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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Honorable John C. Hayes, Circuit Court Judge

JERRY STEWART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002305

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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P.O.Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 JERRY STEWART,)
)
 DEFENDANT.)
 _____)

2015-GS-23-02626

TRANSCRIPT OF RECORD

JANUARY 14, 2016
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. CORDELL MADDOX

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

KAYCE McCALL
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JOHN CRANGLE, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were produced during this hearing)

1 **THE COURT:** Yes, ma'am.

2 **MADAME CLERK:** Your Honor, this is indictment 2015-GS-
3 23-02626, Jerry Wayne Stewart, indicted for manufacturing
4 methamphetamine, pleading to manufacturing methamphetamine,
5 second. And it is a true bill.

6 **THE COURT:** Thank you.

7 **MADAME CLERK:** Please raise your right hand. Do you
8 swear or affirm to tell the truth, the whole truth and
9 nothing but the truth so help you God?

10 **MR. STEWART:** Yes.

11 **THE COURT:** Okay. Mr. Stewart, I need to ask you some
12 questions. How old are you?

13 **MR. STEWART:** Sixty -- I'll be sixty in March, Your
14 Honor.

15 **THE COURT:** Okay. And it's without -- this is without
16 any recommendation?

17 **MS. McCALL:** That's right, Your Honor.

18 **THE COURT:** And what's the maximum? It's five to
19 thirty?

20 **MS. McCALL:** That's right, Your Honor.

21 **MR. CRANGLE:** However, the five is suspendable because
22 he has two prior possession offenses, Your Honor.

23 **THE COURT:** And this is the one we were up here ---

24 **MR. CRANGLE:** Yes, Your Honor.

25 **THE COURT:** All right. Mr. Stewart, how long you been

1 incarcerated?

2 **MR. STEWART:** Well, twenty-three days this time, but
3 before that -- I've been -- the reason that I couldn't make
4 probation and all that is I've been trying to stay out of
5 jail, paying bonds and everything else. But all this is
6 behind me now.

7 And I live with my sister. She's seventy-five years
8 old. And she's the youngest one I've got. I've got three
9 sisters. And the oldest one's about eighty-five. And if I
10 go in prison, they going to send me all the way down to the
11 other side of ---

12 **THE COURT:** Well, now you understand that there's a
13 minimum sentence of five years here? It's suspendable but
14 ---

15 **MR. STEWART:** Well, ---

16 **THE COURT:** Hold on just a second. Trust me a minute.
17 (Whereupon a bench conference was held off the record)

18 **THE COURT:** All right. You understand that given your
19 record and, in fact, you're on probation, right?

20 **MR. STEWART:** Yes, sir.

21 **THE COURT:** All right. You understand that in all
22 likelihood you're going to have to go to prison at some
23 point? You understand that? I mean, you can argue -- you
24 can ask me, but you've got a long record and you're on
25 probation for this kind of stuff. So let's get through the

1 questioning and then I'll let you talk to me, okay?

2 **MR. STEWART:** Yes, sir.

3 **THE COURT:** All right. How far did you go in school?

4 **MR. STEWART:** I -- it was in reform school, Your Honor.
5 They didn't have grades. I don't ---

6 **THE COURT:** Okay.

7 **MR. STEWART:** I don't have much education.

8 **THE COURT:** All right. And where did you last work?

9 **MR. STEWART:** I work for myself. I used to do tree
10 service until I got on SSI.

11 **THE COURT:** Okay. And how many times have you been on
12 probation? Several?

13 **AGENT COLLIER:** Yeah, I'm not sure ---

14 **MR. STEWART:** I've always done it before.

15 **THE COURT:** Yeah, hold on.

16 **AGENT COLLIER:** I've got his current case, but I don't
17 have ---

18 **THE COURT:** Okay.

19 **AGENT COLLIER:** --- anything in front of me showing his
20 other cases.

21 **THE COURT:** Okay. Have you had any drugs or alcohol
22 within the last twenty-four hours?

23 **MR. STEWART:** No, sir.

24 **THE COURT:** Are you taking any kind of medication or
25 prescription medicine that might prevent you from knowing

1 what's going on here today?

2 **MR. STEWART:** No, sir.

3 **THE COURT:** Okay. You take any kind of prescriptions
4 at all, like blood pressure stuff and that ...

5 **MR. STEWART:** I'm supposed to be taking stuff for blood
6 sugar. And I've got arthritis in my joints.

7 **THE COURT:** Okay.

8 **MR. STEWART:** My spine is deteriorating. I've got
9 bulging discs and herniated discs. And I've had to have
10 three discs in my throat replaced.

11 **THE COURT:** Me, too. That ain't no fun, is it?

12 **MR. STEWART:** No, sir, it ain't.

13 **THE COURT:** All right. But you're not taking anything
14 now for any of that stuff that might get you confused?
15 That's what I'm ---

16 **MR. STEWART:** No, I'm not -- I'm not taking anything
17 right now.

18 **THE COURT:** Okay.

19 **MR. CRANGLE:** He'll give us a chance to speak, okay?
20 Just answer his questions ---

21 **THE COURT:** Yeah.

22 **MR. CRANGLE:** --- and then we'll get a chance to talk
23 to him, okay?

24 **THE COURT:** Yeah, I'm going to let you talk then. And
25 you understand that this is going to be a violation of your

1 probation? You understand that?

2 MR. STEWART: Yes, sir.

3 THE COURT: All right. Do you understand that if you
4 want to plead guilty today that you've got to waive your
5 constitutional rights?

6 MR. STEWART: Yes, sir.

7 THE COURT: And in particular you've got to waive your
8 right to a jury trial. You doing that?

9 MR. STEWART: Yes, sir.

10 THE COURT: You're waiving your right to remain silent?

11 MR. STEWART: I'm ---

12 THE COURT: I'm going to let you talk, but you have to
13 waive your right to remain silent.

14 MR. STEWART: Yes, sir.

15 THE COURT: You waiving your right to put up a defense
16 to all these charges?

17 MR. STEWART: Yes, sir.

18 THE COURT: And you've got a right under the
19 Constitution. It's called the Confrontation Clause. You
20 could require the State to come in and bring in witnesses
21 and allow your attorney to cross examine them, but you've
22 got to waive your right of confrontation if you want to
23 plead guilty. So you waiving that right?

24 MR. STEWART: Yes, sir.

25 THE COURT: Okay. Have you had plenty of time to speak

1 to your lawyer?

2 **MR. STEWART:** Yes, 'sir.

3 **THE COURT:** And have you talked to him about those
4 constitutional rights in this case?

5 **MR. STEWART:** Yes. He's told me everything ---

6 **THE COURT:** Yeah, you've got a good one. I mean, he's
7 done everything you've asked him to do, right?

8 **MR. STEWART:** He's a very good lawyer.

9 **THE COURT:** Yeah. Do you have any questions for him
10 now?

11 **MR. STEWART:** No, sir. But I ---

12 **THE COURT:** Okay.

13 **MR. STEWART:** I -- well, I ---

14 **MR. CRANGLE:** We'll get a chance to tell him.

15 **THE COURT:** Yeah, I'm going to let you talk. Just let
16 me get through this and then we'll get -- now, you are
17 understanding you're violating your probation?

18 **MR. STEWART:** Yes, sir.

19 **THE COURT:** And what's he got hanging over his head
20 with probation?

21 **AGENT COLLIER:** He has three years. He was sentenced
22 by Judge Welmaker on 9/17/13 for possession of meth. He had
23 three years with one day time served and two years
24 probation.

25 **THE COURT:** All right. So you realize you could be

1 revoked for up to three years minus the time you served?

2 You understand that?

3 **MR. STEWART:** Yes, sir.

4 **THE COURT:** Okay. All right. So you're satisfied with
5 your lawyer?

6 **MR. STEWART:** Yes, sir.

7 **THE COURT:** Okay.

8 **MR. STEWART:** Very satisfied.

9 **THE COURT:** All right. Have you had plenty of time to
10 speak to your client, you think he understands the elements
11 of these charges and his waiver of constitutional rights?

12 **MR. CRANGLE:** Yes, Your Honor.

13 **THE COURT:** All right. Mr. Stewart, do you want to
14 plead guilty to this charge?

15 **MR. STEWART:** Yes, sir.

16 **THE COURT:** And are you guilty?

17 **MR. STEWART:** Yes, sir.

18 **THE COURT:** Okay. All right. I'm going to accept your
19 plea and find it freely and voluntarily made based upon the
20 advice of counsel. I find that he waived his constitutional
21 rights and did so knowingly and voluntarily.

22 Yes, ma'am. Now, listen to what she's going to tell me
23 because I'm going to ask you if you agree with it.

24 **MS. McCALL:** May it please the Court. On September
25 26th, 2014 a Greenville County Sheriff's Office deputy

1 initiated a traffic stop on the Defendant's moped after he
2 observed the Defendant having a hard time maintaining his
3 balance and was weaving inside his lane. The officer
4 suspected that the driver was impaired.

5 The Defendant did not have any paperwork for the moped.
6 And the Defendant was acting very nervous. The Defendant
7 gave the deputy consent to search his moped.

8 During the search of the moped's storage container, the
9 container under the seat, the deputy observed items
10 consistent with manufacturing of methamphetamine. Deputy
11 located items to include drain cleaner, empty two liter
12 bottle, bottle cap with plastic tubing running through it,
13 plastic bags with crystal substance that tested positive for
14 methamphetamine. During the search the deputy was exposed
15 to chemicals, and he had to be treated at Greenville
16 Memorial Hospital.

17 Records revealed the Defendant had purchased eighty-
18 five pseudoephedrine eighty-five times and had been blocked
19 from purchasing thirty-nine times, this according to
20 Greenville County. The Defendant does have a prior record.
21 There is no recommendation. And jail days that I have for
22 this charge is seventy-five days or seventy-six.

23 **MR. CRANGLE:** With regards to those jail days, Judge,
24 he's currently serving twenty-four days for the violation of
25 probation. And he also was arrested in 2013. And he was

1 incarcerated for ninety-one days for another manufacturing
2 methamphetamine case that was subsequently dismissed, which
3 is basically dead time to him, Your Honor. But he did
4 ninety-one days and then the case was dismissed, Your Honor.

5 I'd ask you to consider in totality a hundred and
6 ninety-one days, credit time served considering that he's
7 done twenty-four, seventy-six and then ninety-one. And the
8 ninety-one was for a methamphetamine case that was very
9 similar to this. It was a no weight, found some of the
10 stuff, Judge.

11 **THE COURT:** All right. And I also want to make sure
12 that I find that he's admitting he's violated his probation.
13 All right. You agree with all those facts?

14 **MR. STEWART:** Yes, sir.

15 **THE COURT:** All right. Mr. Stewart, it's real clear to
16 you -- clear to me. How old are you?

17 **MR. STEWART:** I'll be sixty in March.

18 **THE COURT:** You've got a bad meth problem. Man to man,
19 you've got a bad meth problem. And at your age, you ought
20 not to be up here dealing with this stuff. You taking care
21 of your sisters?

22 **MR. STEWART:** Sir?

23 **THE COURT:** You taking care of your sisters?

24 **MR. STEWART:** I stay with my youngest sister. And I
25 help pay the bills. And without my check, she won't have

1 enough ---

2 **THE COURT:** I know.

3 **MR. STEWART:** --- to live on. My counselor said that
4 you might consider something about reinstating my probation
5 or whatever. If you could do that, I could stay at home. I
6 would have been -- I'd be benefitting more out here than in
7 the penitentiary sitting around not doing nothing and being
8 across the State where I couldn't even, you know, see my
9 sisters or nothing.

10 And like I said, they're old. I mean, they ---

11 **THE COURT:** Well, here's the problem. I mean, I feel
12 for you, but you've been away from them for a hundred and
13 ninety-one days because you've been waiting in jail on all
14 these little meth charges.

15 **MR. STEWART:** I -- well, I've been trying to get in and
16 out, in and out because I've had -- I've been paying bonds
17 and bails and all that to try to get out. That's one of the
18 reasons I messed up my parole. And I promise you sincerely,
19 if you give me one chance and let me go home and stay with
20 my sister to help her, I promise you that you could check on
21 me any time you want to and you will not regret it at all.

22 **THE COURT:** Well, here's -- oh, I might regret it
23 because here's the problem. You've got three years hanging
24 over your head. So what I'm trying to do for you today is
25 wrap it all up into one big package, deal with it and then

1 -- I assume y'all don't want him on probation again, is that
2 correct?

3 **AGENT COLLIER:** That'd be correct. I failed to
4 mention, he has been served with a warrant back on December
5 22nd of '15. And part of that was for not reporting since
6 October of 2013.

7 **THE COURT:** Well, I'm going to make you halfway happy,
8 but, you know, I'll do my best. I mean, look, you've got to
9 get yourself straightened up. But I'm trying to get this
10 over with for you, all -- tied all up.

11 **MR. STEWART:** Well, I was just -- the probation officer
12 would get their money, the court would get theirs, I'd still
13 be able to help my sister.

14 **THE COURT:** I know.

15 **MR. STEWART:** If I go -- if I go into prison, they're
16 going to cut my check off.

17 **THE COURT:** I know.

18 **MR. STEWART:** It's not going to help me. It's not
19 going to help her. And ---

20 **THE COURT:** But now let me tell you something. I mean,
21 this isn't my first rodeo. And here's the problem. I know
22 this doesn't make any difference, but it just makes me feel
23 better. It ain't my fault that you do all this stuff.

24 **MR. STEWART:** I know that, sir.

25 **THE COURT:** You know, I mean, ---

1 **MR. STEWART:** And I ---

2 **THE COURT:** I know you're trying to get me to do
3 something. And I'd love to help you. My problem is, I'm
4 afraid that if I let you go at lunch that by four you'd be
5 out trying to find somebody to give you a little bit of
6 meth.

7 **MR. STEWART:** No, sir.

8 **THE COURT:** I would if I was in your boat.

9 **MR. STEWART:** I don't -- listen, Your Honor, last night
10 I sat down and I thought, I thought and I thought hard after
11 I seen my lawyer. And I prayed. And I told God, I said,
12 look, I'm putting it in your hands. Whatever you do is fine
13 with me.

14 **THE COURT:** Well, that's the only chance you got right
15 now with meth. Meth's hard to beat.

16 **MR. STEWART:** And my sister has been trying to get me
17 to go to church with her and everything. And I told God if
18 it works out, you know, I'd be there Sunday morning.

19 **THE COURT:** Well, you won't be there this Sunday, but
20 you're not going to be there -- you won't be gone as long as
21 you think. I mean, you're looking at thirty years in
22 prison. You understand that?

23 **MR. STEWART:** Yes, sir.

24 **THE COURT:** Literally. I don't think you'd make it to
25 thirty years.

1 **MR. STEWART:** I don't think so either.

2 **THE COURT:** All right. What I'm going to do as I said
3 earlier, I'm going to accept the plea. And this is sort of
4 your last shot. But the sentence is ten years provided upon
5 the service of three years, then six months probation. And
6 I'm doing that as short as I can so y'all can get him off.

7 I'm going to revoke three years on probation, run it
8 concurrent and terminate it. I assume there's no victims
9 since these are all just this stuff. And for those six
10 months, random drug and alcohol testing, substance abuse
11 counseling. I'm just trying to shorten it to -- as short as
12 I can. This is the best I can do for you.

13 I'm going to give you credit for the hundred and
14 ninety-one days because here's the deal. I can't help you,
15 none of your lawyers can help you, your sisters can't help
16 you, the Lord can help you, but you're going to have to do
17 something yourself. And with your record coming in front of
18 me, I can't let you go home.

19 But there are some judges that would look at you and go
20 you know what, you're wasting everybody's time, thirty
21 years. I promise you there's judges that would do it. I'm
22 not saying I'm a good guy. I'm just saying I'm trying to
23 help you out.

24 Your lawyer's a good lawyer. The solicitor's not
25 trying to bury you under the house. So do your time. It's

1 not that much. And then go to church with your sister and
2 be happy. Time's short.

3 **MR. CRANGLE:** Don't be messing with that stuff anymore,
4 either because it's a mandatory ten years if you get caught
5 again with the manufacturing.

6 **THE COURT:** I mean, yeah, there ain't -- next time,
7 it's ten years. And that's the minimum. All right.

8 **MR. CRANGLE:** Okay.

9 **THE COURT:** Good luck to you, brother.

10 **MR. STEWART:** Your Honor, I'd like to say that you are
11 one of the nicest judges I've ever been in front of.

12 **THE COURT:** Well, that's because in Greenville y'all've
13 got a bunch of mean idiots, but I appreciate it. I would
14 like that -- I would like a copy of that transcript. Good
15 luck to you, brother.

16 (Hearing Ended at 1:20 pm)

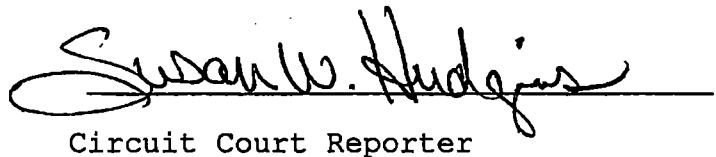
17 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 14th day of January 2016.

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

June 11, 2016

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in black ink and is positioned above a solid horizontal line.

Circuit Court Reporter

WITNESSES

C R Cunningham

Greenville County Sheriffs Office

9/26/2014

ARREST WARRANT NUMBER
2014A2330208918

ACTION OF GRAND JURY

TRUE BILL

Wayne Shephardson

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-23-
KB

002626

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2015

THE STATE

vs.

JERRY WAYNE STEWART

P/W

Indictment for

3777
3776

MANUFACTURING METHAMPHETAMINE

VIOLATION § 44-53-0375

**ENTERED
NOV 10 2015**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MANUFACTURING METHAMPHETAMINE

At a Court of General Sessions, convened on **APR 21 2015** the Grand Jurors of Greenville
County present upon their oath:

That JERRY WAYNE STEWART did in Greenville County, on or about the 26th day of September, 2014,
knowingly manufacture methamphetamine or did knowingly provide financial assistance or otherwise attempt,
aid, abet or conspire to manufacture methamphetamine or was knowingly in actual or constructive possession of
the common ingredient(s) and/or supplies used in the manufacturing of methamphetamine. This is in violation of
§ 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

J. Howard
SOLICITOR BAR # 73639

STATE OF SOUTH CAROLINA

320482 5-30 years
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2015GS2302626

Jerry Wayne Stewart

A/W#: 2014A2330208918

AKA:

Date of Offense: 9/26/2014

Race: WHITE Sex: M Age: 59

S.C. Code § : 44-53-0375

DOB: -1956 SS#: [REDACTED]

CDR Code #: 3776

Address: [REDACTED]

City, State, Zip: Greer, SC 29651

DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Manufacturing Methamphetamine 2nd

in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 3777

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

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

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

ATTEST: *[Signature]* 72567 *[Signature]* John Crank 12275
McCall, Kathryn Harper 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 3 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 6

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCIA Surcharge)	\$5	\$ 5.00
3% to County. (if paid in installments)		\$ 3.40
TOTAL		\$ 288.40

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

Clerk of Court/ Deputy Clerk *Paul B. Wickensimer*
Court Reporter: *[Signature]*
SCCA/217 (03/2011)

Presiding Judge *[Signature]*
Judge Code: 2137
Sentence Date: 1/14/2016

WITNESSES

James Compton
Greer Police Department
2/16/2012

[Handwritten signature]

DOCKET NO. 2012-GS-23-
WJW 010115

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2012

THE STATE

vs.

JERRY W. STEWART

ARREST WARRANT NUMBER
1584076

ACTION OF GRAND JURY
TRUE BILL.

[Handwritten signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

✓
3009

Indictment for

POSSESSION OF METHAMPHETAMINE

VIOLATION § 44-53-0375

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF METHAMPHETAMINE

At a Court of General Sessions, convened on **DEC 18 2012** the Grand Jurors of Greenville
County present upon their oath:

That JERRY W. STEWART did in Greenville County, on or about the 16th day of February, 2012, willfully and
unlawfully have in his possession a quantity of Methamphetamine (Crank), a schedule II controlled substance.
This is in violation of §44-53-0375 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. Jerry W Stewart

INDICTMENT/CASE#: 2012GS2310115
A/W#: 1584076
Date of Offense: 2/16/2012
S.C. Code § : 44-53-0375 (A)
CDR Code #: 3009

AKA:
Race: WHITE Sex: M Age: 57
DOB: -1956 SS#:
Address:
City, State, Zip: GREER, SC 29651
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Drugs/possession of less than one gram of meth. or cocaine base, 1st

CONVICTED OF or PLEADS
(0-3 YEARS)

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3009
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST:
Jeff Weston, Jeff SC Bar# 10047 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 3 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 751 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 2

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment
Payment Terms:
Set by SCDPPPS

Recipient:

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

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

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

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Paul B Willeming

Presiding Judge
Judge Code:
Sentence Date: 9/17/13

Probation begins today

RETURN

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

on the 22 day of December 2015

GCSO

Constable or Law Enforcement Officer

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to deal with according to law.

(L.S.)

Signature of Judge

STATE OF SOUTH CAROLINA

COUNTY OF

GREENVILLE

THE STATE

against

JERRY W STEWART

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 9/11/2015

Officer and Agency: SC Department of Probation, Parole and Pardon Services

Jeremy Brown

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name JERRY W STEWART

Address _____
TAYLORS, SC 29687

Phone _____

Sex Male Race White Height 508

Weight 185 Birth date 1956

Social Security Number _____

INFORMATION ON WITNESSES

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Magistrate _____

on _____

with _____

Attorney for the Defendant.

Decision _____

BAIL

Date Set _____

Magistrate _____

Amount _____

Surely _____

I 5840710

Form 16.1 - Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-180
March 16, 1978

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Probation
ARREST WARRANT

Indictment Number 12-GS-23-10115

Warrant Number W-23-15-1402

State Identification No. (SID) 00006149

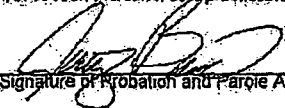
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENVILLE AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JERRY W STEWART, did on the 11 day of September, 2015 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions 1, 7, 9, 10 and special conditions of probation as ordered in cause number 12-GS-23-10115 by the Greenville County Court of General Sessions on 9/17/2013;

Now, therefore, you are empowered and directed to arrest the said defendant and bring JERRY W STEWART before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENVILLE, S.C. this 11 day of September, 2015.



Signature of Probation and Parole Agent (L.S.)

County of GREENVILLE

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Jeremy Brown, who, first being duly sworn, deposes and says that JERRY W STEWART did within this County and State on the 11 day of September, 2015, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

By violating conditions 1, 7, 9, 10 and special conditions of probation as ordered in cause number 12-GS-23-10115 by the Greenville County Court of General Sessions on 9/17/2013.

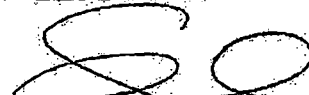
The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

By failing to report on 10/07/13, 1/20/14, 6/10/14 and 8/26/14 or anytime thereafter.
By failing to pay sf, being \$1150 in arrears.
By failing to pay sur, being \$288.40 in arrears.
By failing to pay drug test fee, being \$20 in arrears.
By failing to complete court ordered SAC.
By failing to follow the advice and instructions of the agent.

Sworn to and Subscribed before me
this 11 day of September, 2015.



Affiant



Signature of Notary Public (L.S.)
11/5/2023
My Commission Expires

Address: SUITE 6500
301 UNIVERSITY RIDGE
GREENVILLE, SC 29601
GREENVILLE
USA
(864) 282-4540

W1028840

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

Indictment Number: 12 -GS- 23 - 10115

AKA: Jerry W. Stewart
Race: W Sex: M
DOB: [REDACTED]
SSN: [REDACTED]
SID#: 00006149

Probation C/W#: W-23-15-1402
Name of Original Offense: POS Meth
Original A/W#: 1584076
Date of Original Offense: 2-16-12
Conviction S.C. Code #: 44-53-0375(A)
Conviction CDR Code #: 301019
Original Sentence: 2 YR PRV 1 day of
balsusp. 2 ORDER 1/2 Prob.

The above named defendant has been charged with violating the conditions of probation ordered on 9/17/13 in the Court of General Sessions of Greenville County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 9/11/13, as set forth in the attached warrant(s) or citation(s) dated 9/11/13. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 1, 7, 9, 10 susp. cond.

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 2 YR. 364 days months/years of the original sentence, and/or pay \$ _____
- the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- Financial Obligations: Order satisfies:
 - Department fees (arrearage)
 - Fines and other fees (arrearage/balance)
 - Restitution (and 20%) (arrearage/balance)
- Civil Judgment:
 - Department fees
 - Fines and other fees
 - Restitution (and 20%)
- Additional Conditions ordered by the Court:

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant has previously served 1 day months/years on this sentence. (split sentence time and/or prior partial revocation time)
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 14 day of Jan., 2016, at Greenville, SC. J. Corbett Maddox Jr. Presiding Judge, 131A Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions if deemed proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____, _____ at _____ SC

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of GREENVILLE)
)
JERRY W. STEWART)
 Full name and prison number (if any) of Applicant)
 #265973)
 v.)
)
 State of South Carolina)
)
)
)
)

IN THE COURT OF COMMON PLEAS

2016-CP-23-2182

APPLICATION FOR

POST-CONVICTION RELIEF

FILED - CLERK OF COURT
 GREENVILLE CO., S.C.
 PAUL B. WICKENSIMMER
 PM 3 28

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 M.C.I. 1516 OLD GILLIARD RD.
RIDGEVILLE S.C. 29472
2. Name and location of Court which imposed sentence 305 EAST NORTH ST.
GREENVILLE S.C. 29601
3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 12-GS-23-10115 POSS METH
 - (b) 15-GS-23-02626 MANUF. DIST. METH

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-4-2016 PROBATION VIOLATION TO 3 YEAR
 - (b) 1-4-2016 10-SUSPENDED TO 3 YEARS 6 MONTHS PROBATION
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty YES
 - (b) after a plea of not guilty NIA
 - (c) after a plea of nolo contendere NIA
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO. I REQUESTED COUNSEL TO FILE APPEAL
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. NIA
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. NIA
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. NIA
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. NIA
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) COUNSEL FAILED TO DO HIS DUTY.
 - (b) _____

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

- (a) SUBJECT MATTER JURISDICTION NOT VESTED
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) FAILURE TO OBJECT OR SUPPRESS EVIDENCE

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

- (a) SEE ATTACHMENT FACTS
- (b) SEE ATTACHMENT FACTS
- (c) SEE ATTACHMENT FACTS

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

- (a) any petition in a State Court under South Carolina Law? NIA
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NIA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NIA
- (d) any other petitions, motions or applications in this or any other Court? NIA

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

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

"ATTACHMENT FACTS"

31

THIS INDICTMENT NO. 15-GS-23-02626 DOES NOT STATE, STATE 2ND. OFFENSE. SO THE COURT DID NOT HAVE JURISDICTION TO SENTENCE DEFENDANT TO 2ND OFFENSE, AND COUNSEL IS ~~INEFFECTIVE~~ OF ASSISTANCE. FOR FAILURE TO OBJECT. AND THE INDICTMENT DOES NOT HAVE THE DATE ON IT. AS WHEN IT WAS TRUE BILL. AND UNDER 317-19-20 S.C. CODE STATES. AN INDICTMENT IS DEEMED SUFFICIENT WHERE, IN ADDITION TO ALLEGATIONS AS TO TIME AND PLACE. AS REQUIRED BY LAW. IN THIS INDICTMENT IT DOES NOT STATE WHERE IN GREENVILLE COUNTY THIS TOOK PLACE. THIS LEFT THE GRAND JURY TO SPECULATE ON ESSENTIAL ELEMENTS. THE GRAND JURY IS NEVER TO BE LEFT TO SPECULATE. THE COURT LOSES JURISDICTION. SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME CARTER V STATE 329 S.C. 355, 495 S.E. 2D 773 [1998]

INEFFECTIVE ASSISTANCE

A DEFENDANT WHO PLEADS GUILTY ON THE ADVICE OF COUNSEL MAY ONLY ATTACK THE VOLUNTARY AND INTELLIGENT CHARACTER OF THE PLEA BY SHOWING [1.] THAT COUNSEL REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND [2.] THAT THERE IS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S ERRORS, THE DEFENDANT WOULD NOT HAVE PLEADED GUILTY BUT WOULD HAVE INSISTED ON GOING TO TRIAL. WOLFE V STATE 326 S.C. 158, 485 S.E. 2D 367 [1997] ACCORD HILL V. LOCKHART 474 U.S. 52, 106 S. CT. 366, 88 L. ED 2D 203 [1985]

Jerry Stewart
DEFENDANT

"ATTACHMENT FACTS"

COUNSEL FAILED TO OBJECT TO THE ENHANCEMENT TO 2ND OFFENSE OR PROPERLY PRESERVE IT FOR APPEAL, THEN A PROPER CLAIM IS THAT COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT OR PROPERLY PRESERVE THE ISSUE. DEFENDANT'S PLEA OF GUILTY WAS NOT FREELY AND VOLUNTARILY GIVEN, THE SENTENCING COURT WAS WITHOUT JURISDICTION TO IMPOSE THE SENTENCE.

STATE V. GRIM 341 S.C. 63, 533 S.E. 2D 329 [2000] THIS COURT HAS TO HAVE EVIDENTIARY HEARING TO DETERMINE WHETHER THE COURT HAD SUBJECT MATTER JURISDICTION. ANDERSON V STATE 338 S.C. 629, 527 S.E. 2D 398 [CT. APP. 2000]

WHERE A DEFENDANT ENTERS A GUILTY PLEA UPON COUNSEL'S ADVICE, THE VOLUNTARINESS OF THE PLEA DEPENDS ON WHETHER THE ADVICE WAS WITHIN THE RANGE OF COMPETENCE DEMANDED OF ATTORNEYS IN CRIMINAL CASES. THE TWO-PART STANDARD ADOPTED IN STRECKLAND V. WASHINGTON 466 U.S. 668, FOR EVALUATING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL REQUIRING THAT THE DEFENDANT SHOW THAT COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, AND THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT APPLIES TO GUILTY PLEA CHALLENGES BASE ON INEFFECTIVE ASSISTANCE OF COUNSEL. FOR THESE REASONS THIS SENTENCE SHOULD BE VACATED AND RECORD CLEARED OF CHARGES

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO FIRST BITE OF THE APPLE

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

(a) which grounds have been presented:

- i. _____
- ii. N/A
- 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) FIRST TIME ON P.C.R.
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? COUNSEL FAILED TO DO HIS DUTY
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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. JOHN CRAGLE
PUBLIC DEFENDER
 - ii. GREENVILLE S.C. 29601
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. PLEA AND SENTENCING
 - ii. _____
 - iii. _____

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

TO VACATE SENTENCE AND CLEAR RECORD.

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

NO.

STATE OF SOUTH CAROLINA)
County of BERKELEY)

VERIFICATION

I, JERRY WAYNE STEWART 265973, 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.

Jerry Stewart

SWORN to and subscribed before me this 18th
day of Mar, 2016.

Lisa M Cross (L.S.)
Notary Public

My Commission Expires: Jan 16, 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

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

I, JERRY WAYNE STEWART 265973, 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.

Jerry Stewart
Applicant

SWORN or affirmed to and subscribed before me this
18th day of Mar, 2016.

Sis M Cross
Notary Public

My Commission Expires: Jan 16 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
)
 Jerry W. Stewart,)
 S.C.D.C. No. 265973,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-23-2182

**RETURN AND PARTIAL
 MOTION TO DISMISS¹**

In response to Applicant’s post-conviction relief application filed April 1, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court’s orders of commitment. The December 2012 term of the Greenville County Grand Jury indicted Applicant for possession of methamphetamine (2012-GS-23-010115). Applicant pled guilty to this charge, as indicted, on September 17, 2013. The Honorable William H. Seals Jr. sentenced Applicant to three (3) years confinement, provided that with credit one day of time served, the balance was to be suspended with probation for two years.

The April 2015 term of the Greenville County Grand Jury indicted Applicant for manufacturing methamphetamine 2nd offense (2015-GS-23-002626). Applicant was represented by John Crangle.

¹ Respondent requests that Applicant be appointed counsel.

On January 14, 2016, Applicant pled guilty to the manufacturing methamphetamine charge as indicted. Applicant's probation for the possession charge was also revoked on January 14, 2016, for violating terms of his probation on September 11, 2015. The Honorable J. Cordell Maddox sentenced Applicant to ten (10) years' imprisonment, provided that upon service of three (3) years, the balance is suspended with probation for six months. The Court credited Applicant with 191 days' of time served, and this sentence is to run concurrent to the sentence imposed for Applicant violating the terms of his probation. Judge Maddox revoked his original probationary sentence for the possession charge and ordered Applicant to serve two (2) years and 365 days' of the remainder of his probation sentence. Applicant did not appeal his convictions or sentences.

II.

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

1. "Subject matter jurisdiction not vested."
2. Ineffective assistance of counsel.
3. "Failure to object to or suppress evidence."

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

Attached to this return and incorporated herein are the records of the Greenville County Clerk of Court regarding the subject conviction, and Applicant's records from the South Carolina Department of Corrections and the records of this action. Any records not attached will be

forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Applicant alleges that the sentencing court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90. A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90.

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Therefore, Applicant must present evidence that his case is of some class over which

the circuit court does not have the authority to preside. Respondent contends that Applicant's conviction involved a criminal charge in General Sessions Court, and thus asserts that the circuit court had proper subject matter jurisdiction.

IV.

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

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

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at

2065). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

V.

Respondent interprets Applicant's allegation regarding failure to suppress evidence as an allegation of an involuntary guilty plea based on the facts in support of this allegation. Respondent submits that any allegation that Applicant's guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz, 338 S.C. at 363-64, 527 S.E.2d at 747 (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to

trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

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

VI.

To the extent Applicant's allegations touch on the validity of his 2012 guilty plea for possession of methamphetamine, it should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or

within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to that offense on September 17, 2013, and did not appeal. Therefore, the Applicant was required to file his application by September 18, 2014. This Application was filed on April 1, 2016, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that any allegations challenging the validity of Applicant's 2012 guilty plea be summarily dismissed for failure to file within the time mandated by the Post-Conviction Procedure Act.

[Signature follows]

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that counsel be appointed and an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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August 29, 2016.

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
Jerry Wayne Stewart,)	
)	TRANSCRIPT OF RECORD
Applicant,)	2016-CP-23-2182
-vs-)	
)	
The State,)	
)	October 25, 2016
Respondent.)	Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. HAYES, III, JUDGE

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

BRIAN P. JOHNSON, ESQUIRE
Attorney for the Plaintiff

PATRICK L. SCHMECKPEPER, ESQUIRE
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

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NO EXHIBITS INTRODUCED

MOTIONS AND MATTERS

1 THE COURT: All right.

2 MR. SCHMECKPEPER: Your Honor, this is Jerry Stewart vs.
3 the State of South Carolina 2016-CP-23-2182. The applicant
4 was indicted in December of 2012 for possession of
5 methamphetamine, he pled guilty as indicted on September 17th
6 2013 represented by Mr. Crangle. Judge Seals sentenced the
7 applicant to 3 years confinement, I think that was Judge
8 Maddox.

9 MR. JOHNSON: It's, uh, ---

10 MR. SCHMECKPEPER: Beg the Court's indulgence. I
11 apologize, Your Honor, believe -- appears there's a, uh, typo
12 on the, uh, retur -- State's responsive pleadings but he was
13 sentenced by Judge Maddox to 3 years confinement provided
14 that -- Your Honor, I believe there's a typo and there's
15 a ---

16 THE COURT: Well, yeah, I I ---

17 MR. SCHMECKPEPER: --- and ---

18 THE COURT: --- I I ---

19 MR. SCHMECKPEPER: --- confusion on the, uh, actual
20 responsive pleadings.

21 THE COURT: Well, I I ---

22 THE APPLICANT: Well yes, sir.

23 THE COURT: --- not saying anything derogatory about the
24 AG's office 'cause ya'll turn out ton of stuff but just like I
25 do with my paperwork and my law clerk we, you use wha -- we we

MOTIONS AND MATTERS

1 don't reinvent the wheel, we use things we already have in the
2 pipeline and sometimes it's it's not completely unusual then
3 in typing, uh, the typist will copying something else will
4 pick up, will make such errors, it's not, not saying it
5 happens not ever, very often but it it does happen.

6 MR. SCHMECKPEPER: And, Your Honor, I I believe the
7 correct sentence is he was s -- te -- sentenced to 10 years
8 suspend to 3 years and 6 months probation, um, this point I'll
9 turn it over to opposing counsel.

10 THE COURT: Okay.

11 MR. JOHNSON: Yes, sir, Your Honor. Uh, my client's
12 application it alleged, uh, essentially three different
13 things, the primary one that we're here on today is is
14 ineffective assistance counsel as alleged generally. Uh,
15 after speaking with my client I I think he essentially wants
16 to allege that, uh, that he and the, uh, his attorney didn't
17 go over his discovery, uh, he also has an an an issue, uh,
18 that he'd like to pursue regards to the indictment as as far
19 as him being able to be enhanced ---

20 THE COURT: No.

21 MR. JOHNSON: --- and, uh, we ask if, uh, if I might call
22 him to the stand and go over those issues at this time.

23 THE COURT: All right, please come up and be sworn.

24 (Whereupon, a discussion was held off the record.)

25 THE CLERK: Mr. Stewart, step over here (indicating) to

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 the witness booth and place your left hand on the Bible and
2 raise your right hand.

3 (Whereupon, the applicant came forward.)

4 (Whereupon, a discussion was held off the record.)

5 JERRY WAYNE STEWART, having been
6 first duly sworn, testified as follows:

7 THE CLERK: Thank you, you may be seated.

8 THE OFFICER: Please speak loud.

9 THE CLERK: Please state your full name for the record.

10 THE APPLICANT: Jerry Wayne Stewart.

11 DIRECT EXAMINATION BY MR. JOHNSON:

12 Q. All right. Mr. Stewart, can I help you with your
13 paperwork?

14 A. Uh, . . .

15 (Whereupon, a discussion was held off the record.)

16 Q. All right.

17 A. Uh, ---

18 Q. All right, hold on, Mr. Stewart, let me ask you
19 questions, I just want to help you get to your paperwork,
20 okay.

21 A. Uh-huh. I'm just lookin' to see what I need to get here.
22 That's my expulsion papers. This is them.

23 Q. Mr. Stewart, are you ready?

24 A. Uh, just second, sir.

25 (Whereupon, a discussion was held off the record.)

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 Okay, I've got everything that I need.

2 Q. Okay. Now, uh, Mr. Stewart, you are currently serving
3 what sentence?

4 A. I'm serving sentence for a probation violation and a
5 second offense for manufacturin' meth.

6 Q. And, uh, who was your attorney?

7 A. Uh, John Cringle [sic].

8 Q. Now the sentence was it imposed after a a violation
9 hearing in a, uh, in a trial or was it imposed after a plea?

10 A. Uh, it was, I I gave a plea but nothin' that, huh, I was
11 supposed to been gettin' I got so the, you know, and I, and I
12 I give the plea actually with the rest, I didn't, I I didn't
13 want to plead guilty but I felt I didn't have any choice in
14 the matter.

15 Q. Now now before you pled guilty and and to confirm you're
16 serving a a 10-year sentence on the service of 3 years
17 followed by probation, is that correct?

18 A. Uh, yes, sir, that -- well, that was for the
19 manufacturing meth, ---

20 Q. Okay.

21 A. --- it wasn't for the probation.

22 Q. What are you serving for the probation?

23 A. Uh, I got 2 years, uh, probation suspended for 3 years,
24 uh, for the probation. I, actually on September I was
25 actually through with probation when they re -- when they

1 tried to, uh, revoke it and the reason that they revoked it
2 was because they said I didn't, uh, make my appointments and I
3 didn't pay the fees and I resisted the take a drug test which
4 I did not resist to take a drug test, my probation officer
5 asked me one time if I, the whole time I known if I'd take, if
6 I could pass a drug test, I said bring it on, I don't even
7 take my medicines for diabetes or nothin' else so bring it on
8 and he refused to take it then, he told me, I'll give you one
9 next time, but I've got warrants that kept comin' up because
10 people kept puttin' warrants against me for things that I
11 didn't do and I've I've got expungement papers right here
12 (indicating) where I've had charges expunged that they used to
13 enhance my charge that I have now and, uh, uh, you can't use
14 no, uh, pa, uh, charge that's been expunged to enhance someone
15 charges.

16 Q. Well well first let me ask you a question. Um, before
17 your, a plea of guilty did ---

18 MR. SCHMECKPEPER: Your Honor, at at this point I'd just
19 like to object to this allegation on the grounds for that it
20 it's not the initial pleadings, I haven't heard of it and I
21 may not be prepared to go forward on this specific ground and
22 I haven't, I haven't gotten copies of certified convictions,
23 uh, so I I'd request that either this be, the applicant be
24 precluded from going forward on this or and, or I be given the
25 opportunity to leave the record open, leave the record open.

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 THE COURT: All right, now what, mean, what is, what are
2 you covering now? Which -- this -- the, uh, ---

3 MR. JOHNSON: This is his, ---

4 THE COURT: --- enhancement?

5 MR. JOHNSON: --- this is his enhan -- hancement issue,
6 Judge, that he he'd like to, uh, . . .

7 THE APPLICANT: Uh, would Your Honor, would you ---

8 THE COURT: Well I ---

9 MR. JOHNSON: Ho ---

10 THE COURT: --- I ---

11 MR. JOHNSON: --- hold on, Jerry.

12 THE APPLICANT: --- like to see this?

13 MR. SCHMECKPEPER: And s -- and simply, Your Honor, just
14 depending on how the testimony unfolds I'd like the
15 opportunity to and to present Your Honor with certified
16 convictions.

17 MR. JOHNSON: Well well, Judge, he did allege it in his
18 application, it is in there.

19 THE COURT: But he alleges the subject matter
20 jurisdiction not vested, ineffective assisted counsel, failure
21 to object or suppress the evidence then in, uh, his attachment
22 talks about jurisdiction, ineffective assistance counsel.

23 MR. JOHNSON: On that, uh, second page of those
24 attachment facts, Judge, that second page at at the top is
25 counsel failed to object to the enhancement second offense is

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 where he puts that.

2 THE COURT: All right, well I'll I'll let him go into it
3 with the, uh, State having the right to, uh, supplement the
4 record with convictions ---

5 MR. SCHMECKPEPER: Thank Your Honor.

6 THE COURT: --- keeping in mind that the burden of proof
7 is on the applicant in the first place so you may proceed.

8 MR. JOHNSON: All right, thank Your Honor.

9 BY MR. JOHNSON:

10 Q. Uh, before you go into your enhancement issue,
11 Mr. Stewart, ---

12 A. That's ---

13 Q. --- uh, did, uh, you and your counsel go over your di,
14 your discovery with you?

15 A. Uh, I never saw the discovery, I I I never had anything
16 till I's wrote the Court and got the stuff to put in for this
17 PCR, actually I didn't even know anything about a PCR until
18 my attorney came to me after the case and told me as soon as I
19 hit the yard anywhere or wherever I go go as straight as I can
20 to the law library and put in for a PCR and he told me to use
21 him as, uh, ins -- inefficient a counsel because the judge had
22 lied to him, he didn't do what he said he was gonna do, he
23 aint, he didn't, uh, sentence me the way he was supposed to, I
24 mean, if if he had I would be gettin' out in just a few days,
25 I would be maxin' out if the sent -- if judge had a sentenced

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 me the way he said he was going to sentence me but the way he
2 sentenced me I I've got time till 2018 plus I've got 2 years
3 after that of supervised and 6 months probation that I
4 would -- wasn't discussed between me and my attorney when he
5 offered me this plea, this was a *Alford* plea from the judge
6 and, uh, I think Mr. Crangle should, uh, testify what the
7 judge did.

8 Q. Okay. Now with your enhancement issue, uh, I believe you
9 said you was enhanced to a, to a second offense wrongly, you
10 don't believe that was done ---

11 A. Sir.

12 Q. --- properly?

13 A. Yes, sir. Uh, the warrant that I received was for first
14 offense of, uh, manufa -- excuse me, manufacturin' drugs, uh,
15 the the indictment that I have and it -- I, well personally I
16 don't even think this ever went before the grand jury because
17 there's so many things wrong with it. First of all, the in --
18 the face a the indictment has been changed, the code numbers
19 have been changed and written over in pen and I know the grand
20 jury wouldn't a done that. The grand, uh, the the foreman of
21 grand jury where it is signed with what's supposed to be her
22 name or his name, it's sposed, uh, have the verdict that they
23 put under, it don't have that, it don't have a date where it
24 had, where they done it and then on, uh, in the indictment it
25 doesn't state anywhere that this happened, it says Greenville

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 County, Greenville County's a very big place, it don't say
2 anything about where this happened, whether it happened in a
3 church, a beer joint, uh, somebody's house, on the side a the
4 road, it doesn't say anything, that left the grand jury to
5 speculate on essential an elements, that's what, that's where
6 that comes in and you're never to leave the grand jury to
7 speculate at any time. Okay, I've got a, uh, an order from
8 Jean Toal, the Supreme Court Justice, stating that any
9 document like this (indicating) has to go through the clerk a
10 court and be clock stamped, it's never been clock stamped so
11 therefore Jean Toal says that that it don't happen anymore
12 since he made that order and, uh, that the indictment is not
13 re -- indemal (phonetic) in court, wherever you, uh, however
14 you say that, I'm not a lawyer, but, uh, it's not supposed to
15 be used against me if it's not been clock stamped and, uh,
16 someone has went before the grand jury and told an untruth,
17 they swore before the grand jury on this, uh, first offense,
18 that's what's on the indictment 'cause it don't say first,
19 second, or third, so it has to be construed as the first
20 offense and it's it, like I said, it's been enhanced but it
21 shouldn't have been and, uh, uh, I mean, that that's, that,
22 there there's probly a couple other things about the
23 indictment that I, that I can't even figure out.

24 Q. Now as far as the enhancement, the second offense it, is
25 it your testimony that there was no underlying drug offense or

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 otherwise that they could have used to make this a second
2 offense?

3 A. I, well, I was unaware of anything that they could use.
4 I, now the probation that I was on was for a drug offense, I I
5 pled guilty to that charge because the judge was gonna give me
6 2 years probation. I told him I wasn't guilty but and he
7 started to withdraw my plea but I said, No, I wanna go through
8 with it 'cause, you know, it's 2 years probation, I'm not
9 goin' to prison, I'm I'm happy with that and, uh, and, you
10 know, I I would be happy, you know, get outta prison today if
11 they overturn the drug charge and give me time served for the
12 probation, that would be fine with me today but, you know, and
13 I, and I go my way, the State goes theirs and, uh, you know,
14 we'd never meet again but that's and that's the reason I'm
15 here, I'd I'd like to get this thing overturned and get outta
16 prison.

17 Q. All right. I'm gonna ask you to answer the questions
18 that the attorney general has, okay?

19 A. Okay.

20 THE COURT: All right, he brought up somethin' that I
21 need to make, clarify with him.

22 MR. JOHNSON: Yes, sir, Your Honor.

23 EXAMINATION BY THE COURT:

24 Q. You understand that if I grant you your relief, you say
25 you and State would never cross paths again, I believe that's

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 incorrect because if I overturn your conviction you'll simply
2 be subject to being retried or tried, uh, on this charge, that
3 is, I can't make, I can't make this charge go away, all I can
4 do is, uh, send it back for a reconsider or not
5 reconsideration but, uh, set it aside so that the whole
6 process starts again and you'd be subject to being tried or
7 entering a plea so I just want you to not not be under the
8 impression that ---

9 A. Okay.

10 Q. --- even if I agree a hundred percent with you, I can't
11 just wipe the slate clean, put you in a position where you and
12 the State never cross paths again. .

13 A. Um, well I I didn't exactly mean it that way, Your Honor,
14 I was, and and the way I was tryin' to state it is if the
15 attorney general is willing to drop the case after it's, if
16 it's overturned and he's willing to drop this, forgets me and,
17 uh, accept my time served on probation and and, you know, that
18 that's what I was talkin' about, Your Honor, I wasn't ---

19 Q. Well ---

20 A. --- gonna go ---

21 Q. --- just just to follow up, the attorney general couldn't
22 do that if they wanted to because if you prevail, if you win,
23 attorney general's outta the picture, the case goes back to
24 the solicitors, Greenville Thirteenth Circuit solicitor, uh,
25 Mr. Wilkins' office for them to decide what to do and course

JERRY WAYNE STEWART - DIRECT EXAMINATION BY MR. JOHNSON

1 they're not present today and so, uh, they can't make you any
2 guarantee, uh, what they would do but I can't, well I can g --
3 I can guess what they would probly do but I don't,
4 speculating's not a good idea so ---

5 A. Yes, sir.

6 Q. --- I just wanna make sure you understand that aspect a
7 these.

8 A. Uh, but if this is overturned, I, that I could have a
9 bond and get out ---

10 Q. Well ---

11 A. --- until I could ---

12 Q. --- that be up to another judge, that wouldn't be up to
13 me.

14 A. But I've -- I'll still be in prison is what you're
15 sayin'.

16 Q. No, I don't thi -- we we gettin' probly little bit outta
17 my, uh, I don't usually go behind what I do but but I think
18 what will happen would be that, uh, you would be moved from
19 prison to the Greenville County Detention Center and that
20 whole process would start again just as though you'd been
21 arrested the day before so you'd be in the detention center, I
22 believe you would be subject to, uh, uh, having a bond set,
23 whether one would be set or not is a course not up to me,
24 would be up to another judge but, uh, you, it's my
25 understanding you would not be held in prison, you'd be sent

JERRY WAYNE STEWART - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 back to Greenville County for the process to start over.

2 A. Uh, I understand, Your Honor.

3 Q. Okay.

4 A. Thank you.

5 Q. Yes, sir.

6 DIRECT EXAMINATION BY MR. SCHMECKPEPER:

7 Q. Morning, Mr. Stewart, just have a couple quick questions
8 for you, uh, and I just, first I wanna clarify what your
9 allegations are. Uh, now you said that your counsel never
10 reviewed discovery with you?

11 A. Uh, I never saw, I I'm sayin' I never saw anything that
12 the other side had against me, I mean, any evidence or
13 anything, I mean, I was told that they had a a thing of of,
14 uh, that it's, well it says chemicals but I had one chemical
15 that was, uh, drain cleaner and, uh, it it wasn't to make
16 meth, it was to clean a drain out so and, uh, said sumtin'
17 about a tube, that I had a a bottle cap with a tube in it, I I
18 don't know what I'd a used it for but I was usin' it to put
19 oil in my moped and, uh, as far as, uh, little baggies, I got
20 these little baggies that I had, they were little tiny and I
21 thought they was cute. My nephew sells stuff at the flea
22 market and he was puttin' earrings in these little baggies and
23 I asked him could I have a few of 'em, I mean, I I had no
24 intention a usin' 'em, I just thought that they was kinda cute
25 and I know he wasn't usin' 'em for nothin' like that 'cause I

JERRY WAYNE STEWART - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 sit and I watchin' him but the earrings in, staple 'em on the
2 board, take it to flea market.

3 Q. But you got this information from your attorneys.

4 A. Say ---

5 Q. This information your attorney told you?

6 A. That's, you know, I -- that that's what he said they had
7 against me, I mean, I mean, I I never saw it until I received
8 all this from the Court.

9 Q. So you you did meet with your attorney, is that fair to
10 say?

11 A. I what?

12 Q. You did meet with your attorney, is that ---

13 A. Oh, yes, sir ---

14 Q. --- correct, that's ---

15 A. --- I I ---

16 Q. --- Crangle?

17 A. --- met, I met with my attorney, every time I come to
18 court he asked me if I wanna plead guilty and I said no.

19 Q. And he told you what the, what the State had against
20 you?

21 A. He said, well what my attorney told me was if I asked you
22 to make corn bread and you don't have any corn meal, how you
23 gonna make corn bread so I took it as, huh, you know, I don't
24 have the stuff to make meth, well how am I supposed to be
25 makin' meth?

1 Q. So what what you're saying is even if he didn't show you
2 the actual physical papers the State had, he did tell you the
3 evidence that they had against you.

4 A. I don't ---

5 Q. Even if you, even if you dispute that evidence, he did
6 tell you what it was.

7 A. Well and not not in that many words, no, he he he said
8 they've got a good case or or sumtin' like that and I said how
9 can they have a case, I mean, I had no drugs, I had no, uh,
10 no, nothin' to make, nothin' to manufacture, I was ridin' down
11 the road on a moped so, uh, I mean, we we didn't get get into
12 all that, he -- I -- he just, he thought, every time I seen
13 him he wanted me to plead guilty and at the end I, when he
14 offered me this deal that he talked to the judge and he said
15 he talked to the judge himself and that the solicitor was
16 gonna keep comin' at me and that she was gonna enhance this
17 another time and ca -- call it the third offense and I, I
18 mean, I've never had a first offense much less third offense
19 with, uh, you know, and I ended up taking this plea on my
20 lawyer's, he he's the one that asked me to take this plea
21 'cause if I didn't I'd I'd end up gettin' 30 years and I
22 didn't wanna do 30 years, I'm 61, almost 61-years-old now and,
23 uh, I don't think I can make 31 years in prison.

24 Q. And you're talking about, uh, those little baggies didn't
25 have anything in 'em, the solicitor did say during your guilty

JERRY WAYNE STEWART - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 plea that those little baggies had methamphetamine in them, is
2 that correct?

3 A. Uh; that's that after the thing, yeah, he said that they
4 did have 'em, uh, meth in but they didn't.

5 Q. You agreed ---

6 A. I mean, ---

7 Q. --- to those facts, right?

8 A. Do what?

9 Q. Mean, you pled guilty under those facts, is that
10 correct?

11 A. I was told to tell the judge yes to everything, not to
12 bri -- not bring up anything and, uh, that, uh, the ju --
13 it -- the judge wouldn't sign sumtin' statin' that he promised
14 me this because, you know, he -- my my lawyer didn't wanna ask
15 the judge for that because he didn't think the judge would
16 tell him a lie and that all this came out after the, after
17 everything was said and done.

18 Q. So just just to clarify, your attorney told, your
19 attorney didn't show you any discovery and told you to lie to
20 the judge.

21 A. He he told me just to say yes, that's, uh, that's all, I
22 mean, because he trusted the judge and I trusted him at the
23 time and when he, the judge didn't do what he told me that the
24 judge was gonna do then that's when he came to me and told me
25 that, uh, if I didn't put in a PCR I would be in prison for a

JERRY WAYNE STEWART - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 long time 'cause the judge did everything different from what
2 he said he would do.

3 Q. So turning to this indictment issue you're arguing that
4 it was wrongly enhanced because there were, there were
5 problems with the way that the indictment was presented, that
6 fair?

7 A. I'm wr -- I I'm sayin' that it was wrongly enhanced
8 because the grand jury sent down this indictment as a first
9 offense and, uh, the face of this indictment had been changed
10 completely.

11 Q. And just so, just so I'm sure, you did say that you were
12 on pr -- yeah, at that point you were on probation for a
13 previous drug offense?

14 A. I was on probation but I was sposed to have been off on
15 Septem -- in September, ---

16 Q. But that that was, ---

17 A. --- maybe ---

18 Q. --- but that was for a drug offense.

19 A. That was for the drug offense that I went to court and I
20 testified that yes, I was guilty because the ju -- had, like,
21 uh, like this the o -- the other, all, uh, lawyer that I had
22 told me to go in there and tell this man what what he wanted
23 to hear so that I would get this slap on the wrist with
24 probation.

25 Q. And that was possession of methamphetamines?

JERRY WAYNE STEWART - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 A. Sir?

2 Q. Was that, was that prior offense possession a
3 methamphetamines?

4 A. Yes, it was.

5 Q. Thank you, I have no further questions.

6 MR. JOHNSON: Your Honor, I have no redirect.

7 THE COURT: All right you can step down, Mr. Stewart,
8 thank you.

9 (Whereupon, the applicant left the stand.)

10 (Whereupon, a discussion was held off the record.)

11 MR. JOHNSON: Your Honor, that's the applicant's case.

12 THE COURT: All right. State.

13 MR. SCHMECKPEPER: Your Honor, the State calls John
14 Crangle, the applicant's plea counsel.

15 (Whereupon, the witness came forward.)

16 THE CLERK: Mr. Crangle, ---

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: --- please place your left hand on the Bible,
19 raise your right hand.

20 JOHN CRANGLE, having been first
21 duly sworn, testified as follows:

22 THE CLERK: Thank you, you may be seated.

23 THE COURT: Mr. Crangle, it's good to see you again. I
24 recall, uh, uh, ---

25 THE WITNESS: Yeah, the m ---

JOHN CRANGLE - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 THE COURT: --- doin' mock trial at Furman a couple years
2 ago.

3 THE WITNESS: Yeah, good to see you again, Judge.

4 THE COURT: Good to see you. Go ahead.

5 MR. SCHMECKPEPER: Thank you, Judge.

6 DIRECT EXAMINATION BY MR. SCHMECKPEPER:

7 Q. Good morning, Mr. Crangle.

8 A. Good morning.

9 Q. I just have a few brief questions for you, uh, just a
10 little bit a background information. Would you go over your
11 experience as a criminal defense attorney.

12 A. Yes. I went to, uh, Clemson for my undergraduate degree,
13 I went to Emory for law school. I graduated in 2012, I passed
14 the bar and was licensed in November of 2012, uh, where I
15 joined the public defender's office, I had been there as a law
16 clerk for two months prior to that and I served as a public
17 defender for four years, I'm currently in private practice.

18 Q. So you were a public defender in this case.

19 A. Yes.

20 Q. Now roughly how long did you have this case for?

21 A. According to my notes, uh, Mr. Stewart was arrested on
22 December 27th 2013, um, that was on an unrelated manufacturin'
23 and distribution charge that was subsequently dismissed, he
24 was also arrested on that day for assault and battery in the
25 third degree in Greer and possession of drug paraphernalia.

JOHN CRANGLE - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 Um, I met him at the jail, it was assigned to our office on
2 January 7, 2014, um, and my earliest notes from January of
3 2014 indicated that I met with, um, that I met with him
4 sometime, my earliest notes would be January 15, 2014, I have
5 a note that I met with him, I just don't have a date beside it
6 as to when I first met with him but that was on a charge that
7 was unrelated to this so with regards to this case he was
8 arrested on September 26, 2014 so I'd already represented him
9 and this was a new charge, the PCR charge is based off meth.

10 Q. Now with regards to this charge, did you file for,
11 receive discovery from the solicitor's office?

12 A. I did.

13 Q. And did you review that discovery?

14 A. I did and I also reviewed it with him, uh, ---

15 Q. Did you re ---

16 A. My -- I'm sorry.

17 Q. --- review the physical packet with him?

18 A. Yes, I brought it down and we read through it. He was, I
19 saw him on October 1st 2014, uh, 'cause he was arrested on the
20 26th and I was notified that he was in the detention center.
21 I went and visited him on the 1st and talked to him about his
22 charges. Um, we didn't have discovery, we had filed for it
23 and then according to my notes on 10/26/2014 my notes state JV
24 with D, that means jail visit with D, reviewed discovery on
25 new charges, that means we went through the discovery and

1 talked about it and I can get into the facts of the case if
2 you like.

3 Q. And if you could briefly go into what the facts were on
4 the State's evidence was against the applicant.

5 A. Mr. Stewart was arrested for driving on a moped, uh, law
6 enforcement was monitoring a known drug house, uh, they
7 watched Mr. Stewart leave the house. When he left the house,
8 he was driving erratically and crossing the double yellow line
9 and also touching the fog lane, they activated their blue
10 lights. Their discovery indicates that there was no camera.
11 Um, when Mr. Stewart got off the moped, he consented to a
12 search of his moped. Inside of the center console of the
13 moped that he sits on, uh, there were several items located,
14 uh, there were some baggies with methamphetamine residue that
15 was drug tested and came back as methamphetamine residue,
16 there was no weight, there was also, um, numerous items that
17 they accused him of manufacturing methamphetamine with
18 including, uh, soda bottles and the tubing and batteries and
19 such things. There are pictures of that that I showed to him
20 and we discussed what it is for, that is part of, um, what he
21 was describing earlier to you. Um, when I talked to him about
22 it, uh, I a -- we -- he obviously had the other case pending
23 at the time, I discussed what that case, how that would affect
24 this case.

25 Q. Now I u -- I understand you can't read your client's

JOHN CRANGLE - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 minds, did you have any inclination that the applicant didn't
2 understand the State's evidence or the nature a the case
3 against him?

4 A. No, he understood it. Um, according to my, uh, notes, I
5 met with him, uh, let's see, I met with him on March 23rd
6 2015, it was a plea day. Um, we came in and reviewed the plea
7 offer: 6 years active, he, that was on both charges, the one
8 that was later dismissed, uh, we discussed the facts a the
9 case, he indicated that he wanted a trial. Um, I received
10 additional discovery on April 2nd 2015, um, and then he came
11 back in on April the 7th 2015. We reviewed the discovery and
12 discussed, uh, the 6-year offer, he determined that he did not
13 want him. I saw him on May 4th 2015 in Greer with regards to
14 the assault and battery third degree which was the charge from
15 2013, we discussed all these issues. I told him that I knew
16 throughout this that he was on probation, I kept on telling
17 him to go to probation, uh, and then I went out to Greer in
18 June and that case was still pending, um, the offer was
19 revised to a 3-year active offer, I left a message and to call
20 him back and then I called him on the 18th and talked to him,
21 uh, and left him a voice mail and then in July 8, 2015 he
22 showed up for his plea day. We reviewed the possession of
23 methamphetamine first offer, he turned it down, uh, and I told
24 the solicitor about that, uh, then in September of 2015 his,
25 uh, 2013 case was dismissed. Uh, the solicitor spoke to me on

JOHN CRANGLE - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 December 8, 2015 about putting on the January 11th trial
2 docket, I said I had no problems with that. Uh, probation
3 called me on December 22nd 2015 and informed me that he had a
4 violation probation warrant, that he had absconded
5 supervision, um, and on his NCIC I had seen this prior
6 conviction that he's talking about. He was convicted in 2012
7 for possession of methamphetamine first degree, uh, his
8 sentence was 3 years suspended to 3 years probation, uh, the
9 solicitor then informed me in January that they were going to
10 seek a conviction for a third, uh, offense based on his, uh,
11 2007 drug conviction and obviously, uh, the elements of
12 manufacturing methamphetamine does not require the actual drug
13 charges to be entered in, it's just a punishment thing. If
14 you read the statute, says for a first offense is this, for a
15 second offense is this, for a third offense is this, so if you
16 went to trial would just say manufacturing methamphetamine,
17 that would be a sentencing issue for the judge. Um, I met
18 with him on December 29th 2015, I explained to him that he was
19 on the trial docket, we reviewed the discovery and discussed
20 all of the issues. I informed him what the mandatory minimum
21 was for manufacturing second degree which was a 5-year
22 mandatory sentence that could be suspended based on, uh, if he
23 had prior possessions, uh, but I explained that at trial if he
24 was convicted he would likely face a longer prison
25 incarceration. Then on January 8th I was out of the office

JOHN CRANGLE - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 but I was notified by the solicitor that they were going to
2 seek it as a third conviction, um, if he was convicted at a
3 trial. Uh, I had my co-worker Parker Baxley who's an attorney
4 at our office try and see him at the jail, he refused to come
5 outta the jail and visit with, uh, us. I then saw him on
6 December 13, 2006 or January 13, 2016, um, and I had a jail
7 visit with him. I reviewed all of the discovery and his
8 options, um, I also informed him that his offer was to plead
9 to a second, with a mandatory minimum it could be suspended,
10 uh, he said that he didn't do anything. Uh, I also explained
11 the consequences that his violation of probation was
12 completely separate and that, um, he could be violated even if
13 he wanted a trial. Uh, I reviewed discovery in the case and
14 indicated in my file that I was prepared for trial and then on
15 January 15th 2016 was his plea day, um, he received a sentence
16 of 10 years suspended to service of 3 years and 6 months
17 probation. His probation case was, I believe it was two
18 hundred or 2 years and maybe three hundred and something days,
19 it was basically a 3-year concurrent violation of probation
20 sentence that was ran concurrent with this.

21 Q. Thank you and just just to clarify, I I believe you
22 already addressed this in your testimony, but you didn't see
23 any issues with the sentence being enhanced to to a second
24 offense.

25 A. No, actually it could have been enhanced to a third

JOHN CRANGLE - CROSS-EXAMINATION BY MR. JOHNSON

1 offense. I checked with NCIC and I checked the clerk of
2 court's public index and reviewed his two prior convictions
3 from 2007 and also from 2012. I did not pull certified copies
4 of those, um, and I did not object at trial or at his plea for
5 a second because he was on probation and probation had told
6 the judge that he was on probation for possession. I
7 explained to him numerous times that manufacturing is based on
8 prior drug convictions, it does not require that he had been
9 convicted of manufacturing one, two, and three times, I said
10 any of the drug convictions would be sufficient, he disagreed
11 with me but I explained to him that that's what the law was.
12 He may not have agreed or, I mean, he -- I can't say that he
13 understood 'cause he kept on arguing with me about it but I
14 tried to explain it to him the best I could.

15 Q. Thank you, Mr. Crangle, please answer any questions from
16 Mr. Johnson.

17 CROSS-EXAMINATION BY MR. JOHNSON:

18 Q. Uh, Mr. Crangle, that he ever ask you for a copy of his
19 discovery, do you recall?

20 A. He did not.

21 Q. Okay. All right, so that was never provided to him.

22 A. No, it's my policy that if I'm asked for a copy a
23 discovery I'll make a copy, a a full copy and give it to him
24 and I'll make a a note in my file that I gave him discovery
25 and that's later on what I started doing instead I got, I was

JOHN CRANGLE - CROSS-EXAMINATION BY MR. JOHNSON

1 getting letters from ODC, I started having clients sign
2 letters that I was giving them discovery but he never
3 requested it.

4 Q. Was was there any issue at the plea, he seems to, uh,
5 well well he testified that he he was on the, under the
6 impression that the judge was gonna do somethin' different,
7 was there any confusion there?

8 A. Not to my knowledge. I had explained to him, um, the day
9 of the plea I spoke to the solicitor and spoke to him and I
10 spoke to the judge, the judge indicated that he was willing to
11 run the 3-year sentence concurrent, his violation concurrent
12 with 3 years, um, I told him that. I did not expect that the
13 judge would suspend 10 years on service suspended to 3 years
14 and 6 months probation but I had told him basically your offer
15 is a 3-year offer, it's a recommendation, the judge says that
16 I believe he'll go along with it, I can't, I'm not the judge,
17 I can't guarantee you but I would, I encouraged him to accept
18 the offer since he, even if he got, even if he was found not
19 guilty at this trial, he was still going to get a 3-year
20 violation probation sentence so I encouraged him.

21 (Whereupon, a discussion was held off the record.)

22 Q. All right, I have no further questions, Judge.

23 MR. SCHMECKPEPER: Nothing further from the State, Your
24 Honor.

25 THE COURT: All right, I I'm tryin' take notes fast, one

MOTIONS AND MATTERS

1 thing I'm not too, um, thought you testified first that you
2 did give him hard copy of his discovery.

3 THE WITNESS: I did not, I reviewed it with him.

4 THE COURT: Okay, thank you. You can feel free to
5 leave.

6 THE WITNESS: Thanks.

7 (Whereupon, the witness left the stand.)

8 THE COURT: Anything else on this?

9 MR. SCHMECKPEPER: Your Honor, that's the State's case.

10 THE COURT: Anything else, Mr. Johnson?

11 (Whereupon, a discussion was held off the record.)

12 MR. JOHNSON: Uh, no, Your Honor, uh, we have no reply
13 testimony.

14 THE COURT: Okay. All right, we'll take it under
15 advisement.

16 MR. SCHMECKPEPER: All right, thank you, Judge.

17 THE COURT: Before Mr. Stewart leaves, uh, I I'm gonna
18 allow State to get certified copies of the, uh, prior
19 convictions although quite candidly based on the testimony I
20 don't really think I need it.

21 MR. JOHNSON: Okay, Judge, I understand.

22 THE COURT: And I'm gonna give him an opportunity to get
23 it.

24 MR. SCHMECKPEPER: And, Your Honor, we we'd withdraw that
25 based on the testimony; ---

MOTIONS AND MATTERS

1 THE COURT: I ---

2 MR. SCHMECKPEPER: --- however, if you, if you liked for
3 review it, ---

4 THE COURT: No, I ---

5 MR. SCHMECKPEPER: --- I can have a copy a that, Judge.

6 THE COURT: --- I just wanna while Mr. Stewart's still
7 present say that I don't need that though.

8 MR. SCHMECKPEPER: Thank Your Honor.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 25, 2016 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 30, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

January 25, 2017

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Jerry W. Stewart,
S.C.D.C. No. 265973,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-23-2182

ORDER

ENTERED COMPUTED

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2016 NOV 4 PM 2 54

Applicant filed this post-conviction relief application on April 1, 2016. The matter was heard October 25, 2016. Applicant was represented by Brian P. Johnson, Esq. The State was represented by Patrick Schmeckpeper, Esq.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The December 2012 term of the Greenville County Grand Jury indicted Applicant for possession of methamphetamine (2012-GS-23-010115). Applicant pled guilty to this charge, as indicted, on September 17, 2013. The Honorable William H. Seals, Jr. sentenced Applicant to three (3) years confinement, provided that with credit for one day of time served, the balance was to be suspended with probation for two years.

The April 2015 term of the Greenville County Grand Jury indicted Applicant for manufacturing methamphetamine 2nd offense (2015-GS-23-002626). Applicant was represented by John Crangle.



On January 14, 2016, Applicant pled guilty to the manufacturing methamphetamine charge as indicted. Applicant's probation for the possession charge was also revoked on January 14, 2016, for violating terms of his probation on September 11, 2015. The Honorable J. Cordell Maddox sentenced Applicant to ten (10) years' imprisonment, provided that upon service of three (3) years, the balance is suspended with probation for six months. The Court credited Applicant with 191 days' of time served, and this sentence is to run concurrent to the sentence imposed for Applicant violating the terms of his probation. Judge Maddox revoked his original probationary sentence for the possession charge and ordered Applicant to serve two (2) years and 365 days' of the remainder of his probation sentence. Applicant did not appeal his convictions or sentences.

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

1. "Subject matter jurisdiction not vested."
2. Ineffective assistance of counsel.
3. "Failure to object to or suppress evidence."

However, at the post-conviction relief hearing, Applicant presented three arguments as the grounds for his requested relief, two of which were not listed above. Each of these arguments will be separately discussed below.

First, Applicant claims ineffective assistance of counsel. Specifically, Applicant claims that he was not provided with a copy of discovery after he made a request for the same from trial counsel.

When ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Strickland*, 466 U.S. at 690, 104 S. Ct. 2066. Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

Applicant testified that he requested a copy of discovery from trial counsel and was not provided with the same, and that this constitutes ineffective assistance of counsel. Trial counsel testified that it is his usual practice to provide a copy of discovery to his clients when such a request is made. Further, trial counsel testified that, if he did not provide Applicant with a copy of discovery, he did review the discovery from the case with Applicant.

Second, Applicant alleges that his charge was improperly enhanced from a possession of methamphetamine, first offense to a possession of methamphetamine, second offense. Applicant bolstered this allegation by pointing to changes made in pen on the indictment at issue. These changes and Applicant's allegations about them are discussed further below. As this is solely a sentencing matter, it is not an appropriate ground for post-conviction relief. However, it is worth noting that this offense would actually have been Applicant's third offense, as he has other drug convictions on his record and was on probation for one of those convictions at the time the indictment in the present case was issued by the Grand Jury. As such, Applicant's allegations of improper enhancement do not serve as adequate grounds for relief.

Third, Applicant claims that the indictment at issue was improperly altered and that those alterations serve as grounds for relief. This claim is without merit. An inspection of a copy of the indictment at issue reveals three markings on the indictment which might appear out of the ordinary. The first is, for lack of a better term, a "squiggle" line like that made where one is testing a ballpoint pen. The second is a group of three letters to the right of the case name which do not appear to hold any specific meaning or have any significant effect on the face of the indictment. Third, the CDR code in the "Indictment for" section of the indictment has been crossed out and replaced with a new CDR code. It appears as though the original CDR code was 3776 and the replacement CDR code was 3777. As of the time the indictment was issued by the Grand Jury, CDR Code 3776 represented the charge "Drugs/Manufacture Meth, 1st" and CDR Code 3777 represented the charge "Drugs/Manufacture Meth, 2nd."

The record and testimony indicate that this was and is a proper indictment. The alteration of the CDR code did not result in any prejudice to the defendant, as the enhancement from the

John H. A.


1st to 2nd offense was a mechanism of sentencing, and not the indictment itself. As such, Applicants allegations as to the altered indictment do not serve as adequate grounds for relief.

Wherefore, I find Applicant has not proved by a preponderance of the evidence that trial counsel was ineffective on the grounds presented by Applicant at the post-conviction relief hearing. Further, I find that Applicant has not shown by a preponderance of the evidence that the other two allegations – improper enhancement and altered indictment – presented at the post-conviction relief hearing qualify as grounds for relief. Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

October 26th, 2016
Greenville, South Carolina



John C. Hayes, III
Presiding Judge *HS*