SHEETS ..... 14

APPLICATION FOR POST-CONVICTION RELIEF  
FILED JULY 28, 2014..... 20

RETURN DATED OCTOBER 23, 2014..... 29

POST-CONVICTION RELIEF TRANSCRIPT  
DATED JANUARY 21, 2015 ..... 35

ORDER OF DISMISSAL FILED AUGUST 24, 2016..... 66

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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STATE OF SOUTH CAROLINA

-----x

STATE,

Plaintiff,

Case No.

-against-

2013-GS-46-3378

BRANDON GOLDEN,

Defendant.

-----x

February 26, 2014

York, S.C.

B E F O R E:

HONORABLE PAUL M. BURCH

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

MARINA HAMILTON, Esquire

Assistant Solicitor

ASHLEY ANDERSON, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

1 (Whereupon, Brandon Golden, was sworn by the  
2 clerk.)

3 MS. HAMILTON: May it please the Court, Your Honor.  
4 Before you is Brandon Golden. This was scheduled for  
5 trial actually to begin today, but we are now here to  
6 plead. The defendant is pleading guilty. He is  
7 represented by his attorney Ashley Anderson to  
8 possession of schedule one to five drug, first  
9 offense, specifically Oxycodone. This is a waiver on  
10 the Indictment. The defendant is then pleading also  
11 to possession with intent to distribute marijuana,  
12 third, or subsequent offense on a direct Indictment  
13 that has been True Billed, Your Honor.

14 This is a straight-up plea. There is no  
15 recommendation in this case and the defendant bonded  
16 out the same night that he was arrested, Your Honor.

17 THE COURT: All right, Mr. Golden, you are 29?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: From Rock Hill?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You heard the damage. Let's take a  
22 look at it; 3318, possession of oxycodone, April 25,  
23 2013 here in York County. Didn't have authority to  
24 have it. You could received up to to six months on  
25 that unless I stand corrected.

1 MS. ANDERSON: That's correct, Your Honor.

2 THE COURT: How do you plead to that one?

3 THE DEFENDANT: I would have to plead guilty, Your  
4 Honor, but I have the --

5 MS. ANDERSON: He provided -- he had a  
6 prescription he provided me but it was dated to begin  
7 December 2013, so the only prescription I had to  
8 present was after this incident date, so I advised him  
9 as of this point he hasn't presented a prescription as  
10 of the incident date.

11 THE DEFENDANT: See, I needed to get the 2012 and  
12 2011 but he gave me 2013 and and late 2012 so I had  
13 the prescription but I am not able to go get it since  
14 I am here now.

15 THE COURT: All right. The other one is  
16 prescription with intent to distribute marijuana that  
17 is a third offense, that can carry up to --

18 MS. ANDERSON: Your Honor, that is the five year  
19 to 20 year, no parole.

20 THE COURT: Is that a minimum of five?

21 MS. ANDERSON: Yes, Your Honor.

22 THE COURT: You heard that?

23 THE DEFENDANT: Yes.

24 THE COURT: Up to 20. How do you plead on that?

25 THE DEFENDANT: Guilty.

1 THE COURT: All right. Do you understand by  
2 pleading guilty that you waive your jury trial rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If you had a jury trial the State  
5 would have to prove your guilty beyond a reasonable  
6 doubt to convince 12 jurors unanimously your guilt.  
7 Through your attorney you could cross examine the  
8 State witnesses, put up your own defensive witnesses.  
9 You could testify in your own defense. You could also  
10 exercise your right not to testify. If you didn't it  
11 couldn't be held against you and I would even tell the  
12 jury that that is your 5th amendment rights.

13 You are presumed innocent until proven guilty and  
14 that presumption stays with you throughout the trial  
15 and only end if the jury convicted you. If the jury  
16 did convict you you would have a right to appeal. You  
17 could appeal guilty plea as long as you file a Notice  
18 of Appeal within ten days of sentencing.

19 Those are your basic rights. You discussed those  
20 with your attorney, right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You understand them?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Any questions?

25 THE DEFENDANT: No sir.

1 THE COURT: All right, you don't want a trial?

2 THE DEFENDANT: No, sir.

3 THE COURT: You are satisfied with her help?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Answered your questions?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you today under the influence of  
8 any drugs or alcohol?

9 THE DEFENDANT: No, sir.

10 THE COURT: You fully understand what you are  
11 doing?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has anybody promised you anything or  
14 threatened you in any way in order to get you to plead  
15 guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: You are entering this plea of your own  
18 free will and accord?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I find his plea is freely, voluntarily  
21 and intelligently entered into. He has had the  
22 service of a competent attorney with whom he says he  
23 is satisfied. The plea is accepted.

24 Solicitor.

25 MS. HAMILTON: Thank you, Your Honor.

1           On the date of -- it actually occurred -- the  
2 officer entered the room at 11:57 p.m. so it kind was  
3 kind of between April 25th and April 26th that this  
4 occurred on 2013. Officers of the Rock Hill Police  
5 department went to Motel 6 in York County. Upon going  
6 past room 417 where the defendant was staying they  
7 smelled the odor of marijuana. They attempted to  
8 enter that room but the security lock was enabled.  
9 Once they entered that room -- once the defendant let  
10 them in after about a minute, minute and a half,  
11 officers entered the room and found marijuana all  
12 inside the toilet that had attempted to be flushed.  
13 Estimated by a witness three -- two to three times he  
14 tried to flush the toilet with the marijuana in it.  
15 There were two bags of marijuana found within that  
16 room and also three and a half of oxycodone pills.  
17 Also a scale was also found.

18           Today we went through the cell phone that was in  
19 evidence and we found multiple text messages dated  
20 April 24th and April 25th dealing with drug dealing by  
21 the defendant of marijuana and some dealing with pills  
22 prior to that date. So we are here today pleading --  
23 or he is here today pleading guilty both of those  
24 charges. He has a prior. This makes it a third  
25 because he had a prior 2012 possession of marijuana

1 charge; 2009 possession of marijuana; 2004 attempted  
2 armed robbery, conspiracy, failure to stop for a blue  
3 light, possession of marijuana, first; 2003 possession  
4 with intent to distribute marijuana, first offense,  
5 and it looks like possession with intent to distribute  
6 cocaine within proximity of a school. And Your Honor,  
7 as I stated before I don't know if it was cocaine or  
8 marijuana but proximity charge I believe associated  
9 with that 2003 offense.

10 We were trial mode, Your Honor. We had prepared.  
11 We had all witnesses here this morning ready to go to  
12 trial and the text messages that were found which I  
13 did provide to the defense this morning on a disc, I  
14 believe initiated this plea this morning this morning,  
15 Your Honor. And the State would ask for jail time in  
16 this case.

17 THE COURT: How long has he been in jail?

18 MS. ANDERSON: He bonded out the same night he was  
19 arrested.

20 MS. ANDERSON: One day.

21 THE COURT: Counsel.

22 MS. ANDERSON: May it please the Court. Your  
23 Honor, just for clarity of the record the proximity  
24 prior conviction was on a marijuana charge. It was  
25 not cocaine. I wanted to clear that up.

1           Your Honor, a little bit about Mr. Golden. I got a  
2           little bit of background in preparation of trial.  
3           Your Honor, he had a job lined up actually this week.  
4           He had to come in for trial. I will put that on the  
5           record, with Tribble Electrical Contracting. He had  
6           the business card of the owner here in Gastonia, North  
7           Carolina. Additionally, he also been working on  
8           starting his own business. In checking this morning  
9           they have been filed the tax documents and permits and  
10          everything they needed as well. He is an intelligent  
11          person and, you know, had employment opportunities  
12          even starting this week.

13          Your Honor, he does have a family as well and  
14          children and so he has that support. Been very  
15          attentive about coming to court as well.

16          Your Honor, we were in posture for trial.  
17          Essentially, the situation of presenting argument at  
18          trial, strategy wise this was a lesser included  
19          offense of simple possession versus possession with  
20          intent to distribute and I met with him a number of  
21          times, during the course of plea negotiations and also  
22          weighing out those strategies.

23          As Your Honor heard text messages came up this  
24          morning. The State was not aware of those and they  
25          did turn those over once they received it. But we

1 came in this morning prepared to go to trial having a  
2 strategy worked out to find out there were text  
3 messages on a phone that the police had not turned  
4 over and had not been turned over to me. Certainly  
5 that put us in a very difficult position, a very  
6 different position in terms of a presentation at  
7 trial.

8 I put the background as well, Your Honor, somewhere  
9 around December Mr. Golden had -- we had negotiated an  
10 offer of parole eligible time. Mr. Golden ultimately  
11 rejected that. And at the time I had accessed his  
12 case he did have based on essentially the weight alone  
13 and perhaps him testifying as well, that he had a good  
14 shot at trial arguing for a lesser included charge.  
15 At that time, Your Honor, he did go consult with  
16 another attorney which certainly he had a right to do  
17 so. He actually discussed the text messages with that  
18 attorney and that attorney sort of told him  
19 definitively that he didn't think they would be  
20 admissible under any circumstances. I would probably  
21 disagree with that attorney's assessment. I don't  
22 think the law is clear on that. I have seen them be  
23 admissible during the State's in Chief or certainly  
24 had Mr. Golden testify it could become an issue as  
25 well. So, I wasn't aware of the text message. I

1 think Mr. Golden was relying somewhat on what another  
2 attorney told him and that sort of weighed in his  
3 decision to reject the State's offer and request a  
4 trial.

5 As I stated things changed this morning and I think  
6 it is in his best interest at this point to enter a  
7 plea. We wanted Your Honor to know some of that  
8 background. It was unfortunate I didn't have that  
9 information ahead of time and could have, you know,  
10 advised Mr. Golden probably difficultly, but we would  
11 ask Your Honor -- in this situation, we would ask for  
12 the minimum of five years on this. It is going to be  
13 85 percent charge. That is going to be a substantial  
14 amount of time for him. I think his record  
15 predominantly shows a use of marijuana. I think use  
16 of marijuana was going on, but we understand sort of  
17 the text message put us in a different situation this  
18 morning. I would asked Your Honor to take all those  
19 circumstances into consideration and we would ask for  
20 the minimum sentence in this case concurrent with each  
21 other.

22 THE COURT: Mr. Golden.

23 THE DEFENDANT: Yes, sir. One, I would like to  
24 apologize to the Court, to you, myself, for my family  
25 and friends. I think since the last time since I have

1           been out of prison in 2007 it has been a long road,  
2           but I think everything has turned around. I hate this  
3           situation that happened. In the end I guess she  
4           missed out a couple of things. I have been home for  
5           six years. For the last five and a half I have been  
6           working. I also been to York Tech. All I have to do  
7           is pay for my classes and certificates and I will be  
8           done with York Tech as far as a welding degree. She  
9           mentioned I got this going. I started my own business  
10          probably about two, three weeks ago. That got going  
11          and everything turned around. It's a bad situation,  
12          bad timing. Like she said they said with the plea  
13          non-violent I would have gladly took it because it's,  
14          you know, parolable. I didn't want to be gone that  
15          long. That's kind of what I was asking for in  
16          beginning, but the other attorney advised me that it  
17          wouldn't be brought up in Court because of the drug  
18          investigation so that that would kind of protect me  
19          from five years. The now non-violent plea will be  
20          parolable or work release where I can help me family  
21          and people out. I'm trying. I tried. Still trying.  
22          I ain't gave up. I am not a bad person. Yeah my  
23          record kind of reflects a lot, but really after the  
24          first trouble been in the system the first time I kind  
25          of changed for the better. I still deal with

1 marijuana. I mean, you know, I smoke. I was a user.  
2 I admit to that. That was a wrong thing. That is  
3 something that can take your life in the wrong path  
4 which is doing today. Besides marijuana, you know,  
5 beside working for five and a half years which some  
6 people get out of prison don't do nothing, and take  
7 care of family and married with two kids. Work all  
8 day and go to school at night. Like that was a big  
9 accomplishment for me and, you know, I would just  
10 like to apologize and ask for your mercy.

11 THE COURT: Well, thank goodness in this case it  
12 wasn't the more harder drugs involved here. All  
13 right, on the in intent to district Indictment the  
14 sentence is six years and on the possession it is six  
15 months. All concurrent. Credit for one day.

16 MS. ANDERSON: Yes, Your Honor.

17 MS. HAMILTON: Thank you, Your Honor.

18 \* \* \*

19 (END OF TRANSCRIPT)

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C E R T I F I C A T E

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I, the undersigned Aileen Butler, 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 26th day of February, 2014.

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

October 9, 2014

Aileen Butler

**WITNESSES**

RHPD/Sims

In

**ARREST WARRANT NUMBER**

Direct Indictment Re: 2013A4620302253

**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date: 12-12-13

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-46- 04457

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**December 12, Term 2013**

**THE STATE**

vs.

**BRANDON RASHAD GOLDEN**

**Indictment for**

**POSSESSION WITH INTENT TO DISTRIBUTE  
MARIJUANA**

SC Code: 44-53-370(b)(2)

CDR Code: 0188

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

14

Defendant

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

*Brandon Golden*  
Defendant

Witness:  
*Auna Bonfield Coet*  
C.C.C. PLS. AND G.S. Specialist

STATE OF SOUTH CAROLINA  
 COUNTY OF YORK

CERTIFIED TRUE COPY INDICTMENT  
 )  
 2014 JUL 28 PM 4:27

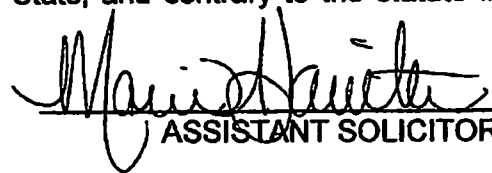
At a Court of General Sessions convened on December 12, 2013, the Grand Jurors of York County present upon their oath.

DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

**POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA**

On or about April 26, 2013, the Defendant, Brandon Rashad Golden, did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

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

  
 ASSISTANT SOLICITOR

**WITNESSES**  
 RHPDASims

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---



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In

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**ARREST WARRANT NUMBER**  
 2013A4620302252

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**ACTION OF GRAND JURY**

---

**TRUE BILL**

*Jammy Eakin*  
 Foreperson of Grand Jury  
 Date: 9-19-13

---

**VERDICT**

---



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---

Foreperson of Petit Jury  
 Date:

DOCKET NO. 2013-GS-46-03318

**The State of South Carolina**  
**County of York**

**COURT OF GENERAL SESSIONS**

**September 19, Term 2013**

**THE STATE**

vs.

**BRANDON RASHAD GOLDEN**

**Indictment for**

**POSSESSION OF A SCHEDULE II NARCOTIC**

SC Code: 44-53-370(d)(1)  
 CDR Code: 0176

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

16

X *Brandon Golden*  
 Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to  
*Possession of a Schedule I-V Drug*  
*(1st offense)*

X *Brandon Golden*  
 Defendant

Witness:  
*Laura Benfield Covert*  
 C.C.C. PLS. AND G.S. Specialist

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT

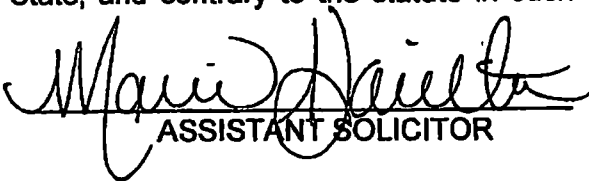
CERTIFIED TRUE COPY  
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At a Court of General Sessions, convened on September 19, 2013, the Grand Jurors of York County present upon their oath  
SAVING HALL  
CLERK OF COURT  
YORK COUNTY, SC

**POSSESSION OF A SCHEDULE II NARCOTIC**

On or about April 25, 2013, the Defendant, Brandon Rashad Golden, did knowingly or intentionally possess Acetaminophen/Oxycodone, a Schedule II narcotic controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

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

  
ASSISTANT SOLICITOR

VS.  
Brandon Rashad Golden

INDICTMENT/CASE#: 2013GS4604457

A/W#: DI2013A4620302253

Date of Offense: 4/26/2013

S.C. Code §: 44-53-0370(b)(2)

CDR Code #: 0188

AKA:

Race: BLACK

Sex: M

Age: 29

DOB: \_\_\_\_\_

SS#: \_\_\_\_\_

2014 JUL 28 PM 4:27

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

City, State, Zip: Rock Hill, SC 29730

DL#: 100035101

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

DAVID HAMILTON  
CLERK OF COURT

\*CDL Yes  No  CMV Yes  No  Hazmat  No  \_\_\_\_\_

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or  PLEADS

TO: Drugs / Manufacture, possession of other sub. in Sch. I, II, III or flunitrazepam, w.i.t.d. - 3rd or sub. offense

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

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:

HAMILTON, Marina Bender

80383 SC Bar#

Defendant

Attorney for Defendant

72492 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 6 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 1 day  
 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  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ 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: \_\_\_\_\_

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

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$ 280.00

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

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Aileen Butler

Presiding Judge

[Signature]

Judge Code: 2048

Sentence Date: 2-26-14

ORIGINAL

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
STATE VS. )  
Brandon Rashad Golden )

INDICTMENT/CASE#: 2013GS4603318  
A/W#: 2013A4620302252  
Date of Offense: 4/26/2013  
S.C. Code § : 44-53-0370(d)(2)  
CDR Code #: 0179

AKA: \_\_\_\_\_  
Race: BLACK Sex: M Age: \_\_\_\_\_  
DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: Rock Hill, SC 29730  
DL#: 100035101 SID#: \_\_\_\_\_

CERTIFIED TRUE COPY  
2013 JUL 23 PM 4:27  
Relationship No. \_\_\_\_\_

ORIGINAL

CONVICTED OF or  PLEADS

\*CDL Yes  No  CMV Yes  No  Hazardous  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Drugs / Possession of other controlled sub. in Sched. I to V - 1st offense

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0179  
 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) B.G.  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Marina Bender 80383 SC Bar# David Hamilton Defendant [Signature] Attorney for Defendant 72492 SC Bar#

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for a determinate term of 6 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections. 1 day  
 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  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_  
\_\_\_\_\_ 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: \_\_\_\_\_

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

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$ 280.00

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

Clerk of Court/ Deputy Clerk David Hamilton  
Court Reporter: Aileen Butler  
SCCA/217 (03/2011)

Presiding Judge [Signature]  
Judge Code: 2048  
Sentence Date: 2-26-14

2014-CP-46-2430

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of York )  
 )  
Brandon Golden #310162 )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

FILED - RECEIVED  
 2014 JUL 28 2:40 PM  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention York County
2. Name and location of Court which imposed sentence York County Detention Center
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) 2013GS4603318  
 (b) 2013GS4604457

CERTIFIED TRUE COPY  
 2014 JUL 28 PM 3:25  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

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

(a) 654604457 / 2-26-14 10 yrs

(b) 654603318 / 2-26-14 6 months

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(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. N/A

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

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

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

ii. N/A

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

(c) the date of each such result:

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

ii. N/A

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

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

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

ii. N/A

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

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

(a) lawyer never mentioned appeal process.

(b) when I found out about appeal it was too late

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

- (a) First P.W.I.D is over ten years old.
- (b) What they claim as second offense was a traffic court ticket I paid
- (c) This charge was only 10 grams. →

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

- (a) \_\_\_\_\_
- (b) Under state law you have to have twenty eight grams of marijuana →
- (c) Under state law you have to have twenty eight grams of marijuana

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. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

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

N/A

(d) the date of each such disposition:

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

N/A

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- 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?

\_\_\_\_\_

N/A

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

(a) which grounds have been presented:

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

N/A

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

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

N/A

10. ~~D.~~ They told me they could use my phone against me.

H. Lawyer told me maybe 1 year for third simple pass if we won or maybe 5 non violent if we lost.

E. Ineffective Counseling.

F. Violation of fourth amendment

G. I was using marijuana

11. B. to be charge with P.W.I.D. That was a four gram traffic ticket.

C. to be charged with P.W.I.D. This charge was 10 grams

D. My cellphone was never suppose to be brought up because it was not a narcotic investigation.

E. Ineffective Counseling

F. Illegal search of my room two times

G. Me smoking marijuana did not fall under the category of P.W.I.D.

H. Day of trial told me that had phone and 5 year plea was off table, had to sign 5 to 20 plea or go to trial and get 10 to 15

I. Didn't get time to prepare for new evidence in which was brought up on the day of trial, was suppose to get 30 day to prepare.

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) lawyer never explained appeal process or why I was being arrested →
- (b) lawyer told me that I was going to get probation for 1 year
- (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? \_\_\_\_\_
- (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. Ashley Anderson - York County Public Defender office
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

26

A. with 3rd offense

B. If we won trial. And probably 5 non violent if we lost because of good Judge. (Burch). Day of trial they bring up my cell phone which shouldn't be allowed because it was not a Narcotic Investigation per (Chris Welborn). And with that she told me a 5 non violent plea was off the table and should sign 5 to 20 plea because of new evidence. And if we went to trial was going to get 10 to 15 years. Felt as if lawyer wasn't fighting for me by allowing new evidence the same day as trial and not asking for continuance. And making me sign a plea.

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

The year that I was suppose to get for going to trial  
for my third simple possession.

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

No

STATE OF SOUTH CAROLINA )  
County of Richland )

VERIFICATION

I, Brandon Gorden, 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.

Brandon Gorden

SWORN to and subscribed before me this 18<sup>th</sup>  
day of July, 2014.

[Signature] (L.S.)  
Notary Public

My Commission Expires: Sept 15, 2018

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

I, Brandon Golden, 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.

Brandon Golden  
Applicant

SWORN or affirmed to and subscribed before me this  
18<sup>th</sup> day of July, 2014.

Dan E. S.  
Notary Public

My Commission Expires: Sept 15, 2018

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

Brandon Golden , #310102, )

2014-CP-46-2430

Applicant, )

v. )

**RETURN**

State of South Carolina, )

Respondent. )

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 28, 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 York County Clerk of Court. The Applicant was indicted at the September 2013 term of the York County Grand Jury for Possession of Schedule II Narcotic (2013-GS-46-3318). The Applicant was also indicted at the December 2013 term of the York County Grand Jury for Possession with Intent to Distribute Marijuana (PWID) (2013-GS-46-4457). Ashley Anderson, Esquire, represented him. On February 26, 2014, the Applicant pled guilty before the Honorable Paul M. Burch and was sentenced to six (6) years for PWID Marijuana, 3<sup>rd</sup> offense and six (6) months, concurrent, for Possession of Schedule II drug (Oxycodone), 1<sup>st</sup> offense. Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s) and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "First PWID is over ten years old."
2. "What they claim as second offense was traffic court ticket I paid"
  - a. "Under State law you have to have twenty-eight grams of marijuana to be charged with PWID. That was a four gram traffic ticket"
3. "This charge was only 10 grams"
  - a. "Under State law you have to have twenty-eight grams of marijuana to be charge with PWID. This charge was 10 grams."
4. "They told me they could use my phone against me"
  - a. :My cell phone was never suppose(sic) to be brought up because it was not a narcotic investigation"
5. "Ineffective Counseling"
  - a. "Ineffective Counseling"
6. "Violation of Fourth Amendment"
  - a. "Illegal search of my room two times"
7. "I was using marijuana"
  - a. "Me smoking marijuana did not fall under category of PWID"
8. "Lawyer told me maybe 1 year for third simple possession if we won or maybe 5 non-violent if we lost."
  - a. "Day of trial told me that had phone and 5 year plea as off table. Had to sign 5 to 20 plea or go to trial and get 10 to 15."

9. "Didn't get time to prepare for new evidence in which was brought up on the day of trial. Was suppose(sic) to get 30 days to prepare."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

### III.

Respondent construes these allegations as ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective 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.

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

#### V.

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

J. RUTLEDGE JOHNSON  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

*October 23*, 2014.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 )  
 )  
 )  
 BRANDON GOLDEN, #310102 )  
 )  
 )  
 Applicant, )  
 )  
 )  
 vs )  
 )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

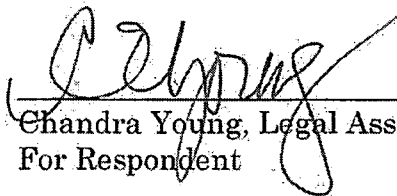
2014-CP-46-2430

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(s) by depositing same in the United States mail, postage prepaid:

W. Michael Hemlepp, Jr., Esquire  
 3027 S. Paraham Rd  
 York, SC 29745

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

  
 \_\_\_\_\_  
 Chandra Young, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )

COURT OF COMMON PLEAS

County of York )

2014-CP-46-2430

BRANDON GOLDEN, )

vs. )

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA. )

January 21st, 2015  
York, South Carolina

BEFORE:

THE HONORABLE J. DERHAM COLE , JUDGE.

APPEARANCES:

WILLIAM MICHAEL HEMLEPP, JR., ESQ.  
Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL  
Attorney for the State

AMINAH R. HARDY  
Official Court Reporter

INDEX

WITNESS

Brandon Golden	3	10
Ashley Anderson	12	25

CERTIFICATE		31
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EXHIBITS

No.	Description	Page
-----	-------------	------

(No exhibits were marked.)

BRANDON GOLDEN - DIRECT EXAMINATION BY MR. HEMLEPPP R O C E E D I N G S

1

2 THE COURT: This is Brandon Golden, 2014-46-2430.

2

3

Mr. Hemlepp, you represent Mr. Golden?

4

MR. HEMLEPP: I do, Your Honor.

5

THE COURT: Okay.

6

7

MR. HEMLEPP: Thank you, Your Honor. I would call  
the applicant to the stand.

8

9

BRANDON GOLDEN, after having been duly sworn,  
testified as follows:

10

MR. HEMLEPP: May it please the Court, Your Honor?

11

THE COURT: Yes, sir.

12

MR. HEMLEPP: Thank you.

13

## DIRECT EXAMINATION

14

BY MR. HEMLEPP:

15

Q Mr. Golden, would you please state your full name and  
16 would you also spell your last name for the court  
17 reporter?

18

A Brandon Rashad Golden, last name is spelled

19

G-O-L-D-E-N.

20

Q How old are you, Mr. Golden?

21

A Thirty years old.

22

Q And where do you live?

23

A In Rock Hill, South Carolina.

24

Q How long have you lived in Rock Hill?

25

A Approximately 13 years.

BRANDON GOLDEN - DIRECT EXAMINATION BY MR. HEMLEPP

1 Q Okay. And are you married, single or divorced?

2 A Married?

3 Q And to whom are you married?

4 A To Laquata Golden.

5 THE COURT REPORTER: I'm sorry, who?

6 THE APPLICANT: Laquata Wilson.

7 THE COURT REPORTER: Can you spell that?

8 THE APPLICANT: L-A-Q-U-A-T-A.

9 BY MR. HEMLEPP:

10 Q How far did you go in school?

11 A In college.

12 Q In college. And did you finish college?

13 A No, sir, got one semester left.

14 Q Oh, nice. What was that degree program?

15 A Welding.

16 Q In welding, okay.

17 A Yes, sir.

18 Q And where did you go to school?

19 A York Tech.

20 Q Do you recall coming to court in February of 2014?

21 A Yes, sir.

22 Q Did you have a lawyer at that time?

23 A No, sir.

24 Q Ms. Ashley Anderson?

25 A Oh, February -- yes, sir, yes, sir.

BRANDON GOLDEN - DIRECT EXAMINATION BY MR. HEMLEPP

1 Q And I'm talking about the charge that you're  
2 currently serving?

3 A Yes, sir.

4 Q How long have you been in the Department of  
5 Corrections?

6 A Eleven months.

7 Q Okay. Since February?

8 A Yes, sir.

9 Q Okay. What was the charge that you were convicted or  
10 pled guilty to?

11 A Possession with intent third offense.

12 Q Of what substance?

13 A Marijuana.

14 Q Marijuana?

15 A Yes, sir.

16 Q And when were you arrested on that charge?

17 A April 26 -- April 26, 2013.

18 Q And were you put into jail when you were arrested?

19 A City jail, yes.

20 Q How long did you stay in jail?

21 A One night.

22 Q One night. Did you post a bond?

23 A Yes, sir.

24 Q And subsequent to that, how did you get Ms. Anderson  
25 as an attorney?

BRANDON GOLDEN - DIRECT EXAMINATION BY MR. HEMLEPP

1 A Through the public defender's office.

2 Q And do you remember when that was?

3 A No, sir, not exactly.

4 Q Did you have an opportunity to talk to Ms. Anderson  
5 about your charges and the events surrounding your arrest?

6 A Yes, sir.

7 Q And you talked to her about circumstances of the  
8 arrest. Did you talk to her about where you were, what  
9 happened, that kind of thing?

10 A Yes, we went over the case one time.

11 Q Were you aware at the time that you were charged with  
12 a third offense?

13 A Yes, sir.

14 Q Did you ever have an opportunity to talk to  
15 Ms. Anderson about that, about it being a third offense?

16 A Yes.

17 Q Tell Judge Cole about that, about your discussions  
18 with Ms. Anderson about your priors.

19 A With my priors, I talked to her basically about my  
20 priors because, okay, as of 2003, November 19, 2003, I  
21 received a possession with intent to distribute. And  
22 after that, I caught three other simple possessions, which  
23 were all -- well, two of them was with dismissed, so I had  
24 one. And with this one that's as September 2000 --  
25 September 4th, 2013, I caught another simple possession.

BRANDON GOLDEN - DIRECT EXAMINATION BY MR. HEMLEPP

1 And with that simple possession, it's getting brought into  
2 general sessions court, which is making that a second  
3 offense in general sessions court, which is making this  
4 charge that I'm on now a third. But I was trying to get  
5 an explanation from her as to how could they take a simple  
6 possession, a fine that was paid for in magistrate court  
7 and make it a second offense when there was no indictment  
8 in the general sessions court for that magistrate court  
9 charge.

10 Q When did you have this discussion with her?

11 A Probably our second-to-last visit prior to court.

12 Q And did she tell you -- what did she advise you about  
13 whether this was a second or a third?

14 A Well, she told that it would still be -- they somehow  
15 ruled that it would still be a third offense and that I  
16 should take the plea.

17 Q So when you pled guilty, you pled guilty in front of  
18 Judge Burch, do you remember that?

19 A Yes, sir.

20 Q Okay. And there's a transcript of that hearing, but  
21 you were present, you remember that, do you not? Was  
22 there any discussion with the Judge in your plea as to  
23 whether this was a second or a third?

24 A I can't recall.

25 Q And if I told you that the transcript doesn't have

BRANDON GOLDEN - DIRECT EXAMINATION BY MR. HEMLEPP

1 anything, would you agree with that?

2 A Yes, sir.

3 Q Now, I believe your testimony a moment ago was that  
4 your lawyer had told you that it had already been ruled a  
5 third?

6 A Yes, sir.

7 Q Is that what she said?

8 A Yes, sir.

9 Q In 2009, you had a possession of marijuana in  
10 Georgia, is that true?

11 A In Georgia?

12 Q Was it in Georgia?

13 A Yes, sir, simple possession.

14 Q And you forfeited bond on that?

15 A I think so.

16 Q That means you didn't show up to court, you just paid  
17 the bond, got out and they kept the money as your fine, is  
18 that what happened? Did you go to court?

19 A No, sir, they told me if I paid a certain amount of  
20 money that I wouldn't have to come to court and it would  
21 be...

22 Q Okay. Is that also what happened in 2012 with your  
23 possession of marijuana?

24 A 2012, yeah. I had to pay 565 bond and I wouldn't  
25 have to come to court.

BRANDON GOLDEN - DIRECT EXAMINATION BY MR. HEMLEPP

1 Q Okay. Where did that happen? That in 2012, not the  
2 Georgia, but in 2012?

3 A At the magistrate court office on Cherry Road.

4 Q Here in Rock Hill?

5 A Yes, sir.

6 Q And was that during the court day or did you go on a  
7 different day?

8 A I think I went on a different day just to pay the  
9 fine. It wasn't the court date.

10 Q Had you consulted with any lawyer on that?

11 A No, sir.

12 Q You didn't have a lawyer with you?

13 A No, sir.

14 Q What was the charge that you were charged with?

15 A Well, on the ticket, it was simple possession first  
16 offense.

17 Q And it was on a uniform traffic ticket, a blue  
18 ticket?

19 A Yes, sir.

20 Q It was not a warrant?

21 A No, sir.

22 Q Thank you, Mr. Golden. Is there anything else you  
23 think that Judge Cole needs to know about this issue at  
24 this time?

25 A Well, prior to me coming to court today, in the last

BRANDON GOLDEN - DIRECT EXAMINATION BY MR. HEMLEPP

1 session, there was a case similar to mine that the Judge  
2 ruled in favor because of the second offense thing and  
3 they said that they had to have -- since he paid the fine  
4 that they couldn't use it. And that was just the last  
5 time.

6 Q So that's when you discovered more about --

7 A Yeah, that's when I discovered more because the  
8 client came back -- because he's where I am and he came  
9 back and gave me knowledge of what happened in his  
10 situation.

11 MR. JOHNSON: Objection to relevance of that, Your  
12 Honor.

13 THE COURT: Sustained.

14 MR. HEMLEPP: Mr. Golden, thank you so much. Answer  
15 any questions the attorney general would have or the  
16 Court.

17 Thank you, Your Honor.

18 MR. JOHNSON: May it please the Court, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. JOHNSON:

21 Q Mr. Golden, when you pled guilty, the Judge went over  
22 the constitutional rights to a trial and you said you  
23 wanted to waive those and plead guilty?

24 A No, actually, I wanted to go to a preliminary  
25 hearing, but my lawyer told me that they had enough

BRANDON GOLDEN - CROSS-EXAMINATION BY MR. JOHNSON

1 evidence and she wouldn't advise me. But on my paperwork,  
2 I didn't sign to waive my rights to go in front of the  
3 Grand Jury.

4 Q I'm not talking about the Grand Jury, I'm talking  
5 about your right to a trial. You didn't want a trial in  
6 this case, did you?

7 A Oh, no, sir.

8 Q And you said you were satisfied with your counsel?

9 A Yes, sir.

10 Q Okay. And that nobody threatened or promised you  
11 anything to get you to plead guilty, right?

12 A No, sir.

13 Q And the Judge explained that PWID marijuana third  
14 offense carries five to 20 years, correct?

15 A Yes, sir.

16 Q And then as you probably understand now, the PWID  
17 marijuana second offense carries up to 10 years; right?

18 A Yes.

19 Q You received a sentence of six years, correct?

20 A Yes, sir.

21 Q Okay. So even if you get a PWID -- if Judge Cole  
22 grants this application and they charge you again with  
23 PWID marijuana second offense, you could still receive the  
24 same sentence that you've got right now?

25 A Yes, sir.

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 Q Okay.

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

3 THE COURT: You may step down.

4 MR. JOHNSON: Nothing further, Your Honor.

5 MR. HEMLEPP: Your Honor, the Plaintiff would call  
6 Ashley Anderson to the stand.

7 ASHLEY ANDERSON, after having been duly sworn,  
8 testified as follows:

9 DIRECT EXAMINATION:

10 BY MR. HEMLEPP:

11 Q Ms. Anderson, you've already testified today, but if  
12 you could give us your full name and spell your last name  
13 for the record.

14 A Ashley Anderson, A-N-D-E-R-S-O-N.

15 Q And you're with the public defender's office?

16 A Yes.

17 Q Prior to that, with the solicitor's office and you've  
18 been practicing here in York County in general sessions  
19 court for approximately 10 years?

20 A That's correct.

21 Q Do you remember representing Mr. Golden?

22 A Yes.

23 Q And you maintained a file on that?

24 A Yes.

25 Q As way of background, Ms. Anderson, tell us about the

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 history in York County with interpreting statutes between  
2 the public defender's and the Solicitor's Office regarding  
3 priors in marijuana cases. You've dealt with this issue a  
4 lot, have you not?

5 A Yes.

6 Q And I believe when we talked before, you said  
7 probably more than anybody in your office?

8 A Yes.

9 Q Tell the Court a little bit about that history.

10 A The Solicitor's Office interpretation of, basically,  
11 with the conflict between the enactment of 44-53-470 as a  
12 second or subsequent offense. I take the position as to  
13 my office that that sort of supercedes any other  
14 enhancement, that that was intended as an enhancement  
15 provision for the drug offenses in Title 44, Chapter 53.

16 If you look, however, in -- within the body of  
17 44-53-370, which would pertain to the marijuana, so in  
18 this case, and then also in 44-53-375, which deals with  
19 crack and methamphetamine, within the actual substantive  
20 part of the PWID or distribution statute, the original  
21 language, which put basically any violation, including  
22 marijuana, remains in the statute. So, clearly, there's a  
23 conflict in that the legislature, I guess, either didn't  
24 see or hasn't removed.

25 My conversations with a staff attorney for the

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 legislature has been that that was an oversight it was not  
2 removed. We've had legislators come to our conference and  
3 say that the intention is to clean that up with a  
4 subsequent bill to remove the discrepancy. So there's a  
5 discrepancy as to whether a possession of marijuana can be  
6 used to enhance, for instance, in this case, the  
7 possession with intent to distribute.

8         The Solicitor's Office takes the position that the  
9 language within the body of the 44-53-370 controls. I had  
10 one case that was going to trial on this issue that dealt  
11 with a crack charge where the solicitor had, in fact,  
12 briefed it anticipating that if my client were convicted,  
13 this would be a large in that she was sentencing.

14         Within their brief, their position was because there  
15 was a subsequent -- in 44-53-370, there was a 2012  
16 amendment. That didn't change much of the statute, but  
17 the solicitor's position is the legislature could have  
18 taken that language out in 2012 had they intended it not  
19 to be used. The Solicitor's Office position, therefore,  
20 is that it wasn't removed in 2012, that is more recent  
21 than the 2010 enactment of section 470. So that is the  
22 basis for their argument that a possession of marijuana as  
23 long as it meets the sort of constitutional requirement,  
24 it's eligible to be used.

25         They are firm on that position. The general process

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 has been they will indict up to a third offense, that's  
2 what they did in this case. My note actually indicates  
3 that when I met with Mr. Golden on his initial appearance  
4 on May 28, 2013, I informed him the State had already  
5 informed me they planned to indict this up to a third  
6 offense. The State's general procedure, I guess, policy  
7 or practice may be the better word is they generally will  
8 not reduce that down, say, for a negotiated sentence. So  
9 the charges are sent to the Grand Jury at the higher  
10 level. In this case, Mr. Golden's charge was indicted as  
11 a third offense with the Grand Jury. The negotiations in  
12 this case to allow him to plead to a second offense was  
13 only to a negotiated five years. But with that, the State  
14 is indicating that should they go to trial, it is on a  
15 third offense.

16 There has been a number of discussions, arguments  
17 back and forth about the interpretation of that. At this  
18 point, absent an update by the legislature, because I  
19 think the cleanup bill did not pass for other reasons, or  
20 any appellate case law, we're sort of from the defense  
21 side up in the air as to how it's going to be interpreted.

22 Q Has this been brought to the Court's attention by way  
23 of motions to quash or pretrial motions before any of the  
24 judges in general sessions court?

25 A I attempted on one of the nonjury terms -- I actually

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 filed a motion -- Judge Alford was the administrative  
2 judge at the time. I filed a motion -- I have a copy,  
3 basically, to determine enhancibility. Because it becomes  
4 an impact in terms of advising clients whether to plea or  
5 go to trial since the drug -- many of the drug  
6 convictions -- or charges with a third offense carries  
7 such a heavy sentencing range that it's not always  
8 necessarily in a client's best interest to go to trial on  
9 that given that if the Judge rules against you on a third  
10 offense, they may be facing substantial time. So I  
11 actually try to sort of get that litigated to establish  
12 some sort of precedent, just get some sort of  
13 clarification on how the judges, particularly our resident  
14 judges, might view it where it would give some insight to  
15 advise clients, look, here's how I read it, but a judge  
16 has said X.

17 Q So how do you advise clients on this issue?

18 A I advise them this is the way I read the law, this is  
19 the solicitor's position. We have no clarity over what an  
20 appellate court would think. And the client will --  
21 essentially, give them all of that information and the  
22 client has to make the call as to whether they wish to  
23 accept the plea or go the trial.

24 Q In this case, did you raise the issue of whether  
25 Mr. Golden's record should or should not have been a

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 third?

2 A I did. The Solicitor's Office here has always  
3 opposed litigation of any pretrial matters prior to start  
4 of trial. But in this case, unusually, for some reason, I  
5 was able to get the solicitor to agree to, essentially, go  
6 into chambers in sort of a status conference guise with  
7 Judge Alford, who was the administrative judge at the  
8 time.

9 We raised the issue to Judge Alford just to get some  
10 clarification. At that point, Mr. Golden still had a plea  
11 offer on the table. He hadn't yet decided about trial  
12 versus plea or how to dispose of the case. We were just  
13 trying to get clear as to, perhaps, how a judge might view  
14 the case to give him some guidance.

15 We presented his record there. In that meeting,  
16 Judge Alford said he would rely on 44-53-470, but he  
17 viewed the language that says, basically, doesn't accept a  
18 first violation of a marijuana possession provision as  
19 only pertaining to a chronological first conviction. In  
20 other words, Mr. Golden had a 2003 PWID that would clearly  
21 by used -- could be used for enhancement.

22 He had, I think, a 2004 possession of marijuana  
23 first. The Judge said he would view that as being  
24 disqualified for being used under 44-53-470(a)(2). He  
25 had a 2009 possession of marijuana in Georgia that

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 indicated on the record was a bond forfeiture. The State  
2 conceded that under the case law, the bond forfeiture  
3 absent any information about his representation could not  
4 be used. But he had a 2012 guilty plea or plea in  
5 magistrate court that just indicated a guilty plea with a  
6 fine on the record. The Judge viewed that could be  
7 eligible because he viewed the language of that statute  
8 the way that the first was put at the front of not  
9 violating -- or possession -- marijuana possession first  
10 offense, the way it says first violation that he viewed it  
11 as being a chronological first violation.

12 So based on that, the State's position was they were  
13 still entitled to go forward with third offenses as  
14 indicted. And given that, I think I went back and -- I  
15 recall telling Mr. Golden about that and operated on that  
16 point that I had a judge weigh in and said it could be  
17 treated as a third offense.

18 Q The ruling -- I hesitate to call it a ruling, the  
19 discussion you had with Judge Alford, that was not on the  
20 record?

21 A No. The State would not agree to do anything on the  
22 record in terms of a motion.

23 Q Did you subsequently attempt to put that on the  
24 record?

25 A I did not. We -- Mr. Golden had made the decision to

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 go to trial. I believe we actually did a rejection of his  
2 offer on the record at some point. I think I'm correct on  
3 that. I seem to recall the State made him come in and  
4 appear in front of a judge and reject it on the record.  
5 We initially intended to go to trial on the charge and  
6 present, basically, the defense of this was only a simple  
7 possession charge, so we had prepared based on that.

8         The morning of the trial, which would have been  
9 March 3rd, 2014, when the officers came to court, they  
10 brought with them a cell phone that had been taken into  
11 evidence from Mr. Golden that contained text messages that  
12 would pertain to drug distribution or sales. The  
13 solicitor was unaware of it. I was unaware of it. At  
14 that point, the solicitor called me and made me aware of  
15 it and showed me what it was. Said I'll show you right  
16 now, I'm going to get a copy of it to you later. And so  
17 the posture sort of changed at that point to a plea.

18         I did attempt to -- it came out in the course of that  
19 that Mr. Golden had consulted with another attorney, which  
20 he was certainly entitled to do, and had told the other  
21 attorney about the text messages. The other attorney had  
22 given him some advice and he did not believe they would be  
23 admissible in court. I disagreed with that advice and I  
24 told Mr. Golden that. I believe his wife was also in the  
25 meeting in my office as well.

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 I did attempt to go back to the State and get them to  
2 let him plead to a second offense based on the fact that I  
3 felt like Mr. Golden had relied on some advice another  
4 attorney had give him that I would have given him  
5 different advice. That worked its way up the chain in the  
6 solicitor's office because they say any time something on  
7 the trial board is supervised or has to be approved and  
8 they weren't willing to do that. So at that point, they  
9 said the options were for Mr. Golden to plead straight up  
10 to a possession with intent to distribute third or the  
11 trial would be continued one day to allow me to go through  
12 all the text messages and we would be starting the next  
13 morning.

14 Q Was there a negotiation in this case?

15 A It was. The plea offer from the State was for a  
16 possession with intent to distribute second offense -- it  
17 originally started as a negotiated five years on  
18 possession with intent to distribute third offense. At  
19 some point, it was then changed to a negotiated possession  
20 with intent to distribute second offense five years, which  
21 would have been the difference between no parole time  
22 versus parole eligible time.

23 Q And you -- I apologize, you answered my question  
24 correctly, however, I misstated my question. At the time  
25 of the plea, there was no offer? This was a straight-up

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 plea?

2 A Correct.

3 Q He was pleading to what he was indicted for?

4 A And he was also required -- there had been a  
5 possession of controlled substance charge that I don't  
6 believe the State had indicted and didn't intend to call  
7 at trial. Mr. Golden had produced a prescription, but the  
8 prescription was dated after the offense date. And I put  
9 that on the record with the discussion with Judge Burch.  
10 The State also required that at the morning of trial he  
11 pled, he had to, essentially, waive presentment and plead  
12 on that charge as well.

13 Q If he was pleading straight up on this charge, why  
14 not make a motion at that time regarding the enhancibility  
15 of the 2012 conviction? And my purpose for asking is you  
16 have very clearly stated that this is an unanswered  
17 question in law, at least, as interpreted in York County,  
18 that you have struggled with this for many years. And  
19 that having it on the record and able to be appealed would  
20 be helpful in resolving that, why did you not put this on  
21 the record at the time of the appeal because he was  
22 pleading straight up, he had nothing to lose?

23 A I can give you probably two reasons what I was  
24 thinking at the time. One, when I met with the Judge, I  
25 did see how the Judge interpreted it. And it seemed

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 fairly settled for me under the circumstances. The second  
2 I would say is one of the larger reasons that the  
3 Solicitor's Office here has maintained -- or one of  
4 concerns they have expressed about being unwilling to  
5 allow us to do nonjury motions or pretrial motions, which  
6 is something my office has very strongly wanted to do to  
7 litigate, search issues, things like that. It is the  
8 belief that if we did not get the ruling we like, we would  
9 then raise it again in front of a trial judge with a  
10 different judge. So that the argument being that they  
11 would, essentially, be wasting their time because it was  
12 nothing to keep it binding.

13 So I think that is probably -- also in the back of my  
14 mind is that if I do that very thing, that's another  
15 argument of why the larger reason they are opposed to  
16 pretrial motions is that we would, essentially, keep  
17 relitigating the issue in front of different judges when  
18 there would be no guarantee that the administrative judge  
19 or the nonjury judge would be the trial judge.

20 Q However, it's true that if you make a motion it is  
21 the Court's decision as to whether the Court hears that  
22 motion, is it not? Had you raised the issue prior to the  
23 plea --

24 A Uh-huh.

25 Q -- in the form of a motion, it would have been the

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 Court's decision whether or not to hear that motion?

2 A So far, we have -- the motions I have filed have been  
3 unsuccessful in getting those scheduled.

4 Q Right, I get that, but this was a visiting judge?

5 A Yes.

6 Q And you see my point, that that would have made this  
7 an appealable issue on an area of law that is unsettled?  
8 Do you see that would have been helpful?

9 A Yes.

10 Q Do you know -- have you dealt with this issue since  
11 that time?

12 A Yes.

13 Q Have you done subsequent research?

14 A In terms of research, I think largely, the same  
15 argument. I have had --

16 Q And if I may re-ask my question, I hate to interrupt  
17 you. Do you know of any case law that has come out that  
18 has helped to resolve this?

19 A Not that I'm aware of.

20 Q And do you know has legislature stepped in to help  
21 resolve this?

22 A My understanding is that there has been -- there was  
23 a bill proposed that would have cleaned it up, that was  
24 sort of a clean up act of the omnibus bill, but there was  
25 some other issues that were contentious and that the bill

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 did not pass, but that the legislature -- I assume it's  
2 contending -- I've been told intends to keep -- knows  
3 there's a conflict and is going to at some point address  
4 it.

5 Q Okay. How do you on behalf your clients interpret  
6 this conflict?

7 A My interpretation is that the intention was for  
8 44-53-470 to govern enhancibility of all drug offenses.  
9 And that whatever the language says on that -- now, I'm  
10 not as clear on the first violation versus possession of  
11 marijuana first. That seems a little ambiguous in the  
12 language. My interpretation is that the 44-53-470 should  
13 control the statute and the legislature intended that,  
14 basically, a blanket provision for enhancibility. I've  
15 not had any success in getting the solicitor to agree to  
16 that and in the subsequent -- and at a trial, it's going  
17 to be an issue. The individual was acquitted, so it  
18 wasn't an issue. Sort of off the record, the judge had  
19 said that he probably would have sided with the State's  
20 interpretation that the remaining language in 44-53-375  
21 would govern. So the only information I have at this  
22 point is that anecdotally I may be ruled against.

23 Q If you were able to have this heard by a circuit  
24 judge and the circuit judge were to rule against your  
25 interests, would your office seek to appeal that ruling?

ASHLEY ANDERSON - DIRECT EXAMINATION BY MR. HEMLEPP

1 Would you have sought to appeal that ruling?

2 A Well, I assume. I think it all depends on the -- it  
3 all depends on the situation because, obviously, the  
4 client is the one who's made the call whether to accept an  
5 offer or whether to go the trial. And so, you know, it's  
6 a bit hypothetical, it depends on the situation, but it is  
7 an issue we would like to have litigated.

8 Q It's an issue you would like --

9 A Or clarified by the legislature is probably what we  
10 need.

11 MR. HEMLEPP: Your Honor, I have no further questions  
12 at this time.

13 Thank you, Ms. Anderson.

14 MR. JOHNSON: Just briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. JOHNSON:

17 Q Hypothetically speaking, Ms. Anderson, had your --  
18 Mr. Golden, your client at the time, decided to seek a  
19 trial, would he not be facing up to 30 years in prison  
20 based on a third offense?

21 A Yes. My understanding is had he gone to trial, he  
22 would have been going to trial facing up to 30 years.

23 Q And --

24 A Or 20 years, excuse me.

25 Q You talk about some of the plea negotiations, the

ASHLEY ANDERSON - CROSS-EXAMINATION BY MR. JOHNSON

1 plea offer from the State, the original plea offers, whose  
2 decision was it to reject those offers?

3 A It was Mr. Golden's. I did not really push him very  
4 strongly because, initially, absent the text messages, I  
5 thought he did have a good chance at trial, everything is  
6 always uncertain, of just getting a simple possession.  
7 Had I known about the text messages, I would have advised  
8 him at that point to take the offer of a parole eligible  
9 five years. But, ultimately, it was Mr. Golden's  
10 decision.

11 MR. JOHNSON: That's all I have, Your Honor. Thank  
12 you.

13 THE COURT: Okay. You may step down.

14 MR. HEMLEPP: Your Honor, may it please the Court, if  
15 we can make sure the court record is complete. The  
16 application of the postconviction relief that was filled  
17 out and signed by my client, it has several attachments.  
18 There are things written. There's a copy of where it has  
19 verification and in forma pauperis affidavit, the  
20 sentencing sheet, the indictment, 13-3318, warrant  
21 number -- the warrant for possession of oxycodone, the  
22 warrant for possession with intent to distribute marijuana  
23 also indicted in 4457 -- I'm sorry, 2013-4457 as well as  
24 the transcript of the hearing from February 26 of 2014.  
25 That would be what I believe is the complete file. Oh,

ASHLEY ANDERSON - CROSS-EXAMINATION BY MR. JOHNSON

1 I'm sorry, the Department of Corrections record summary  
2 should also be included. I would ask the Court to  
3 consider all that. And the applicant rests.

4 MR. JOHNSON: The State has no witnesses, Your Honor.

5 THE COURT: It's my understanding, Mr. Hemlepp, the  
6 petitioner's position is that it should have been a second  
7 offense and not a third?

8 MR. HEMLEPP: Your Honor, the application prepared by  
9 my client, he believes that this should have been a second  
10 offense. Ms. Anderson was able to educate me about the  
11 problems they've had in York County and making any type of  
12 resolution and the area of law is actually unsettled. Her  
13 failure to put this on the record and get a ruling on the  
14 record, and that my client was denied the ability to  
15 appeal this issue that he believed he could have won that  
16 issue or and he would have been denied his right to appeal  
17 it. An issue that the bar needs to have appealed absent  
18 action from the legislature, only an appellate court is  
19 going to be able to tell us how to resolve the apparent  
20 conflict between the two statutes.

21 THE COURT: If y'all will, the dates of the  
22 convictions are what? I know the bond forfeiture is not  
23 being considered. There was a possession with intent to  
24 distribute conviction in 2012?

25 MR. HEMLEPP: 2003.

ASHLEY ANDERSON - CROSS-EXAMINATION BY MR. JOHNSON

1 THE COURT: Excuse me, 2003. Clearly, you're in  
2 agreement that's properly used for enhancement?

3 MR. HEMLEPP: Yes.

4 MR. JOHNSON: Yes.

5 THE COURT: All right. The other conviction is what?

6 MR. JOHNSON: 2012 simple possession of marijuana in  
7 magistrate's court. I believe that was the one that Judge  
8 Alford also used.

9 MR. HEMLEPP: That was the second, the one that my  
10 client testified was he just went down there and paid  
11 money, didn't have a lawyer. And that conviction went  
12 through that way. That's the one my client testified  
13 about paying in Rock Hill.

14 THE COURT: And that's the conviction he contends  
15 should not have been considered?

16 MR. HEMLEPP: Yes, Your Honor.

17 THE COURT: And could not be used to enhance it to a  
18 third?

19 MR. HEMLEPP: Yes, Your Honor.

20 THE COURT: And the rational is section 44-53-470?

21 MR. HEMLEPP: Yes, sir.

22 THE COURT: It's not based upon not being advised  
23 right of counsel or not -- it's not being a bond  
24 forfeiture, it's the fact that it doesn't fit under 470?

25 MR. HEMLEPP: Exactly, Your Honor, because the two

ASHLEY ANDERSON - CROSS-EXAMINATION BY MR. JOHNSON

1 statutes don't -- they read very differently.

2 THE COURT: I understand.

3 And the State's position is that it was properly  
4 considered under 44-53-370?

5 MR. JOHNSON: That could be the State's position.  
6 The State's position is as far as the PCR is concerned,  
7 Your Honor, is that counsel was effective in asking Judge  
8 Alford about how these convictions would be used and then  
9 properly advised her client that they're still charging  
10 you under third. He chose to plead guilty and, therefore,  
11 in pleading guilty, he has waived his right to challenge  
12 these convictions.

13 THE COURT: So as I understand -- okay, the State's  
14 position is that Mr. Golden was aware of the fact that it  
15 was sort of up in the air as to whether it would be a  
16 second or a third. And that he understanding that it  
17 could be treated as a second, but he was being required to  
18 plead to a third if he wanted to plead guilty, he took  
19 that option knowingly and intelligently and decided to  
20 plea to a third?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: And the petitioner's position is that  
23 there was no reason to do that because he was not being  
24 given a benefit?

25 MR. HEMLEPP: Well, in addition --

ASHLEY ANDERSON - CROSS-EXAMINATION BY MR. JOHNSON

1 THE COURT: He didn't get a pretrial ruling as to  
2 whether or not it was second or third.

3 MR. HEMLEPP: Yes, Your Honor.

4 THE COURT: Okay. I've got it. Anything else? I'll  
5 review the record and issue an order.

6 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Brandon Golden, )  
 S.C.D.C. No. 310102, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-2430

**ORDER OF DISMISSAL**

FILED-RECEIVED  
 2016 AUG 24 PM 3:31  
 DAVID HAMILTON  
 C.C.P. & GS  
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 28, 2014. Respondent made its Return on or about October 23, 2014. An evidentiary hearing into the matter was convened on January 21, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Michael Hemlepp, Jr., Esquire. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Ashley Anderson, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the September 2013 term of the York County Grand Jury for Possession of Schedule II Narcotic (2013-GS-46-3318). Applicant was also indicted at the December 2013 term of the York County Grand Jury for Possession with Intent to Distribute Marijuana (PWID) (2013-GS-46-4457).

Ashley Anderson, Esquire, represented him. On February 26, 2014, Applicant pled guilty before the Honorable Paul M. Burch and was sentenced to imprisonment for six (6) years for PWID Marijuana, 3<sup>rd</sup> offense and six (6) months, concurrent, for Possession of Schedule II drug (Oxycodone), 1<sup>st</sup> offense. Applicant did not appeal his convictions or sentences.

#### Allegations

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

1. "First PWID is over ten years old."
2. "What they claim as second offense was traffic court ticket I paid"
  - a. "Under State law you have to have twenty-eight grams of marijuana to be charged with PWID. That was a four gram traffic ticket."
3. "This charge was only 10 grams"
  - a. "Under State law you have to have twenty-eight grams of marijuana to be charge with PWID. This charge was 10 grams."
4. "They told me they could use my phone against me"
  - a. "My cell phone was never suppose (sic) to be brought up because it was not a narcotic investigation"
5. "Ineffective Counseling"
  - a. "Ineffective Counseling"
6. "Violation of Fourth Amendment"
  - a. "Illegal search of my room two times"
7. "I was using marijuana"
  - a. "Me smoking marijuana did not fall under category of PWID"
8. "Lawyer told me maybe 1 year for third simple possession if we won or maybe 5 non-violent if we lost."
  - a. "Day of trial told me that had phone and 5 year plea as off table. Had to sign 5 to 20 plea or go to trial and get 10 to 15."
9. "Didn't get time to prepare for new evidence in which was brought up on the day of trial. Was suppose (sic) to get 30 days to prepare."

## II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

### Applicant's Testimony

Applicant testified that he spoke with his attorney about his charges after his arrest. He testified that he was charged with third offenses and spoke with Counsel about his prior offenses. He testified that he had three other simple possession charges including a second offense charge in 2013. He testified that Counsel advised him to plead guilty, but that there was no discussion about whether he was pleading to a second or third offense. Applicant testified that Counsel told him that his charge had already been ruled to be a third offense.

Applicant testified that he paid fines in two of his prior marijuana charges and did not have an attorney for a simple possession on a traffic ticket.

### Counsel Ashley Anderson's Testimony

Counsel testified that there was some discrepancy involving the enhancement provisions for marijuana charges and the State would use S.C. Code § 44-53-470 to make Applicant's marijuana charge a third offense. She testified that the solicitor's office told her that Applicant's priors were eligible to be used and they would indict his current charge up to a third offense. She testified that she explained all of this to Applicant. Counsel further testified that she negotiated for a five year plea offer and the State would not negotiate the charges down.

Counsel testified that she raised the issue of whether Applicant's marijuana charge should be a second or third offense to the plea judge at a status conference. She testified that the plea offer was still on the table at that point and the plea judge informed her that he would rely on S.C. Code § 44-53-470 and determine that a third offense was the proper charge because of Applicant's 2003 PWID marijuana charge and 2012 possession of marijuana charge. Counsel testified that she advised Applicant about the plea judge's position on the charges.

Counsel testified that Applicant elected to go to trial and his defense would be that this was only simple possession. She testified that investigating officers brought Applicant's cell phone that showed many drug texts sent from him. She testified that this caused Applicant to change his posture to a guilty plea. Counsel further testified that Applicant's offer was to plead straight up to a third offense or go to trial. She testified that the State negotiated an offer for Applicant to plead to PWID third offense for five years and then PWID second offense. She testified that Applicant rejected the plea offer and that no plea offer existed at the time of the plea.

Counsel also testified that she did not make a motion on the record regarding Applicant's charge being a second offense because she had already received the plea judge's interpretation and the solicitor was not willing to do pretrial motions.

### III. APPLICABLE LAW

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

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

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

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

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

### Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective in failing to investigate and for providing erroneous advice prior to Applicant's guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (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 applicant 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) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). 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).

This Court also finds that Applicant has failed to show that Counsel's investigation was deficient and has also failed to show what any further investigation would have revealed. To establish counsel was inadequately prepared for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere

speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). This Court finds that Applicant has failed to meet his burden of showing Counsel was ineffective regarding his investigation and has also failed to show how the result of the trial would have been different had he pursued further investigation.

Additionally, this Court finds that Applicant has failed to meet his burden of proving that Counsel provided erroneous advice that induced Applicant to plead guilty. Counsel properly advised Applicant of the elements of the crime, reviewed discovery with Applicant, and relayed the plea negotiations that allowed Applicant to plead guilty. Applicant has failed to show that he otherwise would have elected to go to trial and has not shown any error in Counsel's assistance that led him to plead guilty instead. Therefore he cannot prove any prejudice. Applicant made the decision to accept the State's offer to plead guilty. Accordingly, this allegation is denied and dismissed with prejudice.

#### **Involuntary Guilty Plea**

Applicant further 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). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be

accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty and therefore waiving 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 at the plea hearing. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case. 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. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). After a full review of the record, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

#### **Plea Court's Lack of Jurisdiction**

Applicant alleges that the plea court did not have jurisdiction to hear his guilty plea because there was no waiver hearing from Family Court. This Court finds this allegation is wholly without merit. The transfer of jurisdiction from Family Court to General Sessions Court in cases where juveniles are charged with crimes is governed by S.C. Code § 63-19-1210 (1976). The applicable code section in this case is § 63-19-20, which states:

When used in this chapter and unless otherwise defined or the specific context indicates otherwise:

(1) "Child" or "juvenile" means a person less than seventeen years of age. "Child" or "juvenile" does not mean a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

This Court finds this allegation is without merit since pursuant to § 63-19-20, the Applicant's case was not governed by the transfer of jurisdiction provisions in § 63-19-1210. Applicant was sixteen at the time of the events and charged with Murder, Attempted Murder, and Armed Robbery, which put his charges within the jurisdiction of the Circuit Court unless the solicitor chose to remand it to the Family Court. This Court finds Applicant has presented no evidence to support this allegation and finds it without merit. This Court also finds that Applicant's charges were properly under the jurisdiction of the Court of General Sessions.

### 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.

### V. CONCLUSION

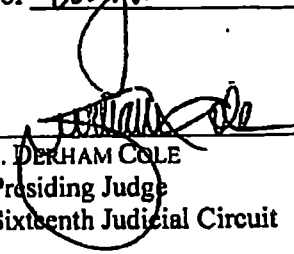
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry,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


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

**IT IS THEREFORE ORDERED THAT:**

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

AND IT IS SO ORDERED this 23<sup>rd</sup> day of August, 2016.

  
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J. DERHAM COLE  
Presiding Judge  
Sixteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina



**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Jamal Hakeem, Appellant.

Appellate Case No. 2015-001542

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Appeal From Greenwood County  
Edward W. Miller, Circuit Court Judge

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Unpublished Opinion No. 2017-UP-075  
Submitted December 1, 2016 – Filed February 8, 2017

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**APPEAL DISMISSED**

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Appellate Defender Kathrine Haggard Hudgins, of  
Columbia, and Jamal Hakeem, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior  
Assistant Deputy Attorney General John Benjamin Aplin,  
both of Columbia; and Solicitor David Matthew Stumbo,  
of Greenwood, all for Respondent.

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**PER CURIAM:** Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.<sup>1</sup>

**APPEAL DISMISSED.**

**LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.