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SSCC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Kershaw County

Honorable Jocelyn J. Newman, Circuit Court Judge

DARRIN GRAHAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002427

APPENDIX

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Appellate Defender

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

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P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF KERSHAW) No. 2012 GS 47 10

3

4 STATE OF SOUTH CAROLINA)
)
 5)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
 8 DARRIN LARELL GRAHAM)
)
 9 Defendant)

10 Camden, South Carolina
 11 January 7, 2013

12 B E F O R E :

13 HONORABLE PAUL BURCH, Judge

14

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

16 For the State: C. GOINGS, Esq.
 Assistant Solicitor

17 For the Defendant: J. KIRINCICH, Esq.

18

19 Reporter Present: DAPHNE D. HELMS

20

21 (NOTE: This Defendant entering plea at same time
 as Brad Levar Nelson, Quentin Andrell Nelson and Reuben
 Odell Levy)

22

HARRIET P. BENNETT
 Reporter, South Carolina Court Administration
 46 Regency Oaks Drive
 Summerville, S. C. 29485

23

24

25

1 (The within matter came before the Court for hearing
2 on January 7, 2013)

3 THE COURT: For voluntariness on the pleas, I would
4 prefer that we do them all at one time to conserve my voice
5 so you all are going to need a few minutes.

6 We'll stand at ease.

7 SOLICITOR: May it please the Court, Your Honor? The
8 State would call Lemar Nelson, Andrell Nelson, Reuben Levy
9 and Darrin Larell Graham.

10 Your Honor, standing before you is Brad Levar Nelson,
11 Quentin Andrell Nelson, Reuben Odell Levy and Darrin
12 Larell Graham.

13 They have been indicted either in -- as far as Mr.
14 Nelson is concerned, he has been indicted on 2012 GS 47 10,
15 which is the powder cocaine indictment. He's been charged
16 with count one of that indictment which is trafficking and
17 conspiracy, four hundred grams or more, and count six of
18 that indictment, trafficking in powder cocaine, of twenty-
19 eight to one hundred.

20 Mr. Quentin Andrell Nelson has been indicted in 2012
21 GS 47 10 under count one, four hundred grams or more. Also
22 under count seven and eight, trafficking in powder cocaine;
23 twenty-eight to a hundred grams in count seven and two hun-
24 dred to four hundred grams in count eight. He is pleading
25 to three grams of trafficking in cocaine, twenty-eight to

1 a hundred.

2 He has also been indicted in 2012 GS 47 09, a crack
3 indictment. He's been charged with count one, trafficking,
4 four hundred grams or more, and also count ten, a subse-
5 quent count, ten to twenty-eight grams. He is pleading to
6 one count of trafficking crack, ten to twenty-eight grams.

7 Levy has been charged under 2012 GS 47 10 with two
8 counts under count eleven, impersonating a law enforcement
9 officer; two counts of strong-arm robbery, counts thirteen
10 and fourteen, and one count of kidnapping, count fifteen.
11 He is pleading to two counts of impersonating an officer
12 strong-arm robbery, and kidnapping.

13 Finally, Mr. Darrin Larell Graham has been charged in
14 2012 GS 47 10 with trafficking and conspiracy, four hundred
15 grams or more, and also under count two, to twenty-eight to
16 one hundred grams. He's pleading today to two counts of
17 trafficking cocaine powder, twenty-eight to one hundred
18 grams, and the other two remaining charges under count four
19 of the indictment are going to be dismissed.

20 Your Honor, all of these are -- right now we are going
21 to have the guilty pleas and have them sentenced at a later
22 date.

23 THE COURT: Okay. All right, everybody is represented, and
24 all indictments have been true billed.

25 Let me talk to you a little bit about your rights, and

1 then we'll talk individually about the charges.

2 First of all, you need to understand that when you
3 plead to your particular indictment or indictments that
4 you will be waiving your jury trial rights.

5 If you have a trial the State would have to prove
6 your guilt beyond a reasonable doubt and convince twelve
7 jurors of your guilt.

8 Through your attorney you can examine the State's wit-
9 nesses and put up your own defense. You can testify in
10 your own defense.

11 You also have a constitutional right to remain sil-
12 ent, and if you elect not to testify that could not be held
13 against you, and I would even tell the jury that.

14 You need to understand that you are presumed innocent,
15 and that presumption stays with you throughout any trial.
16 That presumption would only end if the jury should convict
17 you, and if the jury convicted you you would have the right
18 to appeal. You can appeal a guilty plea, but you must file
19 your notice of appeal within ten days from your sentence.

20 Those are the jury trial rights. Do you have any ques-
21 tions about them, or if you don't understand them be sure
22 to ask your attorney in just a few minutes if you need any
23 clarification. If you don't get a satisfactory answer then
24 ask me about them.

25 I don't get into anything regarding any prison credits

1 or anything like that. If you've got a question about violent
2 or serious offenses or prison credits, eighty-five percent
3 rule or anything like that, you need to talk with your at-
4 torney about that and before you complete this plea.

5 Also, gun rights can be affected according to what you
6 plead to. You need to ask about that if you have concerns as
7 to that.

8 I can't take your plea if you don't understand what you
9 are doing.

10 If you have been involved with any promise being made in
11 any way, I can't take your plea. The plea has got to be
12 freely, voluntarily and intelligently entered into before I
13 can accept it. I need to know if you are happy with or
14 if you are not satisfied with your attorney's services; I
15 need to know that.

16 If you are not completely satisfied with their services
17 now is the time to let me know.

18 (Brief pause)

19 THE COURT: All right. One other issue I didn't dis-
20 cuss with you is if you have any physical or mental issue
21 that could be affecting your understanding. If so, you
22 need to let me know about that.

23 (The Court speaking individually with other Defendants)

24 Mr. Brad Nelson, you are thirty-three?

25 MR. NELSON: Yes, sir.

1 (TRANSCRIPTION NOTE: The Court speaking individually
2 with Mr. Brad Nelson, Mr. Andrell Nelson and Mr. Reuben
3 Levy)

4 THE COURT: Mr. Graham, you're twenty-two?

5 MR. GRAHAM: Yes, sir.

6 THE COURT: And your education?

7 MR. GRAHAM: Twelfth grade.

8 THE COURT: Where are you from?

9 MR. GRAHAM: Rembert.

10 THE COURT: Are you satisfied with your attorney's
11 advice and service?

12 MR. GRAHAM: Yes, sir.

13 THE COURT: Did he answer all of your questions?

14 MR. GRAHAM: Yes, sir.

15 THE COURT: Do you understand what you are charged
16 with?

17 MR. GRAHAM: Yes, sir.

18 THE COURT: 2012 47 10, date of offense January first,
19 2007, to present, conspiracy and trafficking, twenty-eight
20 to one hundred grams.

21 You could receive up to twenty-five years; a minimum
22 of seven years.

23 How do you plead to that?

24 MR. GRAHAM: Guilty.

25 THE COURT: The next indictment, trafficking in cocaine,

1 twenty-eight to one hundred grams, count two; same possible
2 penalty.

3 How do you plead on that?

4 MR. GRAHAM: Guilty.

5 THE COURT: Are you under the influence of any drugs or
6 alcohol?

7 MR. GRAHAM: No, sir.

8 THE COURT: Any mental or physical problems?

9 MR. GRAHAM: No, sir.

10 THE COURT: Do you fully understand what you're
11 doing?

12 MR. GRAHAM: Yes, sir.

13 THE COURT: Did anyone promise you anything or threaten
14 you in any way in order to get you to plead?

15 MR. GRAHAM: No, sir.

16 THE COURT: You do not want a trial?

17 MR. GRAHAM: Yes, sir.

18 THE COURT: You understood all your rights?

19 MR. GRAHAM: Yes, sir.

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

22 MR. GRAHAM: Yes, sir.

23 THE COURT: All right. I don't know if I said this but on
24 Mr. Levy and Mr. Graham, I accept your plea as freely,
25 voluntarily and intelligently entered into, with the

1 services of a competent attorney, with whom you say you are
2 satisfied.

3 Your pleas are accepted too.

4 All right. Unless anybody has any questions, . . .

5 SOLICITOR: Your Honor, if I may, all of these are going
6 to remain out on bond at this time, or we'd ask that they go
7 back to their bonding companies and make return to the Clerk's
8 Office; that they remain out on bond as their bonding company
9 has no problem with it.

10 The gentleman is here in the Courtroom and I've talked to
11 him already. He has no problem staying on the bonds. If he
12 will just sign the documents before he leaves, that will be
13 fine, Your Honor.

14 THE COURT: I appreciate you all working to get to this
15 stage. The next stage, of course, will be sentencing.

16 SOLICITOR: The next stage most likely will be March
17 18th or thereabouts.

18 Thank you.

19 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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1
2 CERTIFICATE

3 I, HARRIET P. BENNETT, Court Reporter for South
4 Carolina Court Administration, hereby certify that the
5 foregoing Transcript was prepared from the records of
6 Daphne Helms to the best of my ability, having been heard
7 in the Court of General Sessions for Kershaw County on
8 January 7, 2013.

9 FURTHER, I certify that I am neither of kin nor of
10 counsel to any party to his matter, nor do I have any in-
11 terest therein.

12 February 17, 2016

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) COURT OF GENERAL SESSIONS
2012-GS-47-10

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Darrin Larell Graham,)
Defendant.)

January 15, 2015
Camden, South Carolina

B E F O R E :

THE HONORABLE PAUL M. BURCH, JUDGE.

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

JOSHUA R. UNDERWOOD, ASSISTANT ATTORNEY GENERAL
Attorney for the Plaintiff

JASON D. KIRINCICH, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced during these proceedings.)

1 sheet that the CDR code may have been left off on
2 the original. The copy that I have did not have
3 the CDR code on it. In the event that needs to be
4 put on there, Your Honor, that charge's CDR code is
5 0392 for the charge that was pled to, and the
6 original charge -- excuse me, Your Honor, that is
7 CDR Code 2359. I'm sorry, 2359. And the original
8 charge would have been 0281.

9 THE COURT: All right, wait a minute. The
10 original --

11 MR. UNDERWOOD: The CDR code at the top, Your
12 Honor, would be 0281 and the CDR code for the
13 charge pled to for that count would be 2359,
14 trafficking cocaine, 28 grams -- 28 to 100 grams,
15 first offense.

16 THE COURT: 2359?

17 MR. UNDERWOOD: Yes, Your Honor.

18 THE COURT: And how about the others, Count
19 One?

20 MR. UNDERWOOD: Your Honor, that was Count
21 One. Count Two was a substantive count as
22 indicted. That was trafficking cocaine 28 to
23 100 grams. That stemmed from a controlled purchase
24 of 28.1 grams of cocaine on May 19th, 2011.

25 THE COURT: Okay.

1 MR. UNDERWOOD: And, Your Honor, he was also
2 charged under Counts Three and Four in that
3 indictment. Those were trafficking 10 to 28 grams.
4 Those were substantive counts. However, those are
5 going to be nol-prossed pursuant to the plea.

6 THE COURT: Now, what is the CDR code on that
7 particular one?

8 MR. UNDERWOOD: On Count Two, Your Honor?
9 That would be 2359.

10 THE COURT: And the original one was 2359?

11 MR. UNDERWOOD: Yes, Your Honor, that was as
12 indicted.

13 THE COURT: All right.

14 MR. UNDERWOOD: Your Honor, I will just
15 refresh the Court's memory. I know it has been two
16 years since the facts were heard.

17 As to the conspiracy count, Mr. Graham's role
18 was he would act as an intermediary on behalf of
19 Lennie Belton, co-conspirator. He would
20 essentially run errands, run drugs, run money for
21 Lennie Belton. In addition, Mr. Graham also had
22 some of his own customers that he would sell mid to
23 lower levels of cocaine.

24 Your Honor, he does a criminal history. 2009,
25 unlawful use of fraudulent application for a

1 license. And then from 2014, public disorderly
2 conduct.

3 Your Honor, as to Mr. Graham's potential for
4 assistance in the case, following his plea he did
5 agree to sit down and speak with Agent Rushing from
6 SLED. However, at the onset of that meeting he
7 advised Agent Rushing that he had no intention and
8 would refuse to testify against any Co-Defendants.

9 So, while he was willing to speak to law
10 enforcement, he was not willing to be truly
11 cooperative in the sense of doing what he really
12 could to help the investigation. He was willing to
13 talk, but he was not willing to testify.

14 And the State would ask that he be sentenced
15 accordingly when taken together with other
16 individuals who provided substantial assistance.

17 THE COURT: Counsel?

18 MR. KIRINCICH: Thank you, Your Honor. May it
19 please the Court?

20 Your Honor, today Mr. Graham is 24 years old.
21 As the Court is aware, most of these events
22 occurred more than three years ago. The
23 sentence -- or the plea itself occurred two years
24 ago. So historically Mr. Graham was a teenager
25 when a lot of these events first came up.

1 Your Honor, he is connected to this case
2 because he is related to Mr. Belton and to Mr.
3 Nelson. As Mr. Underwood has stated, he was sort
4 of an intermediary. When the call came in,
5 Mr. Graham is the one that would deliver the
6 product.

7 In regards to any cooperation, shortly after
8 the initial hearing in August of 2012 -- when I was
9 appointed in September, we made contact with
10 Mr. Rushing. We did meet with him in the
11 courthouse downstairs across from my office for
12 roughly two hours. Mr. Graham did say that he did
13 not intend to testify, but he would speak with law
14 enforcement about the case.

15 Additionally, we met with Agent Rushing again
16 after the plea, but because Mr. Graham, once again,
17 indicated he did not intend to testify to the
18 information he was going to give, that would make a
19 very short meeting.

20 Your Honor, he has been -- other than the
21 public disorderly conduct that I was unaware of
22 until Mr. Underwood pointed it out to me, he has
23 been in no trouble since 2012. He has no
24 significant criminal history for drugs. Again, he
25 was a mere teenager when most of this occurred.

1 Significantly less involvement than the others in
2 this case, Your Honor.

3 He is not married. He has no children. He
4 has been living with his mom. Again, laying low
5 and staying out of trouble.

6 Respectfully, Your Honor, I would ask for
7 seven years as a minimum that he could get. I
8 think that -- in this case I think seven years is a
9 significant sentence. As Your Honor knows, he will
10 have to do almost six complete years, 85 percent,
11 no parole. He will come out on community
12 supervision for two years.

13 I talked to Mr. Graham about that. He
14 accepted responsibility. He always told me, told
15 law enforcement that he would take responsibility
16 for what he did.

17 Your Honor, I think Mr. Graham would like to
18 address the Court.

19 And, respectfully, we would ask for a minimum
20 of seven years.

21 THE COURT: How much jail time has he got?

22 MR. KIRINCICH: He did four days in jail.

23 THE COURT: Yes, sir?

24 THE DEFENDANT: I know I was wrong for what I
25 did, but I have changed since this happened. I

1 just ask you for mercy. I will just take the seven
2 years. I hope I can get less, but I'll just take
3 the seven.

4 MR. KIRINCICH: Your Honor, he does have
5 family members in the court today. I just want to
6 point that out.

7 THE COURT: Well, compared to others, he does
8 not have a serious criminal record. But he didn't
9 help.

10 So, two concurrent sentences of ten years,
11 credit for four days.

12 (WHEREUPON, the proceedings were concluded.)

13

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(END OF TRANSCRIPT)

FORM 5

STATE OF SOUTH CAROLINA)

2016 JAN 12 AM 9:43 COURT OF COMMON PLEAS

County of Kershaw)

Darrin Lorell Graham)

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

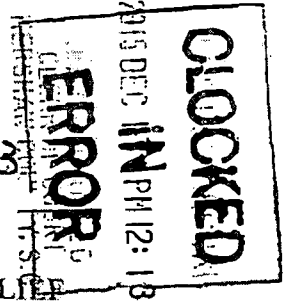
v.)

State of South Carolina)

2016-CP-28-023

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.

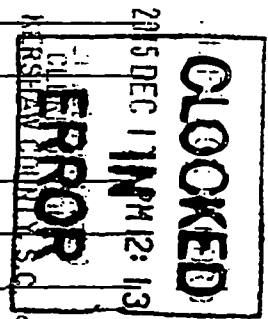
Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

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 South Carolina Department of Corrections
Kirkland Corr Inst 41344 Broad River Rd Columbia SC 29210.
2. Name and location of Court which imposed sentence Kershaw County General
Sessions
3. Name(s) of co-defendant(s) (if any) Jennie Belton/ Patricia Montgomery/ Brad Nelson
Quentin Nelson/ John Outlaw/ Tyson Ransom/ Reuben Levy, JR
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012 GS 47 10 ~~102~~
 - (b) " "

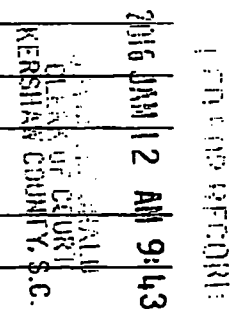
ATTEST True, Correct & Verified
Copy of Original on file in this
Court
Clerk of Court
Kershaw County

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 15 2015
 - (b) 10 years x 2 Concurrent
 - (c) 4 Days Jail Time Credit.



- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty X
 - (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. N/A
 - ii. _____
 - iii. _____

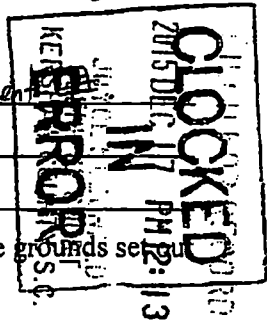


- (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) I had no instruction or Ideas of how to
 - (b) file an Appeal.

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

- (a) I WAS Indicted twice under same Indictment
- (b) I was Mis-Represented
- (c) Im not Guilty

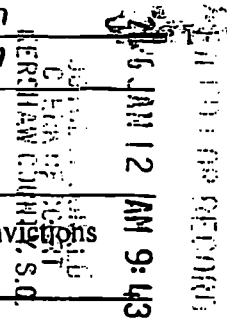


11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of Counsel to Realize error
- (b) " "
- (c) " "

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO



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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A _____
- iii. _____
- iv. _____

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

- i. _____
- ii. N/A _____
- iii. _____
- iv. _____

2015 DEC 16 PM 12:13
 CLOCKED
 ERROR
 JUDGE
 CLERK OF COURT
 MERSHAW COUNTY, S.C.

2016 JAN 12 AM 9:43
 MERSHAW COUNTY, S.C.

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

No

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

(a) which grounds have been presented:

- i. N/A _____
- ii. _____
- iii. _____

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

- i. _____
- ii. N/A _____
- iii. _____

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

- (a) my Lack of knowledge
- (b) as well as Ineffectual assistance of C
- (c) Lack of funds to appoint attorney

2015 DEC 11 AM 12:13
 CLERK OF COURT
 Kershaw County, S.C.
UNLOCKED
ERROR

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

2016 JAN 12 AM 9:43
 CLERK OF COURT
 Kershaw County, S.C.
 COURT RECORD

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. Jason D. ~~Rosen~~ Kirincich
1121 Broad Street Camden, SC 29020
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea
 - ii. Sentencing
 - iii. _____

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

a ~~Conviction~~ Vacated Conviction
a sentence Reduction

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

NO

CLOCKED
2015 DEC 11 AM 12:13
ERROR
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
County of Columbia)

VERIFICATION

I, Darren Graham, 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.

Darren Graham
Darren Graham

SWORN to and subscribed before me this 10th day of December, 2015.
Darrell A. [Signature] (L.S.)
Notary Public

My Commission Expires: April 12, 2018

FILED
2016 JAN 12 AM 9:43
KERSHAW COUNTY, S.C.

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

FILED FOR RECORD
2015 DEC 17 13
CLOCKED
IN
KERSHAW COUNTY S.C.

I, Darren Graham, 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.

Darren Graham
Applicant

SWORN or affirmed to and subscribed before me this

16th day of December 2015.

[Signature]
Notary Public

My Commission Expires: April 12, 2023

FILED FOR RECORD
2016 JAN 12 AM 9:43
KERSHAW COUNTY S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
Darrin Larell Graham, #362765)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2016-CP-28-023

**RETURN AND MOTION TO
DISMISS**

FILED FOR RECORD
2016 MAR -7 PM 1:14
JUDICIAL CLERK
OF COURT
KERSHAW COUNTY S.C.

On January 12, 2016, Darrin Larell Graham (“Applicant”) filed an application for post-conviction relief (“PCR”) in accordance with S.C. Code Ann. § 17-27-40. In response, the State (“Respondent”) submits this Return and moves for a summary judgment.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. He was indicted in June 2012 by the State Grand Jury for conspiracy to trafficking cocaine (conspiracy), 400 grams or more (Count 1); trafficking cocaine, 28-100 grams (Count 2); and trafficking cocaine, 10-28 grams (Counts 3 and 4).

On January 7, 2013, Applicant, represented by Jason D. Kirincich, pleaded guilty to two counts of trafficking cocaine powder, 28-100 grams. Counts 3 and 4 of the indictment were dismissed. On January 15, 2015, the Honorable Paul M. Burch sentenced Applicant to ten years imprisonment on each count, to run concurrently. Applicant received four days credit for time served pursuant to S.C. Code § 24-13-40. No appeal was filed.

Attached herewith and incorporated herein are the Applicant’s records from the State Grand Jury Clerk of Court and the South Carolina Department of Corrections, as well as the guilty plea and sentencing transcripts. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. APPLICANT'S ALLEGATIONS

Applicant alleges ineffective assistance of counsel. PCR App. at 3. More specifically, he contends that: (1) he was “indicted twice under the same indictment,” (2) he was misrepresented, and (3) he is not guilty. *Id.* The Sixth Amendment guarantees a guilty plea defendant the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 685, 686 (1984); Ramirez v. State, 413 S.C. 351, 365, 776 S.E.2d 101, 109 (2015). To prevail on an effectiveness claim, a PCR applicant must prove that counsel’s performance was objectively deficient and that such performance prejudiced the applicant. Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991). Since it is presumed that counsel rendered effective assistance, the applicant bears the burden of proof. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The deficiency prong of Strickland requires a finding that counsel’s performance was deficient such that it falls below an objective standard of reasonableness. 466 U.S. at 687; Alexander, 303 S.C. at 541. In making this determination, the reviewing court must apply “a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Strickland, 466 U.S. at 689. Additionally, counsel’s conduct must not be viewed in a vacuum but must be assessed for reasonableness in light of all the facts and circumstances of the case. *Id.* at 690. As the Strickland Court observed:

It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable . . . [E]very effort [must] be made to eliminate the distorting effects of hindsight . . .

Id. at 689.

In the context of a guilty plea, the applicant must prove prejudice by showing that, but for counsel’s errors, there is a reasonable probability that he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988); Roscoe v. State, 345 S.C. 16, 20, 546

F.3d 20, 26 (9th Cir. 1994)) (“It is well-settled that ‘conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief.’”); see also Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977) (summary disposition of habeas petition is appropriate where allegations are vague or conclusory); Aubut v. Maine, 431 F.2d 688, 689 (1st Cir. 1970) (“The petition should set out substantive facts that will enable the court to see a real possibility of constitutional error.”). Applicant fails to set forth facts as to how he was misrepresented. Thus, Applicant’s claim should be dismissed.

C. I’m Not Guilty (Ground Three)

Applicant claims that he is not guilty. First, Applicant fails to assert a cognizable claim upon which relief can be granted under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 et seq. (1976). A PCR action is not a substitute for appellate review, as Applicant could have but failed to raise this issue on direct review. Applicant avers that he did not file an appeal because he had “no instructions or idea of how to file an appeal.” PCR App. at 2. Based on the record, it appears that Applicant is being disingenuous. The record clearly reflects that the Court informed Applicant that he “can appeal a guilty plea, but [he] must file [his] notice of appeal within ten days from [his sentence].” Plea Tr. at 4. Hence, Applicant’s claim should be dismissed.

Secondly, even if Applicant’s claim was not barred, it should be dismissed. Prior to admitting guilt, the Court informed Applicant that he was “presumed innocent” and that such presumption would remain throughout trial. Plea Tr. at 4. After advising Applicant of his rights to a jury trial, the Court advised him to “take a few minutes” to obtain clarification from his counsel or the Court, if necessary. Id. After having full knowledge and being given sufficient time to seek clarification of his rights, when asked by the Court how does he wish to plead to the charges against him, Applicant unhesitatingly replied, “Guilty.” Plea Tr. at 6, 7.

Moreover, more than two years after Applicant pleaded guilty to the charged offenses, he

STATE OF SOUTH CAROLINA)
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 COUNTY OF KERSHAW)
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 Darrin Larell Graham, #362765)
)
 Applicant,)
)
 v.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2016-CP-28-023

AFFIDAVIT OF SERVICE BY MAIL

JUDICIAL RECORDS
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

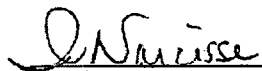
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FILED FOR RECORD

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:

Kristy G. Goldberg, Esq.
 Law Office of Kristy Goldberg, LLC
 1720 Main Street, Suite 303
 Columbia, SC 29201

DATED this 3rd day of March, 2016.



 IVORY NARCISSE
 Assistant Attorney General

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF KERSHAW)	DOCKET NO.: 2016-CP-28-023
)	
DARRIN GRAHAM,)	
SCDC # 362765)	
Applicant,)	
v.)	RESPONSE TO STATE'S MOTION TO DISMISS
)	
STATE OF SOUTH CAROLINA,)	
Respondent,)	
)	

COMES NOW Applicant, by and through his undersigned attorney, who requests that this Court not dismiss the Applicant's pending Post-Conviction Relief Application and allow an evidentiary hearing regarding the merits of this case.

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed on January 12, 2016. This Application was timely as it involves a conviction and sentence that was entered January 15, 2015. Undersigned counsel was appointed as attorney for the Applicant on January 28, 2016

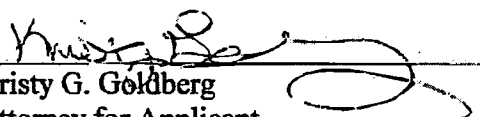
On today, March 8, 2016, counsel for the Applicant received a packet of documents from the Attorney General including a Return and Motion to Dismiss, State Grand Jury Clerk's Records, SCDC Records, Transcripts – Guilty Plea and Sentencing, and a Proposed Order of Dismissal. As these documents were received for the first time today counsel for the Applicant has not had the opportunity to review these documents with the Applicant at Ridgeland Correctional to discuss the merits of his case.

On behalf of Applicant, undersigned counsel has reviewed the PCR application and other documents provided by the Attorney General's office and requests that this Court deny the State's motion to dismiss. The motion made by the State is solely made upon the ground that the original Application fails to "present any genuine issues of material fact." However, the

Applicant clearly states that he was "misrepresented" during his plea. This statement can reasonably be construed as an allegation for ineffective assistance of counsel which needs to be investigated by PCR counsel. The Applicant also asserts that he is not guilty of his charges which may be an assertion of some due process violation. Finally, the Applicant also states in his Application that he did not know how to file an Appeal which is a clear allegation under State v. White. It is clear that these allegations have substance and a factual dispute is likely to resolve these issues, and accordingly an evidentiary hearing may be necessary.

Counsel for the Applicant intends to investigate these allegations and file an Amended Application in the future if appropriate. At this time, counsel would simply request, on behalf of the Applicant, that the pending Motion to Dismiss be denied.

Respectfully Submitted,



Kristy G. Goldberg
Attorney for Applicant

Columbia, South Carolina
This 8th Day of March, 2016.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 DARRIN GRAHAM,)
 SCDC # 362765)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
 Respondent,)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2016-CP-28-023

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

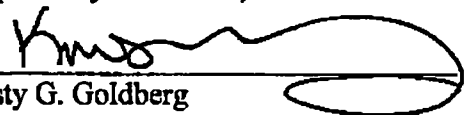
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 2016 APR 13 AM 8:41
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- a) Ineffective assistance of counsel for failing to effectively communicate with client regarding case status, exact charges in indictment and nature of those charges, and evidence.
- b) Ineffective assistance of counsel for failing to adequately negotiate a plea agreement on Applicant's behalf.
- c) Ineffective assistance of counsel pursuant to White v. State for failing to file a notice of appeal upon request by Applicant.

Respectfully Submitted,



 Kristy G. Goldberg
 Attorney for Applicant.

Columbia, South Carolina

This 11 Day of April, 2016.

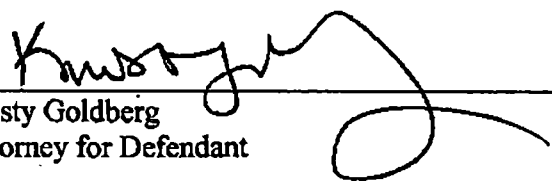
STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 DARRIN GRAHAM,)
 SCDC # 362765)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
 Respondent,)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2016-CP-28-023

CERTIFICATE OF SERVICE

FILED FOR RECORD
 2016 APR 13 AM 8:41
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.



 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 11TH day of April, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF KERSHAW)	DOCKET NO.: 2016-CP-28-023
)	
DARRIN GRAHAM,)	
SCDC # 362765)	
Applicant,)	
v.)	<u>SECOND AMENDED APPLICATION FOR</u>
)	<u>POST-CONVICTION RELIEF</u>
STATE OF SOUTH CAROLINA,)	
Respondent,)	
)	

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- a) Ineffective assistance of counsel for failing to effectively communicate with client regarding case status, exact charges in indictment and nature of those charges, and evidence.
- b) Ineffective assistance of counsel for failing to adequately negotiate a plea agreement on Applicant's behalf.
- c) Ineffective assistance of counsel for failing to file a motion to withdraw plea.
- d) Ineffective assistance of counsel pursuant to White v. State for failing to file a notice of appeal upon request by Applicant.

Respectfully Submitted,



 Kristy G. Goldberg
 Attorney for Applicant

Columbia, South Carolina

This am Day of August, 2016.


STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 DARRIN GRAHAM,)
 SCDC # 362765)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2016-CP-28-023

CERTIFICATE OF SERVICE

I certify that on this date I served the Second Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.



 Kristy Goldberg
 Attorney for Defendant

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 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 9th day of August, 2016

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
 2 COUNTY OF RICHLAND) COURT
 3)
 4 DARRIN L. GRAHAM,)
 5) TRANSCRIPT
 6 -V-) OF
 7) RECORD
 8 STATE OF SOUTH CAROLINA,) 2016-CP-28-023
 9 DEFENDANT.)

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SEPTEMBER 1, 2016
 RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE JOCELYN J. NEWMAN, JUDGE;

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

FOR THE APPLICANT:

KRISTY GOLDBERG, ESQ.

FOR THE DEFENDANT:

IVORY NARCISSE, ESQ.

I-N-D-E-X

	PG.
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2	
3 Examination of Darrin Graham:	
4 Direct by Ms. Goldberg	4
5 Cross by Ms. Narcisse	14
6 Examination of Jason Kirincichi:	
7 Direct by Ms. Narcisse	25
8 Cross by Ms. Goldberg	36
9 Certificate of Reporter	43
10	
11	
12 REPORTER'S NOTE: (There were no exhibits entered.)	
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Darrin Graham Direct by Ms. Goldberg

1 (The following proceedings were held on
2 September 1, 2016.)

3 MS. NARCISSE: This is Darrin Morell Graham vs.
4 State of South Carolina, 2016-CP-28-023. We're here on
5 Mr. Graham's application for post-conviction relief, which
6 was filed on January 12th, 2016.

7 In June 2012, Mr. Graham was indicted by the State
8 Grand Jury for conspiracy to trafficking cocaine, 400 grams
9 or more, trafficking cocaine 28 to 100 grams, and two counts
10 of trafficking cocaine 10 to 28 grams.

11 On January 7th, 2013, Mr. Graham, represented by
12 Jason Kirincich, pleaded guilty to two counts of trafficking
13 cocaine powder, 28 to 100 grams. The remaining two charges
14 were dismissed. On January 15th, 2015, Judge Burch,
15 sentenced him to 10 years imprisonment on each count to run
16 concurrently and he received four days of credit for time
17 served. No appeal was filed.

18 On April 11th, his PCR attorney, Mrs. Kristy
19 Goldberg, filed an amended application as well as a second
20 amended application on August 9th of 2016. And we're here
21 to proceed on that matter, Your Honor.

22 THE COURT: All right. Ms. Goldberg.

23 MS. GOLDBERG: Thank you, Your Honor, may it
24 please the Court. We are proceeding on application -- or
25 the amendments filed on August 9th. If you don't have a

Darrin Graham Direct by Ms. Goldberg

1 copy of that, I can provide you --

2 THE COURT: I do have it.

3 MS. GOLDBERG: All right. Very good. At this
4 time, I'd like to call Mr. Graham to the stand.

5 BAILIFF: Raise your right hand.

6 THEREUPON,

7 DARRIN GRAHAM,

8 after having been duly sworn, testified as follows:

9 BAILIFF: Have a seat there in the witness box.
10 State your full name for the record and spell your last
11 name.

12 THE WITNESS: Darrin Graham, G-R-A-H-A-M.

13 DIRECT EXAMINATION

14 BY MS. GOLDBERG:

15 Q. Mr. Graham, how old are you?

16 A. Twenty-five.

17 Q. Twenty-five?

18 A. Yes, ma'am.

19 Q. Where are you currently housed?

20 A. At Ridgeland Correctional Institution.

21 Q. Ridgeland. And what sentence are you serving?

22 A. Ten-year sentence?

23 Q. Is that violent or nonviolent?

24 A. Violent.

25 Q. What charges are you serving that sentence for?

Darrin Graham Direct by Ms. Goldberg

- 1 A. Trafficking 28 to a hundred and conspiracy 28 to a
2 hundred grams.
- 3 Q. Did you have any prior arrests before these charges
4 came up? Had you been arrested before?
- 5 A. No, ma'am.
- 6 Q. Who was your attorney on these charges?
- 7 A. Jason.
- 8 Q. Was he appointed?
- 9 A. Appointed. It was the public defender.
- 10 Q. Was he your attorney the entire time they were pending?
- 11 A. Yeah.
- 12 Q. When were you arrested, do you call?
- 13 A. August 7th, 2012.
- 14 Q. Did you bond out after that?
- 15 A. Yes, ma'am.
- 16 Q. Were you living locally in Kershaw County the whole
17 time you were on bond?
- 18 A. Yes, ma'am.
- 19 Q. Okay. Did you meet with your attorney while you were
20 on bond?
- 21 A. Yeah.
- 22 Q. Your plea -- you entered your plea January 7th of 2013;
23 is that right?
- 24 A. Yes, ma'am.
- 25 Q. So about six months after you were arrested?

Darrin Graham Direct by Ms. Goldberg

- 1 A. Yes, ma'am.
- 2 Q. When you went to court to enter your guilty plea, I
3 guess you came -- you walked in off the street, right?
- 4 A. Yes, ma'am.
- 5 Q. Did you understand what you were charged with?
- 6 A. No, not really.
- 7 Q. Had you already met with your attorney prior to your
8 plea date?
- 9 A. Yeah.
- 10 Q. Okay. Had he talked to you about what your charges
11 were?
- 12 A. Yeah.
- 13 Q. Okay. What didn't you understand?
- 14 A. I didn't understand -- I didn't really know the law
15 during the time. If I had knowed that, I wouldn't
16 plead to the 400 grams or more because I never did have
17 400 grams or more on that conspiracy part.
- 18 Q. Okay. You understand as it stands today, you didn't
19 plead to the conspiracy for 400 grams or more?
- 20 A. No, when I plead, they dropped it to 28 to a hundred --
- 21 Q. Okay. All right.
- 22 A. -- grams.
- 23 Q. Why did you plead guilty?
- 24 A. Because I -- because I did -- I did had sold to
25 undercover. I did took responsibility for that, but

Darrin Graham Direct by Ms. Goldberg

- 1 under 28 to hundred -- 28 to hundred conspiracy, I
2 ain't had nothing to do with that. That was something
3 they made up just to try to get me in jail.
- 4 Q. So then why did you plead to it?
- 5 A. Because I was guilty to the other thing. Because to
6 tell you the truth, he was like I was going to get --
7 he was going to try to get me seven years.
- 8 Q. Okay.
- 9 A. That's the only reason I pled to that.
- 10 Q. Okay. Did Mr. Kirincich tell you -- and what did he
11 say exactly about seven years? What did he tell -- did
12 he make a promise? Did he tell you his intention? How
13 did he phrase it?
- 14 A. He was like since you -- since your record and stuff,
15 I'm going to try to get you the seven years.
- 16 Q. And that's what he said to you on the day you entered
17 your plea?
- 18 A. Yeah.
- 19 Q. Did he promise you you would get seven years?
- 20 A. No, he didn't promise me that. He said he was going to
21 try.
- 22 Q. Okay. Is there anything that you know now that you
23 think Mr. Kirincich should have told you or explained
24 to you?
- 25 A. He should have told me that I was -- that I was going

Darrin Graham Direct by Ms. Goldberg

1 to get like -- that I could get more than seven years
2 because if I would have know that, I wouldn't -- I
3 wouldn't sign the plea.

4 Q. If you had known you could get more than seven years?

5 A. Yeah, I wouldn't have signed the plea?

6 Q. You wouldn't have pled?

7 A. I wouldn't have pled because my other codefendant, he
8 ain't sign the plea and he got a nonviolent sentence.

9 Q. Who was that?

10 A. Tyjuan Rice. And he got caught with 13 zones of
11 cocaine.

12 Q. If you had know that you could get more than seven
13 years as a result of -- or if you had known that you
14 could get more than seven years, what would you have
15 done instead of pleaing?

16 A. I would have cooperated. I would have -- if I had
17 known I was going to get all this time, I would -- I
18 wouldn't have testified because -- the person who my
19 cousin said he was going to testify on, he burn his
20 house down, shoot his house up and all. I was staying
21 with my momma. I didn't want nothing to happen to my
22 momma. I did told them something, but I told them I
23 wasn't going testify.

24 Q. So let me just try to make what you're saying a little
25 bit clear. The person who burned people's houses down

Darrin Graham Direct by Ms. Goldberg

- 1 and stuff, that's a person the State wanted you to
2 testify against?
- 3 A. (The witness nodded head.)
- 4 Q. Okay. You were afraid to testify against them?
- 5 A. Yeah.
- 6 Q. Okay. And you're telling me that -- what would Mr.
7 Kirincich have said to you to change how you responded
8 to this case?
- 9 A. Say that again now.
- 10 Q. Hold on, let me figure out how to phrase this. You
11 would -- you believe that you should have cooperated
12 more?
- 13 A. Yeah.
- 14 Q. Okay. And you would have if you had known you could
15 have gotten more than seven years, is that what you're
16 saying?
- 17 A. (The witness nodded head.)
- 18 Q. Would you have had a jury trial? Would you have asked
19 for a jury trial?
- 20 A. Yeah.
- 21 Q. Did you want a jury trial at any time?
- 22 A. Yeah.
- 23 Q. Did you ever tell Mr. Kirincich that?
- 24 A. No, I ain't tell him that.
- 25 Q. Is there anything else you don't think you understood

Darrin Graham Direct by Ms. Goldberg

1 at the time of the plea that you know now?

2 A. I didn't know the statutes of the law then.

3 Q. Is there anything that Mr. Kirincich said to you that
4 you thought was improper or unfair?

5 A. When I asked him -- when I ask him to took my plea
6 back, he told me he couldn't do it.

7 Q. Okay.

8 A. The day I got sentenced.

9 Q. Okay. We'll go to sentencing in just a second. Is
10 there anything different that you think your lawyer
11 should have done regarding plea negotiations?

12 A. Yeah. I think he could have tried to get me a
13 nonviolent sentence.

14 Q. He could have asked the State to give you a nonviolent
15 sentence?

16 A. Yeah.

17 Q. You think he didn't ask them for that?

18 A. No. He just asked them to give me seven years.

19 Q. All right. All right. Now, you weren't sentenced on
20 these charges until January of 2015; is that right?

21 A. Yes, ma'am.

22 Q. So two years later. Did anything happen between the
23 plea and sentencing with these charges, anything new?

24 A. No, ma'am.

25 Q. Did you meet with your lawyer ever during that two-year

Darrin Graham Direct by Ms. Goldberg

1 period?

2 A. Yeah, I met with him and Jack Rushing one time.

3 Q. What happened with that?

4 A. I told Jack Rushing some stuff, but I told him that I
5 couldn't testify on nobody or nothing.

6 Q. Did your lawyer give you any advice in that regard
7 about what you should or shouldn't do as far as
8 cooperation?

9 A. He said I should help, but I was like I couldn't. I
10 told the stuff and he write it down on the paper, but I
11 couldn't testify on nobody because I didn't want
12 nothing to happen to my momma or nothing.

13 Q. The day you walked into court for your sentencing, what
14 sentence did you think you were going to get?

15 A. Seven.

16 Q. And what was that based on?

17 A. Um --

18 Q. Why did you think that?

19 A. Because I was the youngest out of the group and that
20 was my first time ever getting in trouble.

21 Q. After the sentence -- and what sentence did you get?

22 A. Ten years.

23 Q. Afterwards, did you ask your lawyer to file anything?

24 A. Yeah, I asked him to -- no, he told me he was going to
25 file an appeal.

Darrin Graham Direct by Ms. Goldberg

1 Q. He told you he was going to file an appeal?

2 A. Yes.

3 Q. He said it that day?

4 A. (The witness nodded head.)

5 Q. Did you ask him to file anything different, like a
6 motion to withdraw or motion to reconsider?

7 A. No.

8 Q. Do you think he should have?

9 A. Yeah.

10 Q. But you didn't ask him to that day?

11 A. I didn't ask him.

12 Q. Okay. Did you rely on his statement that he was going
13 to be filing a notice of appeal?

14 A. Yeah.

15 Q. Was one ever filed?

16 A. No, ma'am.

17 Q. You understand if you win this PCR case and your
18 charges are overturned, you face all of the original
19 charges against you again?

20 A. Yes, ma'am.

21 Q. Okay. And that was three -- basically, three
22 distributions at a trafficking level and then the
23 conspiracy for trafficking, which was originally
24 charged over 400 grams. You understand those are the
25 charges you would be facing?

Darrin Graham Cross by Ms. Narcisse

- 1 A. Yes, ma'am.
- 2 Q. Okay. And then that conspiracy could carry a minimum
3 of 25 years?
- 4 A. Yes, ma'am.
- 5 Q. What do you want this Court to do today? Do you want
6 them to overturn your convictions?
- 7 A. Yes.
- 8 Q. Okay. Why do you want the Court to do that?
- 9 A. Because my -- my codefendant, Patar Montgomery, he --
10 with the 400 grams or more, he took a trial and he got
11 that dismissed. And I was thinking like on my -- I
12 only got three trafficking, so I was asking could she
13 just run them all as one 10 to 28, and that's a three
14 to ten nonviolent sentence.
- 15 Q. You said Patar Montgomery had a jury trial?
- 16 A. Yeah, he took it to trial and he got his dismissed, the
17 400 grams or more conspiracy.
- 18 Q. So once you heard that, you wished you had done that?
- 19 A. (The witness nodded head.)
- 20 Q. Is there anything else related to your allegations that
21 you needed to add or tell this Court?
- 22 A. That's all.
- 23 MS. GOLDBERG: No further questions?
- 24 THE COURT: Cross-examination?
- 25 MS. NARCISSE: Thank you, Your Honor.

Darrin Graham Cross by Ms. Narcisse

1 CROSS-EXAMINATION

2 BY MS. NARCISSE:

3 Q. Good morning, Mr. Graham.

4 A. Good morning.

5 Q. Let's start with your prior record. Now, you said you
6 didn't have any convictions, this is your first time
7 with having a conviction or any convictions on your
8 record?

9 A. Yeah, I did have -- I forgot, a driving without a
10 license and a public disorderly conduct.

11 Q. So you do have some prior convictions, correct?

12 A. Yeah.

13 Q. Now, you stated that you pled guilty because, in fact,
14 you are guilty or you were guilty of those charges?

15 A. Yeah.

16 Q. And so you still maintain that today, that you are
17 guilty of the charges that you've been convicted of?

18 A. I'm guilty for the 28 to hundred trafficking, but the
19 400 grams or more conspiracy, I ain't guilty of that.

20 Q. Right, but you didn't plead to that, right?

21 A. No, ma'am.

22 Q. You didn't plead to --

23 A. Well, the 28 to a hundred grams, I ain't guilty of
24 that.

25 Q. I'm sorry?

Darrin Graham Cross by Ms. Narcisse

- 1 A. I'm not guilty of the 28 to a hundred grams conspiracy.
- 2 Q. Of conspiracy?
- 3 A. Yes, ma'am.
- 4 Q. Okay. But when you were sentenced, you did tell the
- 5 judge while you were under oath that you were guilty of
- 6 that charge?
- 7 A. Yes, ma'am.
- 8 Q. Is that correct?
- 9 A. Yes, ma'am.
- 10 Q. Okay. Now, let's look at what you did plead guilty to.
- 11 The trafficking cocaine, do you know how many -- for 28
- 12 to 100 grams, do you know how many years that carries,
- 13 your potential exposure for jail time?
- 14 A. That's seven to 25, I think.
- 15 Q. Right. Seven to 25 years. And you pled guilty to that
- 16 charge, right?
- 17 A. Yes, ma'am.
- 18 Q. And then the other charge was conspiracy trafficking 28
- 19 to 100 grams. And how many years did that carry?
- 20 A. Seven to 25.
- 21 Q. Seven to 25 years, right. And the other two charges
- 22 that were dismissed, trafficking cocaine, 10 to 28
- 23 grams, do you remember how many years that carried?
- 24 A. From three to ten nonviolent sentence.
- 25 Q. Right. And those two were dismissed against you,

Darrin Graham Cross by Ms. Narcisse

1 correct?

2 A. Yes, ma'am.

3 Q. Okay. And so the charges that you did plead to, you
4 had an exposure of, what, up to 25 years on the
5 trafficking cocaine and up to 30 years on the -- I'm
6 sorry, 25 on the conspiracy as well, right?

7 A. Yes, ma'am.

8 Q. So 50 years; is that correct?

9 A. Yes, ma'am. But I -- but I never -- I never had from
10 28 to a hundred trafficking. All my trafficking was
11 from 10 to 28 grams. I don't know why they had it from
12 28 to a hundred.

13 Q. Right. And -- well, you did see the evidence in the
14 case?

15 A. Uh-huh.

16 Q. You did?

17 A. I seen the evidence. All of them -- one of them was --
18 only one of them was 28 grams.

19 Q. And you have one charge, right, 28.1 grams?

20 A. Yeah.

21 Q. And that's what you pled to, right?

22 A. (The witness nodded head.)

23 Q. Okay. And so you ended up getting, what is your
24 sentence?

25 A. Ten years.

Darrin Graham Cross by Ms. Narcisse

- 1 Q. Ten years. Concurrent for both of them, right? For
2 both charges --
- 3 A. Yeah.
- 4 Q. -- you have a total of 10 years?
- 5 A. Yes, ma'am.
- 6 Q. Okay. Now, you said in your -- when you were being
7 questioned by your attorney that you didn't understand
8 the charges. Talk to -- talk to me a little bit more
9 about that, when you say you didn't understand the
10 charges that were against you?
- 11 A. Cause I ain't really know -- like, when I first got
12 locked up, I didn't know the law or nothing. I ain't
13 understanding what was going on. I just know I was in
14 trouble and I was about to go to jail. And I ain't
15 really find out everything until I went to prison and
16 went to the law library and did some work.
- 17 Q. Well, let's back up. Before you went to jail, you said
18 Mr. Kirincich was your attorney, correct?
- 19 A. Yes, ma'am.
- 20 Q. And Mr. Kirincich went over the indictment with you?
- 21 A. Yes, ma'am.
- 22 Q. And you saw what you were charged with in the
23 indictment?
- 24 A. (The witness nodded head.)
- 25 Q. You have to speak so --

Darrin Graham Cross by Ms. Narcisse

1 A. Yes, ma'am.

2 Q. So you understood that the State said that you were
3 trafficking cocaine in various amounts?

4 A. Yes, ma'am.

5 Q. Okay. So what part of that did you not understand?

6 A. See, on the conspiracy, it wasn't really nothing about
7 me. It was about my cousin, to tell you the truth. It
8 wasn't really nothing about me, really. They just got
9 me tied up in that with his mess because I used to be
10 around him.

11 Q. Uh-huh.

12 A. Got me tied up in that. But on the three traffickings
13 I got, that's me. I blame that on myself.

14 Q. Okay.

15 A. I take the fault for that.

16 Q. Okay. All right. And so you said the only reason in
17 your direct -- in your testimony on direct, you said
18 the only reason that you pled was because you thought
19 you were going to get seven years, correct?

20 A. Yes, ma'am.

21 Q. And -- but you said your attorney did not promise you
22 that?

23 A. Yeah, he told me he was going to fight for me to get
24 seven years.

25 Q. And that's what a good attorney would do is fight for

Darrin Graham Cross by Ms. Narcisse

- 1 their client, right?
- 2 A. Yes, ma'am.
- 3 Q. But he did not promise you that; is that correct?
- 4 A. No, ma'am, he ain't promise me that.
- 5 Q. Right. Because you stated earlier you know that that
- 6 charge carried, what, up to 25 years, correct?
- 7 A. Yes, ma'am.
- 8 Q. So you could have gotten 25 years, right?
- 9 A. Yes, ma'am.
- 10 Q. And you knew that?
- 11 A. (The witness nodded head.)
- 12 Q. But you were hoping for seven; is that correct?
- 13 A. Yes, ma'am.
- 14 Q. Okay. Now, you also stated about you wished that your
- 15 attorney would have told you to cooperate or if you
- 16 would cooperate, maybe seven years would have been more
- 17 likely. Is that your testimony?
- 18 A. Yes, ma'am.
- 19 Q. Okay. And then you went -- and later you stated that
- 20 your attorney did, in fact, encourage you to cooperate
- 21 with law enforcement?
- 22 A. Yes, ma'am, he did.
- 23 Q. He did?
- 24 A. (The witness nodded head.)
- 25 Q. Okay. And now, let's talk about the jury trial. Now,

Darrin Graham Cross by Ms. Narcisse

1 you said on direct that you would have asked for a jury
2 trial had you known you could have gotten seven years,
3 was that your testimony?

4 A. I would -- yeah, I would have asked for a jury trial if
5 I -- if I know I could have -- if I knew I could have
6 had beat -- if I knew my other codefendant would have
7 beat it, I would have asked for the jury trial, too.

8 Q. Okay. But you were -- you were informed by your
9 attorney that you did have that option to go have a
10 jury trial?

11 A. Yeah.

12 Q. But you didn't ask for a jury trial?

13 A. I didn't ask for it.

14 Q. You wanted to plead guilty?

15 A. Yes, ma'am.

16 Q. Okay. And you did not ask your attorney for a jury
17 trial?

18 A. No, ma'am.

19 Q. Okay. Now, as was pointed out, you pled guilty in
20 2013, was it?

21 A. Yes, ma'am.

22 Q. And you were out on bond for two years after you pled
23 guilty?

24 A. Yes, ma'am.

25 Q. Right. So during that two-year period of time, did you

Darrin Graham Cross by Ms. Narcisse

1 go to your attorney's office or call your attorney and
2 say hey, I want to withdraw my plea at any point in
3 time?

4 A. No, I ain't told him nothing till the day -- till the
5 day of my sentencing.

6 Q. Okay. And so at the -- on the day of your plea
7 hearing, you gave no indication that you did not want
8 to plead guilty?

9 A. No. I -- I just signed it because everybody else was
10 signing it.

11 Q. Okay. So it was your decision to plead guilty?

12 A. Yes, ma'am.

13 Q. No one promised you anything?

14 A. No, ma'am.

15 Q. No one forced you to do anything --

16 A. No, ma'am.

17 Q. -- that you didn't want to do? And so your biggest
18 upset right now is the amount of time that you got?

19 A. Yes, ma'am.

20 Q. Right. And do you realize that that time was beyond
21 your attorney's control?

22 A. Yes, ma'am.

23 Q. Do you realize that the sentence is strictly the
24 Judge's -- in the Judge's discretion?

25 A. Yes, ma'am.

Darrin Graham Cross by Ms. Narcisse

1 Q. So based on that, did your attorney do anything wrong
2 in his representation of you -- for you?

3 A. Yeah, he ain't filed for my appeal, like I said.

4 Q. Okay. So let's talk about the appeal. Is that the one
5 and only thing that you would say that your attorney
6 did not do?

7 A. I think that's about it.

8 Q. Okay. So we've narrowed it down that your attorney
9 acted reasonably except for failing to file your
10 appeal?

11 A. Yes, ma'am.

12 Q. Okay. Now, when you say your appeal, you said that you
13 asked your attorney to file an appeal after you were
14 sentenced?

15 A. Yes, ma'am.

16 Q. Okay. And where did that conversation take place?

17 A. Right there beside -- on the bench after I got
18 sentenced.

19 Q. Okay.

20 A. He walked up to me.

21 Q. Uh-huh. And tell me what happened.

22 A. He told me he was going to file for me an appeal, but
23 it ain't never happened.

24 Q. Okay. And after that conversation, did you speak with
25 your attorney after that?

Darrin Graham Cross by Ms. Narcisse

- 1 A. No, ma'am. I write him and asked him to get a detainer
2 from off of me, that's the only thing.
- 3 Q. After you were sentenced?
- 4 A. Yes, ma'am.
- 5 Q. Okay. And so did you ask him about your appeal after
6 that conversation in the courtroom?
- 7 A. No, ma'am, I thought he done put it in already.
- 8 Q. All right. So there was no other conversation after
9 that one conversation in the courtroom?
- 10 A. No, ma'am.
- 11 Q. Okay. Now, you also with your PCR, this application,
12 you filed it like right -- let's see, on January 12th,
13 2016, so you were right at the cusp of --
- 14 A. Yeah.
- 15 Q. -- the deadline? Why did you wait so long to file that
16 appeal -- your PCR application?
- 17 A. Because I was on the yard and I was working seven days
18 a week in the kitchen and I didn't have time. I had
19 somebody else helping me do the PCR anyway, so I didn't
20 really have time.
- 21 Q. Okay. So if you had received a lesser sentence, would
22 you have filed a PCR application?
- 23 A. No, ma'am.
- 24 Q. So but for your getting a seven-year sentence, this is
25 why you filed a PCR application?

Jason Kirincich Direct By Ms. Narcisse

1 A. Yes, ma'am, because my -- because I got like three more
2 other codefendants. Their record sheets longer than
3 mine and they got nonviolent sentences.

4 Q. Uh-huh, right. So you did state that we have
5 already -- we agree that you could have received up to
6 25 years, right?

7 A. Yes, ma'am.

8 Q. And so seven years would -- that would be a legal
9 sentence, right?

10 A. Yes, ma'am.

11 Q. Okay.

12 MS. NARCISSE: No further questions at this time,
13 Your Honor.

14 THE COURT: Any redirect?

15 MS. GOLDBERG: No, Your Honor.

16 THE COURT: All right. Thank you, sir. You can
17 go back and sit next to your lawyer.

18 And, actually, Mr. Graham, I have one question
19 just because I didn't understand. Did you ask your lawyer
20 to appeal -- file an appeal for you, Mr. Kirincich?

21 THE DEFENDANT: He came up on me and told me he
22 was going to file an appeal for me.

23 THE COURT: Did you tell him you wanted an appeal?

24 THE DEFENDANT: Yeah, I said yeah, I want you to
25 go ahead and do that.

Jason Kirincich Direct By Ms. Narcisse

1 THE COURT: Okay. All right. Thank you.

2 All right. Any other witnesses, Ms. Goldberg?

3 MS. GOLDBERG: No, Your Honor.

4 THE COURT: All right. Mrs. Narcisse.

5 MS. NARCISSE: Thank you, Your Honor. The State
6 calls Jason Kirincich.

7 THEREUPON,

8 JASON KIRINCICH,

9 after having been duly sworn, testified as follows:

10 BAILIFF: Thank you, sir. Have a seat in the
11 witness box. State your full name for the record and spell
12 your last name.

13 THE WITNESS: Jason Kirincich, K-I-R-I-N-C-I-C-H.

14 DIRECT EXAMINATION

15 BY MS. NARCISSE:

16 Q. Good morning, Mr. Kirincich.

17 A. Good morning -- or afternoon, I guess.

18 Q. Is it? Tell the Court how long you have been
19 practicing law?

20 A. Since 2007.

21 Q. Okay. And how many years of that have you been
22 practicing criminal law?

23 A. All of them.

24 Q. And where are you employed at this time?

25 A. The Kershaw County Public Defender's Office.

Jason Kirincich Direct By Ms. Narcisse

1 Q. And your responsibilities there include?

2 A. Representing criminal defendants that we're appointed
3 to represent.

4 Q. In various types of cases or are you --

5 A. Yeah, everything from kids not going to school, truancy
6 cases, up to rape and murder in general sessions.

7 Q. Now, how did you become involved in Mr. Graham's case?

8 A. It was a little different because it's a State Grand
9 Jury case. Judge Benjamin was the chief administrative
10 judge for the Fifth Circuit, which I guess also
11 oversees the State Grand Jury, and she appointed us to
12 represent Mr. Graham and it was assigned to me.

13 Q. Okay. And was Mr. Graham out on bond or incarcerated
14 during your representation?

15 A. He was out on bond. I don't if I was appointed when he
16 was in jail the first time or when he initially got
17 arrested, but he was out on bond for most of the time.

18 Q. Okay. And so over the course of your representation,
19 I'm sure you guys had time to meet. So just tell me
20 about your initial interaction with Mr. Graham as to
21 where you met, what you all discussed, what did you go
22 over, things of that sort?

23 A. The first time I met Mr. Graham, I believe, was in the
24 courtroom in the basement of the Kershaw County
25 courthouse. The State Grand Jury -- the attorneys at

Jason Kirincich Direct By Ms. Narcisse

1 the time had court for all of the defendants. That was
2 when I initially met Mr. Graham. That was in
3 September -- let me check my notes real quick.
4 September of 2012. I met with him just briefly. We
5 got our scheduling order and I had him set up an
6 appointment to come in and see me after that.

7 Q. Okay. And so when he did go -- did he make that
8 appointment?

9 A. Yeah, he made multiple appointments to see me from the
10 time I was first appointed until he entered the plea.
11 And then we met multiple times after he entered the
12 plea up until what was suppose be the original
13 sentencing date in March of 2013.

14 Q. Okay. And tell me what did those conversations or
15 those meetings consist of as far as your discussions?

16 A. Our initial discovery in this case was over 1100 pages
17 and there were multiple videos, some involving
18 Mr. Graham, some not involving him. We went over the
19 discovery, mostly, what pertained to him. I had gone
20 through it before he came in. I had it marked as to
21 which specific dates involved or occurrences involved
22 Mr. Graham, including some codefendants' statements
23 against him. We went over things that did not
24 necessarily involve Mr. Graham in regards to the
25 conspiracy allegations against him to see which people

Jason Kirincich Direct By Ms. Narcisse

1 he knew, which people he did not know. We went over
2 videos that had been provided to us, again, some
3 involving Mr. Graham, some not involving Mr. Graham. I
4 think over the first month that I represented him, he
5 was in my office for, according to what was in my book
6 and notes, about 10 hours.

7 Q. With regards to the evidence, you said there were
8 videos. What were those videos of?

9 A. There were videos of Mr. Graham involved in a
10 transaction with an undercover agent.

11 Q. And you said there were statements against him from his
12 codefendants?

13 A. Right. I think that went more towards the conspiracy.
14 He may have referred to them as his family. I'm not
15 sure what the relationship is. There was a Brad Nelson
16 and Lenny Belton, specifically, giving statements
17 regarding Mr. Graham's involvement.

18 Q. So based on that evidence, was there sufficient
19 evidence to support the State's conspiracy charge in
20 your opinion?

21 A. At the time we were going over discovery and at the
22 time of the plea, yes, we felt that there was more than
23 enough evidence to support the conspiracy theory.

24 Q. And you said we felt, who would that we include?

25 A. I'll take the we out of it and say I felt.

Jason Kirincich Direct By Ms. Narcisse

1 Q. Okay. Did Mr. Graham object to any of the evidence or
2 deny his involvement of any sort?

3 A. No.

4 Q. Okay. Did you discuss the specific charges in the
5 indictment against Mr. Graham?

6 A. We did. We were -- at least -- excuse me, I felt like
7 I was pretty thorough going over all of the evidence
8 and then going through -- there were multiple counts in
9 the indictments, going through each count that
10 pertained to him, including the conspiracy parts.

11 Q. Did you feel after going through the indictment that
12 your client had a clear understanding of the charges
13 that he was facing?

14 A. Yes.

15 Q. Did you speak to him about what the State would have to
16 prove, their burden of proof in that case?

17 A. Yes.

18 Q. You did. Did he seem to understand exactly what you
19 were conveying to him?

20 A. Yeah, he understood everything. We had good
21 conversations. I didn't have any questions about him
22 not understanding anything.

23 Q. And did you explain to him all the Constitutional
24 rights that were available to him?

25 A. Yeah, I didn't have any specific notes, but I'm sure at

Jason Kirincich Direct By Ms. Narcisse

1 some point we discussed burden of proof, his right to a
2 trial, his right to testify or not testify.

3 Q. Okay. You said I'm sure at some point, are you sure
4 because -- is that your practice to do that with your
5 clients or where does that certainty come from?

6 A. Right. It's usually that first meeting with clients
7 that I explain the State has the burden of proof, you
8 have the right to a trial. Usually, it's too soon for
9 me to advise them, if I don't have all the discovery,
10 especially, and if I haven't heard anything from them.
11 But I explain to them what their rights are.

12 Q. Okay. And after going through the evidence with your
13 client, based on your assessment, were there any valid
14 defenses that you could put forth on his behalf?

15 A. As to what he pled to or the whole indictment? I'm
16 questioning you now, I'm sorry.

17 Q. Well, did you guys talk -- well, let me rephrase my
18 question. Did you all speak of any defenses that you
19 could put forth if he went forward with a trial?

20 A. I don't recall going over any defenses. I know some of
21 the charges did not seem to fit with Mr. Graham's
22 involvement, so I don't know if those would be
23 classified as defenses.

24 Q. Okay. Is that why he pled to something different than
25 what he was charged with?

Jason Kirincich Direct By Ms. Narcisse

- 1 A. Yes. I had some discussions -- Carrie Goings was the
2 assistant AG that was in charge of it at the time.
3 Curtis Pauling was there was there as well. Josh
4 Underwood was there from the beginning, but he was not
5 in charge. I had phone calls, exchanged personal
6 numbers with Mr. Goings trying to figure out exactly
7 what was appropriate for Mr. Graham to plead to.
- 8 Q. Okay. And so based on these conversations, were there
9 any plea negotiations?
- 10 A. Yes. There was an order -- and I'm sorry, I don't have
11 it. I don't know if you have it. There was an order
12 that Judge Burch laid out when certain things were
13 supposed to be done, such as plea offers, discovery.
14 And the initial plea offer was -- I don't think it was
15 a negotiated range, it was a recommendation for 12 to
16 15 years for Mr. Graham. And I talked with Mr. Goings
17 about that. And at the time Mr. Graham entered the
18 plea, there were still ongoing negotiations as to what
19 the sentencing would be because it was not on the same
20 day.
- 21 Q. Okay. So he pled and you're saying at the time that he
22 pled, it was uncertain as to whether it would be a
23 recommendation or a negotiated sentence, that was
24 unknown at the time of his plea?
- 25 A. That's right. And as Mr. Graham had testified to,

Jason Kirincich Direct By Ms. Narcisse

1 after he entered the plea, we arranged a meeting with
2 special agent Jack Rushing, who was the SLED agent over
3 this corner chop investigation. And Mr. Graham and I
4 met with Mr. Rushing for a couple of hours. It was not
5 at my office, but it was in a conference room across
6 from my office. And we did that trying to -- trying to
7 get Mr. Graham the best possible sentence based on
8 possible cooperation.

9 Q. Okay. So we can safely say that at the time of his
10 plea, Mr. Graham had no idea whether he would get the
11 seven-year sentence or a 25-year sentence, although it
12 was your intent to work towards the seven-year
13 sentence?

14 A. That's right.

15 Q. Okay. And when the plea offer was finalized, did you
16 discuss the terms of the offer with your client?

17 A. Which plea offer? I'm sorry.

18 Q. Okay. You said there was the first plea offer,
19 correct?

20 A. Twelve to 15.

21 Q. Uh-huh.

22 A. I think we discussed it. I know we discussed it. I
23 had notes that I looked at recently that we discussed
24 the plea offer. The main thing was just the reduction
25 in charge, that they were getting rid of the mandatory

Jason Kirincich Direct By Ms. Narcisse

1 minimum of 25, that he was going to be pleading to a
2 seven to 25.

3 Q. Okay. So the first plea offer was 12 to 15 years?

4 A. That's right.

5 Q. And you discussed that with your client?

6 A. Yes.

7 Q. And was he -- did he want to accept that offer or what
8 happened? What were the results of that?

9 A. We continued to engage the attorney general's office in
10 plea negotiations.

11 Q. And then there was another plea offer that came after
12 that, after the 12 to 15?

13 A. I don't know that there was necessarily a plea offer --

14 Q. Okay.

15 A. -- or anything solid that came after that. Everybody
16 agreed that Mr. Graham's involvement in this -- you
17 know, I guess the easiest thing to compare it to is a
18 totem pole. He was the low man on the totem pole. He
19 was told what to do. He didn't make any decisions. So
20 they were not looking to give him any more time than
21 what certain codefendants got, like Brad Nelson or Mr.
22 Belton.

23 Q. Okay. Now, during the plea, did you get any indication
24 from -- before or after -- or during or after the plea
25 hearing any indication that Mr. Graham wanted to

Jason Kirincich Direct By Ms. Narcisse

1 withdraw his plea?

2 A. In the plea hearing in January of 2013?

3 Q. Uh-huh.

4 A. No. We set up the meeting with Agent Rushing after
5 that trying to get a better sentence. You know, I met
6 with Mr. Graham all the way up until that March 7th
7 date, which was supposed to be the sentencing hearing.
8 There were some issues at the attorney general's office
9 and they did not go forward at that time with
10 sentencing.

11 Q. Okay. And then two years later, you all have the
12 sentencing?

13 A. Right.

14 Q. And at that time, he was sentenced. Now, you heard Mr.
15 Graham say in his testimony that he -- you went to him
16 and spoke to him and said you were going to file an
17 appeal. Is that your version of the events --

18 A. I --

19 Q. -- that took place?

20 A. I don't have any recollection of telling Mr. Graham
21 that I was going to file an appeal.

22 Q. Do you have any recollection of him asking you to file
23 an appeal on his behalf?

24 A. His mother come to me outside of the 10 days and asked
25 about an appeal. I told her an appeal was not timely

Jason Kirincich Cross by Ms. Goldberg

1 at that point and he could file for post-conviction
2 relief. I don't know exactly when that was, but I do
3 remember her coming in and telling her that it was too
4 late to file an appeal.

5 Q. Was he aware -- Mr. Graham, was he aware of the 10-day
6 limitation to file an appeal prior to the sentencing or
7 after sentencing, right after sentencing, was he aware
8 of that?

9 A. I don't know if he was aware or not.

10 Q. So you don't know if you would have went over that with
11 your client?

12 A. I don't have any specific recollection of going over
13 the 10-day time to appeal with Mr. Graham.

14 Q. Is it your practice to inform your clients of their
15 rights to appeal and a time in which they must appeal?

16 A. Yeah, I go over it with my clients. And I don't know
17 if Judge Burch went over it during the sentencing
18 hearing or if he just went over it during the plea
19 colloquy, I'm not sure.

20 Q. Okay. If he would have asked you to file an appeal,
21 would you have filed an appeal?

22 A. I would have, yes.

23 Q. If you would have told him that you were going to file
24 an appeal without him asking, would you have filed an
25 appeal?

Jason Kirincich Cross by Ms. Goldberg

1 A. Yes.

2 Q. Were there -- in your opinion, were there any grounds,
3 any legal or factual basis for an appeal in this case?

4 A. I don't do appellate law, but I know on a plea, we have
5 to write the Court of Appeals as to the reason that we
6 believe this should be heard. And I could not think of
7 any actual grounds other than my client would have
8 asked for an appeal.

9 MS. NARCISSE: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 MS. NARCISSE: Nothing further at this time, Your
12 Honor.

13 THE COURT: All right. Cross-examination.

14 MS. GOLDBERG: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. GOLDBERG:

18 Q. Good afternoon.

19 A. Afternoon.

20 Q. I believe you testified that the original plea offer
21 was a recommendation of 12 to 15 years?

22 A. That's right.

23 Q. That would have been violent or nonviolent?

24 A. It would have been violent and 85 percent.

25 Q. The same as his sentence is now?

Jason Kirincich Cross by Ms. Goldberg

1 A. Right.

2 Q. As far as classification?

3 A. Yes.

4 Q. Did you ever ask the State to make an offer that he
5 plead to a reduced charge that would make his sentence
6 nonviolent?

7 A. Yes.

8 Q. What response did you get from the State?

9 A. They were not willing to do that.

10 Q. Did they say why?

11 A. Yes. Before Mr. Graham was even indicted, he had been
12 approached by Jack Rushing as far as cooperation and he
13 would not cooperate. This would have been, I guess,
14 spring of 2012, maybe even earlier than that.

15 Mr. Graham, in September and October when I was
16 representing him, indicated that he would not testify,
17 that he would not give information against anyone else.
18 So at that point, the State was not willing to reduce
19 any further than what they already had. They were
20 going to dismiss the biggest sentence he could get and
21 have him plead somewhere there in the middle.

22 Q. It appears from Mr. Graham's testimony originally today
23 that his biggest concerns had to do with the conspiracy
24 charge. I believe you testified on direct that you
25 thought the State -- and the way you phrased it was at

Jason Kirincich Cross by Ms. Goldberg

1 the time of the plea, you believed the State had
2 sufficient evidence to support the conspiracy. Is
3 there any reason it was qualified at the time of the
4 plea? Have you learned anything since that time that's
5 changed what the State's evidence would be?

6 A. No. I think I probably said it like that just because
7 it was -- well, two reasons in my mind. There were two
8 separate dates. There was the plea and then there was
9 the sentencing. They were two years apart. And
10 definitely at the time of the plea, there were people
11 cooperating who were not cooperating at the time of
12 sentencing. They had still given statements. They had
13 still, I believe, actually testified in front of the
14 Grand Jury. I believe there's statements and could
15 have been used against them. They may have forced them
16 into testifying again later.

17 Q. What kind of evidence did the State have as to the
18 conspiracy?

19 A. Mr. Brad Nelson had given -- I don't want to say
20 testimony. It could have been testimony in front of
21 the Grand Jury. He had given statements involving
22 Mr. Graham's role in the operation. And Mr. Belton had
23 given statements involving Mr. Graham's role in drug
24 transactions. Like I said, he was kind of the low man
25 on the totem pole. They would tell him what to do or

Jason Kirincich Cross by Ms. Goldberg

1 he would be the courier. I think Mr. Nelson said that
2 he would front Mr. Graham drugs for him to sale, but he
3 wasn't very good at -- I don't know, he wasn't a very
4 good drug dealer as far as making money and managing on
5 his own.

6 Q. Did you ever believe that you had grounds or a reason
7 or opportunity to ask the State to dismiss that
8 particular charge?

9 A. No.

10 Q. After the plea offer of 12 to 15 years, how did it get
11 to the point where Mr. Graham received a 10-year
12 sentence? You talked about this a little bit, but was
13 there ever a cap offered by the time of the plea or was
14 there an agreement of any kind?

15 A. I guess just chronologically, we met with Special Agent
16 Rushing. Mr. Graham gave information, but did not want
17 notes taken, did not want to provide a written
18 statement and would not testify. So although he gave
19 some information, it wasn't deemed as he cooperated
20 with law enforcement.

21 Somehow or another, Mr. Goings and Mr. Pauling
22 both left the AG's office and I had engaged in some
23 conversations with Assistant Attorney General
24 Underwood. He indicated that since he was not in
25 charge of making decisions -- excuse me, from the

Jason Kirincich Cross by Ms. Goldberg

1 beginning that he would rely on Special Agent Rushing
2 to advise him on what to do with Mr. Graham, knowing
3 that in the grand scheme of things his involvement was
4 minimal, but also knowing that he did not provide any
5 real cooperation to the investigation.

6 We actually -- before we went in for sentencing,
7 we went out into the hallway and met with -- I believe,
8 Mr. Graham's mother was there and Special Agent
9 Rushing. We talked and Mr. Graham again indicated he
10 would not be willing to testify. And at that point, he
11 was told that they wouldn't ask for any more than what
12 Mr. Nelson got. I think at that point, Mr. Belton had
13 picked up one, if not two sets of new charges for
14 drugs, so he was no longer being considered as a good
15 witness for the State. So it was not going to be
16 anything more than what Mr. Nelson was getting, I
17 guess, with what the cap would have been.

18 Q. That was the sentencing date. On the date of the plea,
19 prior to the plea, did you tell Mr. Graham he was going
20 to get a seven-year sentence?

21 A. No. I didn't tell him he was going to get a seven-year
22 sentence, no.

23 Q. Do you remember talking about seven years at all on
24 that day?

25 A. Sure, I told him -- I'm sure I told him that if he

Jason Kirincich Cross by Ms. Goldberg

1 pleads to this, he can get no less than seven and that
2 his cooperation would help him get that seven.

3 Q. And back to the sentencing date, after he was
4 sentenced, do you recall speaking with Mr. Graham that
5 day at all after sentencing?

6 A. I don't recall speaking with him at all after
7 sentencing.

8 Q. Okay.

9 MS. GOLDBERG: No further questions.

10 THE COURT: Any redirect?

11 MS. NARCISSE: None, Your Honor.

12 THE COURT: All right, Mr. Kirincich. Thank you.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Does the State have any additional
15 witnesses?

16 MS. NARCISSE: No, we don't. Thank you.

17 THE COURT: All right. Any argument you feel you
18 need to make, Ms. Goldberg?

19 MS. GOLDBERG: No, Your Honor. I will stand on
20 the record.

21 THE COURT: All right. Anything else from the
22 State?

23 MS. NARCISSE: No, Your Honor.

24 THE COURT: All right. I will let you know.

25 MS. NARCISSE: Thank you.

1 MS. GOLDBERG: Thank you, Your Honor.

2 END OF PROCEEDINGS

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1 COUNTY OF RICHLAND)

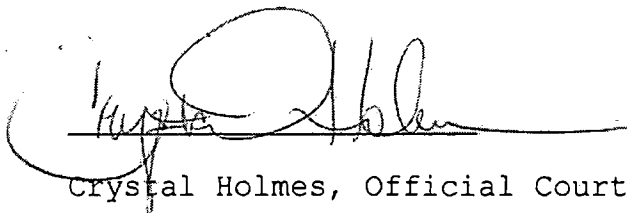
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Darrin L. Graham Vs. State of
5 South Carolina, Case No. 2016-CP-28-023, at the Richland
6 County Courthouse, September 1, 2016.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 43 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 18th day of January,
15 2017.

16 
17 Crystal Holmes, Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Darrin L. Graham, #362765,

2016-CP-28-023

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED FOR RECORD
2016 NOV 28 PM 2:54
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR), which was filed on January 12, 2016. Kristy Goldberg, Esquire was appointed on January 28, 2016, to represent Applicant. In response to the PCR application, Respondent filed its Return on March 7, 2016, requesting a summary judgement. On March 8, 2016, Applicant opposed Respondent's motion.¹ Thereafter, Applicant filed two amended PCR Applications on April 11, 2016, and August 9, 2016.

An evidentiary hearing convened on September 1, 2016, at the Richland County Courthouse. Applicant, represented by Kristy Goldberg, was present for the hearing. Ivory Narcisse, Assistant Attorney General, represented Respondent. During the PCR hearing, Applicant and his plea attorney, Jason D. Kirincich testified before the Court. In addition to testimony, this Court had before it Applicant's records from the State Grand Jury Clerk of Court and the South Carolina Department of Corrections; as well as the PCR applications (initial and amended), the Return, and the guilty plea and sentencing transcripts.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. He was indicted in June 2012.

¹ The Court did not render a decision on the Respondent's motion to dismiss.

ATTEST True, Correct & Certified
Copy of Original on File in this Court
Joyce McDonald
Clerk of Court Kershaw County

(2012-GS-47-10) by the State Grand Jury for conspiracy to trafficking cocaine, 400 grams or more (Count 1); trafficking cocaine, 28-100 grams (Count 2); and trafficking cocaine, 10-28 grams (Counts 3 and 4).

On January 7, 2013, Applicant, represented by Jason D. Kirincich, pled guilty to conspiracy to trafficking cocaine, 28-100 grams (Count 1) and trafficking cocaine, 28-100 grams (Count 2). Counts three and four of the indictment were dismissed. On January 15, 2015, the Honorable Paul M. Burch sentenced Applicant to 10 years imprisonment on each count, to run concurrently. Applicant received four days credit for time served pursuant to S.C. Code § 24-13-40. No appeal was filed.

In this action, Applicant requested relief on the basis of ineffective assistance of counsel. More specifically, Applicant alleged that counsel failed to do the following: (1) communicate with him regarding the status of his case, his charges, the nature of the charges and the State's evidence; (2) adequately negotiate a plea agreement; (3) file a motion to withdraw his plea; and (4) file a notice of appeal upon his request. Additionally, Applicant claims that (1) he was indicted twice in the same indictment; (2) he was misrepresented; and (3) he is not guilty of the charged offenses.

II. APPLICABLE LAW

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

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

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117, 118, 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).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, assessed the credibility of the witnesses, and weighed the testimony accordingly. Further, this Court has reviewed the State Grand Jury Clerk of Court records regarding the subject convictions, the guilty plea and sentencing transcripts, Applicant's records from the South Carolina Department of Corrections, the PCR applications and the Return. As a matter of general impression, this Court finds that Applicant's testimony is inconsistent with the allegations contained in his PCR applications. Although this order will address each allegation, it is important to note that at the

conclusion of Respondent's cross-examination of Applicant, Applicant testified that counsel's only area of deficiency was failing to file an appeal upon his request. This Court finds plea counsel's testimony credible and persuasive on all matters. Pursuant to S.C. Code Ann. § 17-27-80 (2003), these credibility determinations have been applied to the Court's findings and conclusions set forth below.

Failure to Communicate

Applicant contends that plea counsel was ineffective by failing to communicate with him regarding the status of his case, his charges, the nature of the charges and the State's evidence. In his testimony, counsel stated that he met with Applicant multiple times before Applicant's plea hearing and sentencing. Within counsel's first month of representation, counsel met with Applicant for approximately 10 hours, according to counsel's testimony. Counsel also testified that during those client meetings, he reviewed the State's evidence, consisting of videos and statements of co-defendants, with Applicant. In addition to reviewing the evidence, counsel testified that he thoroughly discussed the charges contained in the indictment. Counsel further stated that Applicant neither refuted the evidence nor denied his overall involvement in the criminal activity.

Although Applicant testified that he did not understand the charges against him and that he was not guilty of conspiring to traffic 400 grams or more of cocaine, he also testified that he pled guilty to trafficking 28-100 grams of cocaine because he was in fact guilty. Despite the inconsistencies in Applicant's testimony throughout the hearing, he unequivocally stated that counsel met with him on numerous occasions, showed him the State's evidence and reviewed the indictment with him.

In order to deem a guilty plea voluntary and knowing, the record must establish that the applicant 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 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). Thus, it is proper to consider the guilty plea transcript, as well as the evidence presented during the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Statements made during a guilty plea should be considered conclusively, unless the applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975), *overruled on other grounds by U.S. v. Whitley*, 459 F.2d 327 (4th Cir. 1985).

The guilty plea transcript indicates that the Court advised Applicant of the constitutional rights that he forfeits by pleading guilty, as well as advised him to inquire of his counsel or the Court if he lacked understanding. Thereafter, the Court explicitly asked Applicant whether he understood the charges against him. Applicant replied, "yes, sir." The record also indicates that prior to Applicant entering his guilty plea, the Court informed Applicant of the minimum and maximum penalty associated with the offenses. The transcript is replete with evidence that Applicant was fully aware of the consequences of his guilty plea.

Based on the guilty plea transcript and the evidence presented at the PCR hearing, this Court finds that Applicant was properly and sufficiently advised of the status of his case, the nature of the charges against him and the State's evidence. Moreover, this Court finds that Applicant knowingly, voluntarily and intelligently entered his guilty plea.

Failure to Negotiate an Adequate Plea Agreement

Applicant's allegation regarding counsel's failure to negotiate an adequate plea agreement is nothing more than Applicant's discontentment with receiving a 10-year sentence

rather than the minimum sentence of seven years. On direct examination, Applicant testified that counsel said that he was going to pursue a plea offer of seven years, but he did not promise that he would be successful in his endeavor. Counsel testified that the State's initial offer was 12-15 years and that he never guaranteed Applicant that he would receive a seven-year sentence. Counsel did, however, advise Applicant that he was exposed to a minimum of seven years and that his cooperation with law enforcement would be beneficial to him.

Counsel stated, and Applicant agreed, that Applicant refused to cooperate with law enforcement, despite counsel advising him to do otherwise. As a result, the State was not willing to recommend a minimum sentence or reduce Applicant's charge to a non-violent offense. Applicant testified that he would not have pled guilty if he would have known that he could have received a sentence exceeding seven years. Such assertion is not credible, as the guilty plea transcript clearly indicates that the plea judge apprised Applicant that he could serve a maximum of 25 years and Applicant also testified that he knew that could receive up to 25 years imprisonment but was "hoping for seven."

Based on the foregoing, this Court finds that Applicant fails to state a cause for which relief can be granted, as there is no showing of deficient representation or prejudice. If anything, the efforts expended by counsel to secure the best possible plea offer for Applicant were thwarted by Applicant's refusal to comply with the State's request for his cooperation.

Failure to Withdraw Plea

Applicant alleges that counsel was ineffective for failing to withdraw his plea. After pleading guilty, Applicant was out on bond for two years before being sentenced to prison. Counsel testified that Applicant never indicated a desire to withdraw his plea before, during or after the plea hearing. Applicant testified that he wanted to plead guilty and that he never asked

for a trial. He further testified that it was only after he was sentenced to 10 years that he wanted to withdraw his plea. Counsel testified that he does not recall Applicant asking him to withdraw his plea at any given time. Applicant has failed to meet his burden of proof. Thus, this Court finds that Applicant is not entitled to relief.

Failure to File a Notice of Appeal

“[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). Applicant testified that while he was still in the courtroom after his sentencing, he asked counsel to file an appeal on his behalf and counsel agreed to do so. Counsel testified that he does not recall Applicant making such a request and that he would have filed a notice of appeal on Applicant’s behalf if such a request was made. Counsel also testified that after the time for filing a notice of appeal had expired, Applicant’s mother went to his office and asked him to file an appeal. Counsel informed her that her request was untimely and that Applicant’s other alternative for relief is a PCR action.

Although counsel could not affirmatively state whether he informed Applicant of the time delay for filing a notice of appeal, he did testify that he did not see any appealable issues. The evidence in this matter regarding this particular issue is insufficient to overcome the presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. This Court finds that Applicant has failed to demonstrate

any resulting prejudice by this alleged deficiency. See Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

All Other Allegations

Applicant alleges that he was charged twice in the same indictment, that he was misrepresented and that he is innocent. As to the indictment issue, this Court finds no error in the charging instrument. Applicant was charged with four counts, of which he voluntarily pled guilty to two of them. Given that distinct offenses may be charged in separate counts of the same indictment, there was no error for his attorney to correct. State v. Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct.App.1996) (citing State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955)). Therefore, Applicant's counsel was not deficient in his representation.

Applicant's claim of misrepresentation is too vague to state a claim upon which relief can be granted. See Jones v. Gomez, 66 F.3d 199, 204 (9th Cir. 1995) (quoting James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994)) ("It is well-settled that 'conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief.'"). Hence, this claim is dismissed. Lastly, Applicant claims that he is innocent. Applicant fails to assert a cognizable claim upon which relief can be granted under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 et seq. (1976). Accordingly, Applicant's claim is dismissed.

IV. 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.

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

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 9th day of November, 2016.


 JOCELYN NEWMAN
 Presiding Judge

Columbia, South Carolina

JUN 13 2012

STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARKS
CLERK, STATE GRAND JUR

STATE OF SOUTH CAROLINA)
)
VS.)
)
LENNIE DEWAYNE BELTON,)
DARRIN LARELL GRAHAM (A/K/A)
"RELL"),)
PATAR O'NEAL MONTGOMERY (A/K/A)
"DINKY"),)
BRAD LEVAR NELSON (A/K/A "CHOP"),)
QUENTIN ANDRELL NELSON (A/K/A)
"DRELL"),)
JOHN RUSSELL OUTLAW,)
TYWAN RANSOM,)
REUBEN ODELL LEVY, JR.,)
)
DEFENDANTS.)

CASE NO. 2012-GS-47- 10

**INDICTMENT FOR
UNLAWFUL DRUGS**

Trafficking Cocaine
(Conspiracy)
S.C. Code Ann. § 44-53-370(e)(2)(e)
(1 Count)

Trafficking Cocaine
28 - 100 Grams
S.C. Code Ann. § 44-53-370(e)(2)(b)
(3 Counts)

Trafficking Cocaine
10 - 28 Grams
S.C. Code Ann. § 44-53-370(e)(2)(a)
(3 Counts)

Trafficking Cocaine
400 Grams or More
S.C. Code Ann. § 44-53-370(e)(2)(e)
(1 Count)

Trafficking Cocaine
200 - 400 Grams
S.C. Code Ann. § 44-53-370(e)(2)(b)
(2 Counts)

Impersonating a Law Enforcement
Officer
S.C. Code Ann. § 16-17-720
(2 Counts)

Strong Armed Robbery/Common Law
Robbery
S.C. Code Ann. § 16-11-325
(2 Counts)

Kidnapping
S.C. Code Ann. § 16-3-910
(1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on June 12, 2012 the State Grand Jurors present upon their oath:

COUNT ONE

**TRAFFICKING COCAINE (CONSPIRACY)
S.C. Code Ann. § 44-53-370 (e)(2)(e)**

That LENNIE DEWAYNE BELTON, DARRIN LARELL GRAHAM (A/K/A "RELL"), PATAR O'NEAL MONTGOMERY (A/K/A "DINKY"), BRAD LEVAR NELSON (A/K/A "CHOP"), QUENTIN ANDRELL NELSON (A/K/A "DRELL"), JOHN RUSSELL OUTLAW, TYWAN RANSOM, and other persons whose names are both known and unknown to the State Grand Jury, did in Clarendon, Florence, Kershaw, Lee, Orangeburg and Sumter Counties of South Carolina from January 1, 2007 until present, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State four hundred (400) grams or more of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

As to Patar O'Neal Montgomery (A/K/A "Dinky") ONLY. - COUNT 1 COUNT 5

NOTICE PROCESSED at the request of
Joshua Underwood
Assistant Attorney General, State Grand Jury,

JUL 22 2015

[Signature]

COUNT TWO**TRAFFICKING COCAINE 28-100 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(b)**

That DARRIN LARELL GRAHAM (A/K/A "RELL"), in Sumter County, South Carolina, on or about May 19, 2011, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State twenty-eight (28) grams or more but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT THREE**TRAFFICKING COCAINE 10 -28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(a)**

That DARRIN LARELL GRAHAM (A/K/A "RELL"), in Sumter County, South Carolina, on or about June 23, 2011, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one

NOL-PROS
COUNT THREE ONLY
PLED GUILTY TO
COUNT ONE AND
COUNT TWO.
JOSHUA R. WILSON
ASST. ATTORNEY
GENERAL
4/14/2016

county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

NOL-PROS COUNT FOUR ONLY
 PLED GUILTY TO COUNT ONE AND COUNT TWO.

COUNT FOUR

Joshua R. Underwood
 JOSHUA R. UNDERWOOD
 ASSISTANT ATTORNEY GENERAL

TRAFFICKING COCAINE 10-28 GRAMS
 S.C. Code Ann. § 44-53-370 (e)(2)(a)

4/14/2016

That DARRIN LARELL GRAHAM (A/K/A "RELL"), in Sumter County, South Carolina, on or about July 13, 2011, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FIVE

TRAFFICKING COCAINE 400 GRAMS OR MORE
 S.C. Code Ann. § 44-53-370 (e)(2)(e)

That PATAR O'NEAL MONTGOMERY (A/K/A "DINKY"), in Lee County, South Carolina, on or about March 27, 2012, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State four

hundred (400) grams or more of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT SIX

TRAFFICKING COCAINE 28-100 GRAMS S.C. Code Ann. § 44-53-370 (e)(2)(b)

That BRAD LEVAR NELSON (A/K/A "CHOP"), in Sumter County, South Carolina, on or about August 4, 2011, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State twenty-eight (28) grams or more but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT SEVEN**TRAFFICKING COCAINE 28 - 100 GRAMS****S.C. Code Ann. § 44-53-370 (e)(2)(b)**

That QUENTIN ANDRELL NELSON (A/K/A "DRELL"), in Lee County, South Carolina, on or about March 9, 2012, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State twenty-eight (28) grams or more but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT EIGHT**TRAFFICKING COCAINE 200 - 400 GRAMS****S.C. Code Ann. § 44-53-370 (e)(2)(d)**

That QUENTIN ANDRELL NELSON (A/K/A "DRELL"), in Clarendon County, South Carolina, on or about June 5, 2012, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State two hundred (200) grams or more but less than four hundred (400) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having

significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT NINE

TRAFFICKING COCAINE 10-28 GRAMS S.C. Code Ann. § 44-53-370 (e)(2)(a)

That JOHN RUSSELL OUTLAW, in Kershaw County, South Carolina, on or about March 23, 2012, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TEN

TRAFFICKING COCAINE 200 - 400 GRAMS S.C. Code Ann. § 44-53-370 (e)(2)(d)

That TYWAN RANSOM, in Clarendon County, South Carolina, on or about June 5, 2012, did knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or possess (actually or constructively), or bring into this State two hundred (200) grams

or more but less than four hundred (400) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT ELEVEN

IMPERSONATING A LAW ENFORCEMENT OFFICER S.C. Code Ann. § 16-17-720

That REUBEN ODELL LEVY, JR., in Sumter County, South Carolina, on or about October 27, 2011, did willfully and unlawfully impersonate a law enforcement officer, to-wit: By presenting himself as a law enforcement officer with the United States Drug Enforcement Administration (DEA), to Lennie Belton by presenting a counterfeit badge bearing printed information purported to pertain to an agent of the DEA, when in fact, the Defendant is not an officer for the United States Drug Enforcement Administration (DEA), in violation of § 16-17-720, Code of Laws of South Carolina (1976), as amended.

COUNT TWELVE**IMPERSONATING A LAW ENFORCEMENT OFFICER
S.C. Code Ann. § 16-17-720**

That REUBEN ODELL LEVY, JR., in Sumter County, South Carolina, on or about October 28, 2011, did willfully and unlawfully impersonate a law enforcement officer, to-wit: By presenting himself as a law enforcement officer with the United States Drug Enforcement Administration (DEA), to Lennie Belton and John Russell Outlaw by presenting a counterfeit badge bearing printed information purported to pertain to an agent of the DEA, when in fact, the Defendant is not an officer for the United States Drug Enforcement Administration (DEA), in violation of § 16-17-720, Code of Laws of South Carolina (1976), as amended.

COUNT THIRTEEN**STRONG ARMED ROBBERY/ COMMON LAW ROBBERY
S.C. Code Ann. § 16-11-325**

That REUBEN ODELL LEVY, JR., in Sumter County, South Carolina, on or about October 27, 2011, did feloniously take from the person or presence of Lennie Belton, by means of force and/or violence and intimidation, goods or monies of Lennie Belton, such goods or monies being described as follows: thirty thousand and 00/100 dollars (\$30,000.00) in United States Currency belonging to Lennie Belton, with the intent to permanently deprive the owner of such property, in violation of § 16-11-325, Code of Laws of South Carolina (1976), as amended.

COUNT FOURTEEN**STRONG ARMED ROBBERY/ COMMON LAW ROBBERY
S.C. Code Ann. § 16-11-325**

That REUBEN ODELL LEVY, JR., in Sumter County, South Carolina, on or about October 28, 2011, did feloniously take from the person or presence of Lennie Belton, by means of force and/or violence and intimidation, goods or monies of Lennie Belton, such goods or monies being described as follows: fifteen thousand and 00/100 dollars (\$15,000.00) in United States Currency belonging to Lennie Belton, with the intent to permanently deprive the owner of such property, in violation of § 16-11-325, Code of Laws of South Carolina (1976), as amended.

COUNT FIFTEEN**KIDNAPPING
S.C. Code Ann. § 16-3-910**

That REUBEN ODELL LEVY, JR., in Sumter County, South Carolina, on or about October 28, 2011, did wilfully, unlawfully and with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away one John Russell Outlaw without authority of law, in violation of § 16-3-910, Code of Laws of South Carolina (1976), as amended.

COUNT 15 ONLY
PLED TO COUNTS 11-14

NOLLE PROSSED at the request of
JOSHUA B. UNDERWOOD
Assistant Attorney General, State Grand Jury,

DEC 08 2014

Signature 

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

A True Bill

Michael D. Embury
FOREMAN

Alan Wilson
ALAN WILSON(cng/jru) by JTB
ATTORNEY GENERAL

FILED

STATE OF SOUTH CAROLINA

JAN 15 2015

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Kershaw

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2012-GS-47-10

Darrin vs. Larell Graham
AKA: _____
Race: B Sex: M Age: 22
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

AW#: DP
Date of Offense: May 19, 2011
S.C. Code §: 44-53-370(c)(2)(b)
CDR Code #: 2359
(PMS)

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS Count 2
TO: Trafficking Cocaine 28-100 grams (7-25 yrs.)
In violation of § 44-53-370(c)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 2359
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ 72512 _____ 76892
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 10 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. 4 days
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. _____
Recipient: _____ May serve W/E beginning
Substance Abuse Counseling

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§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	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>8.40</u>
TOTAL		\$ <u>288.40</u>

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____
Voluntariness accepted 1/7/15
 Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk James R. Parks
Court Reporter: Selma McCloud

Presiding Judge _____
Judge Code: 3048
Sentence Date: January 15, 2015

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Kershaw

JAN 15 2015

STATE

JAMES R. PARKS CLERK, STATE GRAND JURY
DICTIONET/Case#: 2012 GS 47 - 10

Darrin Carell Graham vs. DP

AKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____
*CDL Yes No CMV Yes No Hazmat Yes No

Date of Offense: 1/1/2007 - present
S.C. Code §: 44-53-370(e)(2)(b)
CDR Code #: B392 0281

SENTENCE SHEET

Count 1
(7-25 yrs)

In disposition of the said indictment comes now the Defendant, who was CONVICTED OF or PLEADS

TO: Trafficking Cocaine 28-100 grams

In violation of § 44-53-370(e)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 2359

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 72572 [Signature] [Signature] 76892
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 10 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. 4 days
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning
Substance Abuse Counseling

*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) \$ 8.40

TOTAL \$ 288.40 Random Drug/Alcohol Testing
Fire may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

Voluntariness executed 1/7/13

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

Presiding Judge [Signature]
Judge Code: 2045
Sentence Date January 15, 2015

Clerk of Court/Deputy Clerk James R. Parks
Court Reporter: Debra McCloud