

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
The Honorable John C. Hayes, Trial Judge
The Honorable Letitia Verdin, Post-Conviction Relief Judge

Appellate Case No: 2017-000701

RECEIVED

JUN 30 2017

S.C. SUPREME COURT

ROBERT SHAVER,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

NATHAN SHELDON
Appellate Defender

SC Commission of Indigent Defense
Post Office Box 11589
Columbia, SC 29201
(803) 734-1330

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

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I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No Witnesses were called.

Reporter's Certificate Page P.8

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I-N-D-E-X - CON'T

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (ON THE RECORD IN THE MATTER OF STATE OF SOUTH
2 CAROLINA V. ROBERT SHAVER CASE NO. 2010-GS-46-04011; 2012-
3 GS-46-00211;00212 THURSDAY, NOVEMBER 29, 2012 AT 03:57
4 P.M..)

5 SOLICITOR DESCH: Robert Shaver.

6 (DEFENDANT, ROBERT SHAVER, WHITE MALE, ENTERING
7 COURTROOM.)

8 THE COURT: I got a sentencing sheet but no...

9 Oh, I'm sorry, this is --

10 MR. HANCOCK: This is a revocation and drug court
11 sentence.

12 THE COURT: I thought, I got you. Okay. I thought
13 the name Shaver, I apologize, I remember you from Drug
14 Court and I thought the name kept ringing a bell but...

15 All right.

16 SOLICITOR DESCH: May it please the Court, Your Honor.

17 Just for a housekeeping matter, Mr. Hancock is not
18 officially on the case. I understand that he has been
19 retained by the family to handle the sentencing for the
20 Drug Court termination, so if we could just put that on the
21 record that for the purposes of this sentencing Mr. Hancock
22 is retained for 2010-4-0-1-1; 2011-2-1-1 and 2-1-2 which
23 are the three indictments that Mr. Shaver is standing
24 before you and this is a Drug Court sentencing. He pled
25 back in I believe March. It was a negotiated fifteen year

1 sentence and he is here before you --

2 THE COURT: March 31st.

3 SOLICITOR DESCH: March 31st. He has been terminated
4 from Drug Court and he is here before you for sentencing.

5 MR. HANCOCK: And that is true, Your Honor.

6 I have been retained by the family to represent him on
7 this sentencing as part of that will come up and be put in
8 the record later.

9 THE COURT: All right. I'll be glad now to hear from
10 Mr. Hancock.

11 MR. HANCOCK: Your Honor, I am going to ask the Court,
12 he plead in a negotiated sentence in Drug Court and of
13 course he did not make it through Drug Court for fifteen
14 years. I am going to ask that he remain here for sixty
15 days and be held in our facility so that I may actively
16 seek down and departure on these sentences. There are
17 certain things that have come to light that indicate that
18 there may fall within the statute so that I may seek the
19 downward departure and it may possibly be granted by the
20 Court and I just ask for that indulgence of the court at
21 this time.

22 THE COURT: He had an attorney. I can't read the name
23 but he was represented and they negotiated the sentence of
24 fifteen years.

25 MR. HANCOCK: I believe its in the statute, Your

1 Honor, that you can seek a downward departure even after
2 that sentence is negotiated.

3 THE COURT: What is the statute?

4 MR. HANCOCK: Regarding Drug Court.

5 THE COURT: What's the State's position?

6 SOLICITOR DESCH: The State's position is that I think
7 the information that Mr. Shaver is seeking to provide to
8 the State was requested of him at the time. It's a huge
9 case that Jennifer Colton is working on. She is aware and
10 had ask him prior to if he wanted to help to get less of a
11 sentence and he declined to help. I think now that he's
12 facing the fifteen years he's willing to help but it's a
13 matter of whether Ms. Colton needs the help at this point
14 and that's up to them; it's not up to me. But I will say
15 that he was ask prior to if he wanted to help with
16 essentially the meth conspiracy and he declined to help at
17 the time.

18 MR. HANCOCK: Your Honor, I wasn't his attorney at
19 that time or I would have --

20 THE COURT: I understand. But he had one and he
21 chose to make a decision and he made that decision.

22 Anything you want to say, Mr. Shaver?

23 MR. SHAVER: I just - I'm sorry I messed up, Your
24 Honor. I appreciate the chance.

25 THE COURT: All right, here's what I'm gonna do as

1 part of a suggestion. I'm going to impose the negotiated
2 sentence of one year on possession of marijuana. And the
3 two sentences on the fifteen years on distribution of
4 OxiCodone - OxyContin - and distribution of marijuana under
5 morphine as negotiated. But I'm going to entertain, if he
6 wishes to make it, a motion by your attorney to reconsider
7 that sentence and give him time to do anything he wants to
8 to argue that motion for reconsideration, if he makes that
9 motion.

10 MR. HANCOCK: And I so make the motion for a
11 reconsideration in that manner before the Court. I know it
12 has to be done before the close of this term.

13 THE COURT: Done today.

14 MR. HANCOCK: Done today.

15 THE COURT: You've done it on the record so I am going
16 to take the reconsider - impose a sentence, but I'm going
17 to take the reconsideration motion on all three of these
18 under consideration and I'll defer hearing that giving Mr.
19 Hancock some time to do what he thinks may be of value in
20 presenting that argument.

21 MR. HANCOCK: And I will do so, sir.

22 SOLICITOR DESCH: Thank you, Your Honor.

23 (END OF TRANSCRIPT OF RECORD)
24
25

CITY OF York
STATE VS. Jail

Robert Eugene Shaver

INDICTMENT/CASE#: 2011GS4600211

A/W#: J155776

Date of Offense: 8/18/2010

S.C. Code §: 44-53-0370(b)(1)

CDR Code #: 0183

AKA:

Race: WHITE Sex: M Age: 33

DOB: 1979 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Rock Hill, SC 29730

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

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

TO: DISTRIBUTION OF OXYCOTIN, SCHEDULE II NARCOTIC, 1ST OFFENSE (0- 15 YRS)

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury.

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

ATTEST: [Signature] 72806 [Signature]

Jenny E. Desch

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,

for a determinate term of 15 days/months/years or [] under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

[] CONCURRENT or [] CONSECUTIVE to sentence on:

[] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered

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

Payment Terms: _____

[] Set by SCDPPPS _____

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 \$ 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 \$ 1200

SENTENCE SHEET

[] CONVICTED OF or [X] PLEADS

PTUP _____

_____ days/hours Public Service Employment

Obtain GED []

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling []

Random Drug/Alcohol testing []

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

[] Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]

Judge Code: 2049

Sentence Date: 11/29/12

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Wanda Nelson

CITY OF YORK STATE VS. Robert Shaver

INDICTMENT/CASE#: 2011GS4600211 A/W#: J155776

AKA: Race: W Sex: M Age: 32 DOB: 1979 SS#: DL#: Address: City, State, Zip: Rock Hill, SC 29730

Date of Offense: 8/18/2010 S.C. Code §: 44-53-0370(b)(1) Code #: 0183

DAVID HAMILTON CLERK OF COURT YORK COUNTY, SC

DRUG COURT SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: DISTRIBUTION OF SCHEDULE I DRUG (OXYCONTIN) (0-15 YRS)

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183 [X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. The plea is: [] Without Negotiations or Recommendation, [X] Negotiated Sentence, [] Recommendation by the State. ATTEST Desch, Jenny E. SC Bar# 72806 Defendant Robert Shaver Attorney for Defendant Old6593 SC Bar#

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. [] CONCURRENT or [] CONSECUTIVE to sentence on: [] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. [] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered Total: \$ plus 20% fee: \$ Payment Terms: [] Set by SCDPPPS

PTUP days/hours Public Service Employment

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

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vchicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, § 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$, TOTAL \$

Other: Sentence Deferral Drug Court [] Conditional Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition [] Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton Court Reporter: Janet Rich SCCA/217 (06/2010)

Presiding Judge Judge Code: 2049 Sentence Date: 3.31.11

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

CERTIFIED TRUE COPY

2013 JUN 10 PM 2:52


At a Court of General Sessions, convened on January 20, 2011, the Grand Jurors of York County present upon their oath

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

DISTRIBUTION OF A SCHEDULE I DRUG "OXYCONTIN"

That on or about August 18, 2010, in York County, South Carolina, the Defendant, Robert Eugene Shaver, did distribute, dispense, deliver or otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver a quantity of Oxycontin, a schedule I controlled substance under provisions of Section 44-53-190, et seq., Code of Laws of South Carolina (1976), as amended, such distribution not having been authorized by law, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

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



ASSISTANT SOLICITOR

WITNESSES

DEU\Schettler

tr

ARREST WARRANT NUMBER

J-155776

ACTION OF GRAND JURY

TRUE BILL

Deane Schettler
Foreperson of Grand Jury

1/21/11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-46- 00211

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

January 20, Term 2011

THE STATE

vs.

ROBERT EUGENE SHAVER

Indictment for

DISTRIBUTION OF A SCHEDULE I DRUG
"OXYCONTIN"

SC Code: § 44-53-0370
CDR Code: 0183

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

Defendant

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

Robert Shaver

Defendant

Witness:
Clayton A. Spicer
C.O.C. PLS. AND G.S.

ARREST WARRANT

J-155776

STATE OF SOUTH CAROLINA

County/ Municipality of

York

THE STATE
against

201000035772

Robert Eugene Shaver

DAVID HAMILTON

Address:

Rock Hill, SC 29730-

Phone: _____ SSN: _____
Sex: M Race: W Height: 6 2 Weight: 180

DL State: SC DL #: _____

DOB: 1979 Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: Schettler - S7052

Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense

Offense Code: 0183

Code/Ordinance Sec: 44-53-0370(B)(1)

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

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

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant ROBERT EUGENE SHAVER
on 08-25-10

Ryan H. E. J. Henderson
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)

County/ Municipality of)

York)

Personally appeared before me the affiant Schettler who
being duly sworn deposes and says that defendant Robert Eugene Shaver
did within this county and state on or about 08/18/2010 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of York)
in the following particulars:

DESCRIPTION OF OFFENSE Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

183

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

The defendant did willfully and unlawfully violate the South Carolina Drug Laws by distributing two 60 mg Oxycotin Pills
weighing approximately 1.8 grams to another while at 5959 Mt. Gallant Rd. Rock Hill, South Carolina, York County

- *Police Investigation
- *Recovery of Evidence (2 Oxycotin pills)

Signature of Affiant

[Signature] (York)

STATE OF SOUTH CAROLINA)

County/ Municipality of)

York)

Affiant's Address 1675 York Hwy

York, SC 29730-000

Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds believe that

on or about 8/18/2010 defendant Robert Eugene Shaver

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

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

on 08/25/2010)

Judge's Address Moss Justice Center)
York, SC 29745-7423)

Judge's Telephone (803)628-3029)

Issuing Court: Magistrate Municipal Circuit)

Judge Code: 5806)

ORIGINAL

ORIGINAL

ORIGINAL

RECEIVED
AUG 26 AM 1:48
OFFICE OF THE SHERIFF
DETENTION DIVISION
YORK, SOUTH CAROLINA

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
2010 JUN 26 PM 2:52
CERTIFIED TRUE COPY

ORIGINAL 1
Approved by
S.C. Attorney General
APR 21, 2003
SCCA 518

York Jail
VS.

Robert Eugene Shaver

INDICTMENT/CASE#: 2011GS4600212

A/W#: J155777

Date of Offense: 8/18/2010

C.S.C. Code §: 44-53-0370(b)(1)

CDR Code #: 0183

KA: _____

Race: WHITE Sex: M Age: 33

DOB: 1979 SS#: _____

Address: _____

City, State, Zip: Rock Hill, SC 29730

DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: DISTRIBUTION OF MORPHINE, SCHEDULE II NARCOTIC, 1ST OFFENSE (0- 15 YRS)

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

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: Jenny E. Desch 72806 Robert Shaver Bill Hancock
Desch, Jenny E. 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 15 days/months/years or under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: _____

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

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. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ _____

TOTAL \$ 280

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

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Wanda Nelson

Presiding Judge John Hancock

Judge Code: 2049

Sentence Date: 11/29/12

ORIGINAL

SENTENCE SHEET

CERTIFIED TRUE COPY
2013 JUN 10 PM 2:51

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

York

VS.

Robert Shaver

INDICTMENT/CASE#: 2011GS4600212

A/W#: J155777

Date of Offense: 8/18/2010

S.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0183

DAVID HAMILTON CLERK OF COURT YORK COUNTY SC

Race: W Sex: M Age: 32

DOB: 1979 SS#: 2013 JUN 10 PM 2: 51

Address: City, State, Zip: Rock Hill, SC 29730

DL#: SID#: DAVID HAMILTON CLERK OF COURT YORK COUNTY SC

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: DISTRIBUTION OF SCHEDULE I DRUG (MORPHINE) (0-15YRS)

CONVICTED OF or PLEADS

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

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.

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

ATTEST: Desch, Jenny E. 72806 SC Bar# Defendant Robert Shaver Attorney for Defendant 086543 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

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

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine: \$

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, § 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$, TOTAL \$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Sentence Deferral DWI Court

Conditional Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

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

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Janet Rich

Presiding Judge

Judge Code: 2049

Sentence Date: 2.31.11

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

) CERTIFIED TRUE COPY
)
2013 JUN 10 PM 2:51


At a Court of General Sessions, convened on January 20, 2011, the Grand Jurors of York County present upon their oath

DAVID HANSEN
CLERK OF COURT
YORK COUNTY, SC

DISTRIBUTION OF A SCHEDULE I DRUG "MORPHINE"

That on or about August 18, 2010, in York County, South Carolina, the Defendant, Robert Eugene Shaver, did distribute, dispense, deliver or otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver a quantity of Morphine, a schedule I controlled substance under provisions of Section 44-53-190, et seq., Code of Laws of South Carolina (1976), as amended, such distribution not having been authorized by law, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

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



ASSISTANT SOLICITOR

DOCKET NO. 2011-GS-46- 00212

After being fully advised as to my **17**
legal rights, I hereby waive presentment
to the Grand Jury.

WITNESSES

DEU Schettler

The State of South Carolina
County of York

Defendant

COURT OF GENERAL SESSIONS

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

January 20, Term 2011

tr

ARREST WARRANT NUMBER

J-155777

Robert Eugene Shaver

Defendant

THE STATE

vs.

Witness:
Officer Dixon et al.
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

ROBERT EUGENE SHAVER

TRUE BILL

Geary Roberts
Foreperson of Grand Jury
1/20/11

VERDICT

Indictment for

DISTRIBUTION OF A SCHEDULE I DRUG
"MORPHINE"

Foreperson of Petit Jury
Date:

SC Code: § 44-53-0370
CDR Code: 0183

18 ARREST WARRANT

J-155777

STATE OF SOUTH CAROLINA)
)
 County/ Municipality of)
York)

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

FILED-REC'D

2010 AUG 27 PM 3:06

DAVIS HAMILTON
CLERK OF COURT
YORK COUNTY

STATE OF SOUTH CAROLINA
 County/ Municipality of
York
Personally appeared before me the affiant Schettler who
being duly sworn deposes and says that defendant Robert Eugene Shaver
did, within this county and state on or about 08/18/2010 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of York)
in the following particulars:

THE STATE 201000035772
against

Robert Eugene Shaver
Address: [REDACTED]
Rock Hill, SC 29730-

Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: W Height: 6 2 Weight: 180
DL State: SC DL #: [REDACTED]
DOB: [REDACTED]/1979 Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff
Prosecuting Officer: Schettler - S7052
Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense

Offense Code: 0183
Code/Ordinance Sec: 44-53-0370(B)(1)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant ROBERT EUGENE SHAVER
on 08-25-10

[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
York County General Sessions
675 York Hwy
York, SC 29745

DESCRIPTION OF OFFENSE Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
The defendant did willfully and unlawfully violate the South Carolina Drug Laws by distributing four 30 mg Morphine pills to
another while at 5959 Mt. Gallant Rd. Rock Hill, South Carolina, York County.

- *Police Investigation
- *Recovery of Evidence (4 Morphine pills)

Signature of Affiant

STATE OF SOUTH CAROLINA)
)
 County/ Municipality of)
York)

Affiant's Address 1675 York Hwy
York, SC 29730-000
Affiant's Telephone (803)628-3059

RECEIVED
2010 AUG 26 AM 1:48
OFFICE OF THE SHERIFF
DEFENTION DIVISION
YORK, SOUTH CAROLINA

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 8/18/2010 defendant Robert Eugene Shaver
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

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

on 08/25/2010)
[Signature] (L.S.))
Signature of Issuing Judge)
Lynne Horton Benfield)
Judge Code: 5806)

Judge's Address Moss Justice Center
York, SC 29745-7423
Judge's Telephone (803)628-3029

Issuing Court: Magistrate Municipal Circuit

CERTIFIED TRUE COPY
2013 JUN 10 PM 2:55
DAVIS HAMILTON
CLERK OF COURT
YORK COUNTY

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

2013CP4601792

STATE OF SOUTH CAROLINA

County of York CERTIFIED TRUE COPY IN THE COURT OF COMMON PLEAS

Robert E. Shaver 2013 JUN 13 PM 3:46
Full name and prison number (if any) of Applicant

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

FILED-RECEIVED 56
2013 JUN -7 PM 4:17
DAVID HAMILTON
C.C.P. & G.S. SC
YORK COUNTY, SC

v.
State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Turbeville C.I. / PO. Box 252 - Turbeville SC. 29162
2. Name and location of Court which imposed sentence The Judicial Circuit York County
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) 2011GS4600211
 - (b) 2011GS4600212

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11-29-12
 - (b) 15 years in DOC
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) I didn't no I could
 - (b) _____

(c) _____

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

(a) Inadequate Counsel

(b) Will admit at later date

(c) _____

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

(a) My lawyer didn't tell me what I was getting into.

(b) He told me he was going to get me less time

(c) He got me to sign a plea that was different from the first

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

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

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

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) I'm not sure how to answer this question.
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? _____
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Phil Smith : Public Defender of York County
 ii. Bill Handcock : Attorney in Rock Hill
 iii. _____

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

i. Phil Smith got me Drug treatment Court but didn't explain and under Possession Charges
 ii. Bill Handcock got me 15 years on Distribution and promised me less time to get me to sign the Plea.
 iii. _____

19. State clearly the relief you seek in filing this application:
A new trial. An attorney to help me, not
trick me into anything.

20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, Robert E. Shaver, 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.

Robert Shaver

SWORN to and subscribed before me this 1st
day of June, 2013.

Emily White (L.S.)
Notary Public

My Commission Expires: 4-27-2016

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

I, Robert E. Shaver, 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.

Robert E. Shaver
Applicant

SWORN or affirmed to and subscribed before me this
1st day of June, 2013.

Ernie Hodge
Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert E. Shaver #234875
 Plaintiff

v.

State Of South Carolina
 Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-46-1792

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
W. Michael Hemlepp, Bar No.
Address:
2506 W. Cranbrook Ln #3 Charlotte, NC 28207
phone: fax:
e-mail: other:

Defendant's Attorney:
J. Rutledge Johnson, Bar No. 78871
Address:
PO Box 11549 Columbia, SC 29211-1549
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

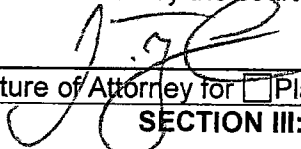
Nature of Motion:

Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff / Defendant October 1, 2013
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT:
- EXEMPT: Rule to Show Cause in Child or Spousal Support (check reason)
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE: _____ Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
)
 Robert E. Shaver, #234875,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-1792

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 7, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the January 2011 term of the York County Grand Jury for Distribution of Schedule I Drug (Oxycotin) (2011-CP-46-0211) and Distribution of Schedule I Drug "Morphine" (2011-GS-46-0212). Bill Hancock, Esquire, represented him. On March 31, 2011, the Applicant waived pled guilty to Distribution of Morphine and sentenced to Drug Court by the Honorable John C. Hayes, III. The Applicant subsequently failed out of Drug Court and was sentenced by Judge Hayes on November 29, 2012 to imprisonment for fifteen (15) years for Distribution of Morphine and one year, concurrent, for Distribution of Oxycotin. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

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

II.

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

1. "Inadequate Counsel(sic)"
 - a. "My lawyer didn't tell me what I was getting into."
 - b. "He told me he was going to get me less time"
 - c. "He got me to sign a plea that was different from the first."

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

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

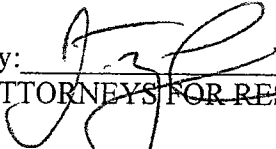
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2013-CP-46-1792

ROBERT E. SHAVER, 234875)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

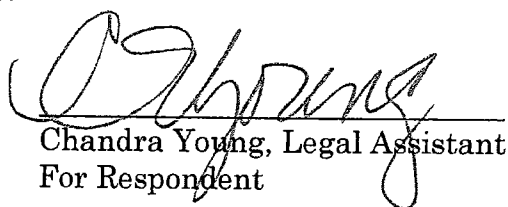
STATE OF SOUTH CAROLINA,)

Respondent.)

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

W. Michael Hemlepp, Esquire
 2506 W. Cranbrook Lane #3
 Charlotte, NC 28207

DATED this 1st day of October, 2013.


 Chandra Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) CASE NO.: 2013-CP-46-1792

ROBERT SHAVER)
)
 vs.) TRANSCRIPT OF RECORD
)
 STATE OF SOUTH CAROLINA)

AUGUST 1, 2016
 YORK, SOUTH CAROLINA

BEFORE THE HONORABLE LETITIA VERDIN

APPEARANCES:

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL
 COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

NATHAN J. SHELDON, ESQUIRE
 ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
 16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
ROBERT SHAVER				
By Mr. Sheldon	5			
By Mr. Hunter		11		
PHIL SMITH				
By Mr. Hunter	14			
By Mr. Sheldon		20		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

(NO EXHIBITS)

1 MR. HUNTER - May it please the Court, Your Honor.

2 THE COURT - Yes.

3 MR. HUNTER - The next case is Robert Shaver
4 versus State of South Carolina, 2013-CP-46-1792. He was
5 indicted at the January, 2011 term of York County Grand
6 Jury for distribution of Schedule I drug, Oxycontin and
7 distribution of Schedule I drug, Morphine. He was
8 represented by Mr. Phil Smith on March 31st, 2011; with Mr.
9 Smith, he pled guilty to both charges and was sentenced to
10 drug court by Judge Hayes. Later, on November 29th, 2012,
11 he appeared before Judge Hayes again after failing out of
12 drug court. At this time he was represented by Mr. Bill
13 Hancock and was sentenced to current negotiated 15-year
14 terms of imprisonment. He did not file a notice of appeal.
15 Your Honor, on -- current action, June 7th, 2013 -- and just
16 for a brief background, this case was originally heard
17 April 13th, 2015 before Judge Kinard. Before ruling on it,
18 he, unfortunately, passed away; the case was distributed to
19 Judge Gibbons who relinquished jurisdiction and ordered a
20 de novo hearing. That's what we're here for today upon -
21 and it's de novo, as I said. He's present today
22 represented by Mr. Nathan Sheldon, and just for another
23 housekeeping matter, the plea transcript in this case is
24 unavailable. The transcript that's in -- that's been
25 provided to Your Honor is the sentencing transcript from

1 2012. Like I say, he's present today represented by Mr.
2 Nathan Sheldon. I'll turn it over to him.

3 THE COURT - All right, yes, sir.

4 MR. SHELDON - Thank you, Your Honor. May it
5 please the Court.

6 THE COURT - Yes, sir.

7 MR. SHELDON - If the Court's ready to proceed, so
8 are we. We'd call Robert Shaver to the stand.

9 THE COURT - All right, very well. Mr. Shaver, if
10 you'll come forward and be sworn.

11 ROBERT SHAVER, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 THE COURT - For some reason, I don't think our
14 microphone's working, so I'm going to have to ask you to
15 speak up.

16 MR. SHAVER - Yes, ma'am.

17 THE COURT - All right. I appreciate it.

18 MR. SHAVER - Okay.

19 MR. SHELDON - May it please the Court, Your
20 Honor.

21 DIRECT EXAMINATION

22 BY MR. SHELDON -

23 Q Mr. Shaver, please state your name of the record.

24 A Robert Eugene Shaver.

25 Q And are you currently incarcerated?

ROBERT SHAVER - DIRECT BY MR. SHELDON

1 A Yes, sir.

2 Q Where at?

3 A At Tyger River Correctional Institute.

4 Q And you're serving a 15-year sentence?

5 A Yes, sir.

6 Q And you were sentenced before into drug court and then
7 subsequently sentenced to incarceration by Judge Hayes on
8 November 29th of 2012?

9 A Yes, sir.

10 Q Mr. Shaver, I -- let's go back to -- I know you've
11 done this once before, but let's go back to the beginning.
12 What were you originally charged with?

13 A Distribution of Oxycontin and Morphine.

14 Q Is that what you received a 15-year sentence on?

15 A Yes, sir.

16 Q Who was your attorney that got you into drug court?

17 A Phil Smith.

18 Q Okay. And what was your relationship like with Mr.
19 Smith?

20 A It was pretty brief. I mean we didn't talk a whole
21 lot. I mean he offered me a five-year cap to begin with
22 and then I asked him could he get me into drug court, and
23 he called me up and said that he got me into drug court, to
24 come up there and get in it that day, you know what I mean?

1 Q So the original offer on the case was five -- was a
2 cap of five?

3 A Yes, sir.

4 Q And you chose to turn that down. Is that right?

5 A Yes, sir.

6 Q When were you -- were you in jail at the time that you
7 accepted the plea into drug court?

8 A No, sir.

9 Q Where did you meet with Mr. Smith at?

10 A In his office up here.

11 Q Here at the Moss Justice Center?

12 A Yes, sir.

13 Q And how long was that meeting?

14 A Twenty minutes, thirty minutes, maybe.

15 Q And -- but you had wanted to plea into drug court. Is
16 that right?

17 A Yes, sir.

18 Q Did he explain to you what all drug court entailed?

19 A Just -- not really. He said he didn't -- he wasn't
20 real familiar with it.

21 Q And you, eventually, come up here and plead guilty
22 into drug court. Is that right?

23 A Yes, sir.

24 Q Is that the same day that he told you you'd been
25 offered drug court?

ROBERT SHAVER - DIRECT BY MR. SHELDON

1 A Yes, sir.

2 Q When you came -- prior to coming up here to be
3 sentenced into drug court, did you have any discussions
4 over what -- how much time would be hanging over your head?

5 A No, sir.

6 Q Were you aware prior to walking into the courtroom
7 that day that you'd be having 15 years held over your head?

8 A No, sir.

9 Q Do you remember anything about being sentenced to 15
10 years?

11 A No, sir.

12 Q What would you have done had you have known that there
13 was this large sentence hanging over your head?

14 A I don't think I would've took a 15. That's -- that's
15 a lot of time. I mean I wouldn't have took it.

16 Q What would you have done instead?

17 A I would've took the five-year cap.

18 Q But certainly you didn't go into drug court thinking
19 you were going to fail out, did you?

20 A No, sir.

21 Q Would you have taken -- I mean -- so if you thought
22 you were going to succeed, why would it have mattered
23 whether you got 15 or not?

1 A Because I don't understand why they -- it went from
2 five all the way up to 15. I don't understand why -- why
3 it went up so much.

4 Q Would you have wanted to risk 15?

5 A No, sir.

6 Q You, eventually, failed out of drug court. Is that
7 right?

8 A Yes, sir.

9 Q And that -- you were sentenced on that about a year
10 and a half later -- Right? -- November of 2012.

11 A Yes, sir.

12 Q Who represented you on that charge -- at that hearing?

13 A Bill Hancock.

14 Q And so it was not Mr. Smith; it was Mr. Hancock at
15 that hearing.

16 A Yes, sir.

17 Q Did you hire Mr. Hancock?

18 A Yes, sir.

19 Q At that hearing you were sentenced to 15 years,
20 weren't you?

21 A Yes, sir.

22 Q Did Mr. Hancock bring it to your attention that it was
23 15 years at that time prior to going in and getting
24 sentenced?

25 A I ain't sure -- say it again.

ROBERT SHAVER - DIRECT BY MR. SHELDON

1 Q Prior to getting sentenced -- did you ever meet with
2 Mr. Hancock?

3 A No, sir.

4 Q You didn't meet with Mr. Hancock at all?

5 A I mean I talked to him on the phone one time.

6 Q How long did that conversation last?

7 A Not long, five minutes, maybe.

8 Q Were you made aware that you were getting sentenced to
9 15 years?

10 A Yes, sir.

11 Q By Mr. Hancock.

12 A Yes, sir.

13 Q Were you under the impression that he could,
14 potentially, get you a lesser sentence?

15 A Yes. He told me he was going to get me a lesser
16 sentence; he was going to try, is what he said.

17 Q And did he -- from what you recall of your sentencing,
18 did the Judge allow him to make a motion to, essentially,
19 reduce the 15-year sentence?

20 A He allowed him, but I -- he didn't. I mean we didn't
21 do it.

22 Q Was that motion ever filed by Mr. Hancock?

23 A No, sir.

1 Q And so to this day, the motion that was, essentially,
2 allowed by Judge Hayes at your sentencing hearing has never
3 been filed, has it?

4 A No, sir.

5 Q Why would Mr. Hancock want to argue for less? Did you
6 discuss that with him?

7 A Well, yeah, I -- I was asking him to argue for less
8 and, you know, with -- I don't really know why he wouldn't.

9 Q Were you under the impression that he was going to do
10 that?

11 A Yes, sir.

12 MR. SHELDON - Thank you, Your Honor. I don't
13 have anymore questions.

14 THE COURT - Yes, sir.

15 MR. HUNTER - Just briefly.

16 CROSS EXAMINATION

17 BY MR. HUNTER -

18 Q So you said -- well, if you could remind me, how many
19 times did you meet with Mr. Smith before you pled?

20 A Before I pled?

21 Q Yes.

22 A Just once.

23 Q And that was when he told you about the five-year cap?

24 A Yes, sir.

ROBERT SHAVER - CROSS BY MR. HUNTER

1 Q Okay. And y'all discussed drug court -- correct? --
2 the day you pled?

3 A Yes, sir.

4 Q Okay.

5 A No, we didn't -- we didn't discuss drug court the day
6 I pled. I asked him about getting drug court when he
7 offered me the five-year cap.

8 Q Okay. Okay. And was there ever a discussion about a
9 negotiated 15-year sentence?

10 A No, we never talked about the 15.

11 Q Did the Judge discuss this to (sic) you, if you
12 recall, during your plea?

13 A He didn't. It doesn't say on the sentencing sheet or
14 anything about 15 years.

15 Q And you never signed any negotiation forms?

16 A No, sir.

17 Q And did you ever discuss the amount of time that you
18 were looking at on these charges, the maximum sentence they
19 carry?

20 A No, sir.

21 Q And you did enter into drug court. Correct?

22 A (No response)

23 Q How long were you there?

24 A Eighteen months.

1 Q And you said that you turned down a five-year cap
2 offer?

3 A Yes, sir.

4 Q And you never understood -- or -- were you ever told
5 what would happen if you failed out of drug court?

6 A I told that I would go to jail, but I wasn't told how
7 much time.

8 Q Did you ever ask?

9 A No.

10 MR. HUNTER - Beg the Court's indulgence one
11 second, Your Honor.

12 THE COURT - Certainly.

13 MR. HUNTER - That's all I have.

14 THE COURT - All right. Anything else for this
15 witness?

16 MR. SHELDON - No, Your Honor.

17 THE COURT - Sir, you can step down. Thank you.
18 Anything else on behalf of the applicant?

19 MR. SHELDON - No, Your Honor.

20 THE COURT - All right. Anything on -- anything
21 from the State?

22 MR. HUNTER - Your Honor, the State would call Mr.
23 Phil Smith.

24 THE COURT - All right.

PHIL SMITH - DIRECT BY MR. HUNTER

1 PHIL SMITH, AFTER BEING FIRST DULY SWORN,

2 TESTIFIES AS FOLLOWS -

3 DIRECT EXAMINATION

4 BY MR. HUNTER -

5 Q Good morning, Mr. Smith.

6 A Good morning.

7 Q Could you please tell us where you're employed?

8 A The York County Public Defender's Office.

9 Q And is that where you were employed when you
10 represented the applicant here?

11 A It was.

12 Q Could you tell us about how you became -- I guess --
13 were you appointed to represent ---

14 A The office was initially appointed. I believe the
15 first attorney he had in our office was Gary Lemel. It was
16 an earlier charge back in 2010, I believe. My first
17 contact with Mr. Shaver would've occurred in January of
18 2011.

19 Q And just to give us some background, how many times
20 did you meet with him before the plea?

21 A My file indicates five times of contact; now, some of
22 those were over the phone. In fact, the first conversation
23 we had over the phone where he says he doesn't want to
24 plead but to see if I could get him probation or drug court

1 that occurred over a phone, but five different times of
2 contact that we had.

3 Q Okay, and just to discuss drug court. Are you
4 familiar with drug court?

5 A I am.

6 Q Have you -- have you advised applicants or defendants
7 to do drug court before?

8 A I have talked to them about the decision; ultimately
9 it's, obviously, their decision, but, yes, I've advised
10 concerning entrance into drug court.

11 Q But you are familiar with the process?

12 A Yes.

13 Q Okay. And I believe you testified that the initial
14 plea offer was to a five-year cap. Is that correct?

15 A That's correct. That would've occurred I think at our
16 second or third contact. That offer would've been
17 communicated at the end of January, January 24th, a cap of
18 five years.

19 Q And you relayed this offer?

20 A I did.

21 Q And he -- he informed you that he did not want to take
22 it?

23 A That's correct.

PHIL SMITH - DIRECT BY MR. HUNTER

1 Q Okay. And just as far as his charges go, did you
2 discuss with him the potential sentences and the elements
3 of the crimes that the State would have to prove?

4 A We did.

5 Q Okay. Do you think he understood the potential
6 sentences?

7 A Yes.

8 Q Was this ever in a trial posture for you?

9 A No, he -- he indicated he didn't want to accept active
10 time and wanted some other resolutions, but from the
11 initial conversation with him, Mr. Shaver indicated that he
12 wanted to see if he could get probation or drug court. He
13 never mentioned wanting to go to trial.

14 Q Okay. Were there any other plea offers related by the
15 State during your representation?

16 A The offer was cap of five. He indicated he did not
17 want that. He mentioned again to see if he could get drug
18 court and that's where conversation with the prosecutor
19 occurred between me and her concerning drug court. She
20 then agreed to that. I don't know if that would count as a
21 second offer, but there were no other offers other than the
22 cap of five.

23 Q As far as the agreement to drug court is concerned,
24 was there discussions with the State of a potential
25 sentence or a deal if he failed out of drug court?

1 A I've always known it to be negotiated in this county.
2 I know in some counties you just plea into drug court and
3 sentencing is withheld, but in my experience in this
4 county, they always have a sentence that you want to --
5 that you are to accept before you enter. I don't have a
6 specific note prior to the plea concerning the 15 years,
7 but that's my understanding of how it occurs here.

8 Q Okay. Is that your understanding out it occurred in
9 this case?

10 A Yes.

11 Q Okay. Was he made aware of this 15-year sentence that
12 he would receive if he failed out of drug court?

13 A He would have been, and I cannot state, specifically,
14 because, obviously, we do not have a transcript, but I
15 would imagine that the Court went over that with him, as
16 well. I can say that always in counseling concerning drug
17 court I have a conversation with my clients that if you
18 could plea now and get some number of years, it -- if you
19 go into drug court and then do not succeed, you are going
20 to get a much higher sentence, so I would've had that
21 conversation, the generic with him, in addition to
22 discussion at the plea of the exact sentence.

23 Q And I believe you testified the first time y'all
24 discussed drug court was the day of the plea. Do you
25 remember how those meetings occurred?

PHIL SMITH - DIRECT BY MR. HUNTER

1 A No, I -- well, there could've been on-going
2 negotiation trying to get him to drug court. That
3 certainly could happen, but I know that in January 24th, I
4 called and he indicated he didn't want to plea, that he
5 would call back to go over discovery further, then on
6 February 2nd, I spoke with him and he indicated that he
7 wouldn't be able to come in on February 7th, that he would
8 come in to meet with me on February 10th and we would've had
9 the next discussion and then, ultimately, the end of March
10 is when drug court worked out, and we would've had the
11 discussion that -- the conversation that he describes of,
12 yes, they've agreed to accept drug court, you need to come
13 over and we need to do that plea, and the majority of that
14 conversation would've occurred the day of that plea.

15 Q Okay. And again, you explained to him -- is it
16 correct that you explained to him what happens when he
17 fails?

18 A Yes.

19 Q Okay. And did you explain to him the amount of time
20 that he would get when he failed?

21 A That would be my practice. I don't have a specific
22 note on it. I do have a note in the file that drug court,
23 knew it to be 15 years, so that must've been communicated,
24 but I -- but I do not see it on his sentencing sheet and I
25 do not have a specific note in my file concerning 15 years.

1 Q Do you remember if an affidavit or some other
2 negotiation form was used in this case?

3 A I can't say 2011. I know Judge Hayes created one that
4 the circuit uses now, but I can't say if that would've
5 occurred before 2011 or not.

6 Q Okay. And as far as his plea goes, just to the best
7 of your recollection, do you remember anything unusual
8 about this plea that would cause you concern?

9 A I didn't remember anything about it, and I didn't
10 realize we didn't have the transcripts until the first PCR
11 either.

12 Q Okay. And are you familiar with Judge Hayes's guilty
13 pleas?

14 A Yes.

15 Q You've had several in front of him?

16 A Thousands probably.

17 Q Okay. When he does his guilty pleas, does he,
18 typically, go over the defendant's constitutional rights?

19 A Yes.

20 Q Okay. Does he go over the sentencing ranges that the
21 defendant faces?

22 A He does.

23 Q Okay, if there's negotiations or recommendations, does
24 he go over that?

25 A He does.

PHIL SMITH - CROSS BY MR. SHELDON

1 Q Does he usually make sure that the plea is given
2 freely and voluntarily?

3 A Yes.

4 Q Does he make sure that there's no promises made or
5 threats?

6 A Yes.

7 Q Okay. And, again, I believe you testified you
8 couldn't remember anything, but at the end of the day, was
9 there anything that caused you concern after this plea?

10 A No, I have no note of indication of anything having
11 gone wrong or unusual at the plea.

12 Q If there was, you would've done something about it?

13 A Yes.

14 MR. HUNTER - Okay. That's all I have.

15 MR. SHELDON - Thank you, Your Honor. May it
16 please the Court.

17 THE COURT - Yes, sir. Certainly.

18 CROSS EXAMINATION

19 BY MR. SHELDON -

20 Q Mr. Smith, is it standard practice now in York County
21 to do a plea affidavit?

22 A It is.

23 Q And in that plea affidavit, does it list out the
24 specific charges someone is pleading to?

25 A It does.

1 Q Does it list out a recommendation from the State?

2 A Yes.

3 Q Does it -- if it's a negotiated sentence, does it list
4 out the negotiation from the State?

5 A It does.

6 Q Who prepares that document?

7 A The solicitor ninety-nine percent plus percent of the
8 time.

9 Q And so -- and did you say that it's now Judge Hayes's
10 practice to have people fill out that form prior to
11 pleading guilty?

12 A That's correct.

13 Q Because it resolves cases like this, doesn't it?

14 A It would help, yes, sir.

15 Q And so -- but that -- but those forms in some version
16 did not -- were not invented out of nowhere by Judge Hayes,
17 were they?

18 A That's correct. We had -- I had some I would use; Mr.
19 Dest in our office had one that he would use, so they did
20 exist in other forms before the, sort of, unified one that
21 Judge Hayes had set forth.

22 Q But you -- and even if Judge Hayes didn't require it,
23 you never did one in this case, regardless. Right?

24 A I don't see a copy of one, no.

PHIL SMITH - CROSS BY MR. SHELDON

1 Q Would it be your standard practice on a 15-year
2 sentence to do a plea affidavit or not?

3 A Probably more often than not. I don't know if it
4 being drug court, I don't know that I was doing them
5 normally for a drug court plea, so I can't say with regard
6 to this, but it would not have been unusual for me to have
7 done one, and I don't see one in this case.

8 Q And you mentioned Judge Hayes's standard practice of
9 going over trial rights and things like that?

10 A Yes.

11 Q Was this your first plea into drug court or had you
12 done that prior to this?

13 A I had done it prior.

14 Q Was it Judge Hayes -- would -- based on your
15 experience of pleading people into drug court, would there
16 typically be a sentence indicated on the sentencing sheet
17 or no?

18 A I expected that to exist, and it does not.

19 Q So when someone is actually sentenced to drug court,
20 the deferred sentence or the suspended sentence, or
21 whatever we want to call it, is, typically, listed on the
22 sentencing sheet.

23 A That was my understanding. I thought that's how we
24 then later knew what the sentence would be when they were
25 brought back.

1 Q And in this case there is no sentence listed on the
2 sentencing sheet.

3 A There is not, on either of the sentencing sheets.

4 Q And there is nothing in your notes to indicate that
5 you explained the 15 years hanging over Mr. Shaver's head
6 prior to going to Court.

7 A That is correct.

8 Q And you referenced that you had something from drug
9 court saying that it was a 15-year sentence. Is that
10 right?

11 A That's correct.

12 Q But that would've occurred after the plea, wouldn't
13 that?

14 A Clearly.

15 Q Okay. So after the plea, drug court states that it's
16 a 15-year sentence but nothing in your notes reflects that
17 that was -- that was related to Mr. Shaver prior to the
18 plea.

19 A Right. I can't say prior. I can say on my file note
20 concerning the plea, my writing in blue says the plea, and
21 then there is some writing in black that says 15 suspended
22 on, but I can't say if that was me or if that was Mr.
23 Vansycle who also had some contact with Mr. Shaver from my
24 office or -- or from where that came.

PHIL SMITH - CROSS BY MR. SHELDON

1 Q And I -- I only need to spend about 30 seconds on that
2 annotation on your file, so if something's written on (sic)
3 blue, would you write that in the courtroom or no?

4 A I -- I -- it appears I wrote this in the courtroom and
5 then at some point black was written, but that would be
6 post-plea, as well.

7 Q It would've been post-plea.

8 A That's correct.

9 Q So you wouldn't have taken a blue pen and then taken a
10 -- then immediately picked up a black pen and wrote
11 something different?

12 A Would not.

13 Q So the 15 -- the only annotation on the 15 years on
14 the file is, actually, post-plea, as well.

15 A Correct.

16 Q And you didn't have anything to do with the plea after
17 -- after failing out of drug court. Is that correct?

18 A I remember being contacted by Mr. Hancock, and I
19 remember him saying he was hoping to get the Judge to knock
20 it down, but -- and then they -- his office asked my office
21 for some copies of discovery later, but nothing regarding
22 the proceeding in the courtroom.

23 Q Will Judges knock those pleas down, typically, or no?

24 A It -- it has occurred. At first there was a sort of
25 bright line rule that they were not. I think that's become

1 a little more flexible. I think our circuit's a little
2 different than some. In some places there's a lot of
3 discretion at sentencing, and I hope we're trending a
4 little more toward that. This was clearly a very large
5 sentence. I would've hoped that that consideration
6 would've been taken, and I think Judge Hayes indicated he
7 would at least year it, but I -- I can't say other than
8 that.

9 Q And so is -- are drug -- are drug court pleas the same
10 now as they were then? Do you go in on a negotiated
11 sentence now?

12 A The last one I did still had to be a negotiated
13 sentence. That's correct.

14 Q And that could still be argued later on at sentencing?

15 A Thankfully, it hasn't come back, but it's my
16 understanding that it could be.

17 Q Okay. So you're -- the negotiated portion of the
18 sentence isn't necessarily the amount of years itself.

19 A The prosecutor would take a different view of that. I
20 think they would say the negotiation is an agreement
21 between my client and the State, that if he doesn't pass,
22 to do that, but I think, ultimately, the Court sentences.

23 Q Okay. So the -- I guess -- I guess my question, Mr.
24 Smith, is, on a drug court plea, not necessarily this one,
25 but any drug court plea, if it's a negotiated sentence as

PHIL SMITH - CROSS BY MR. SHELDON

1 listed on the sentencing sheet negotiated, will a Judge
2 take the -- can a Judge take the position that the sentence
3 should -- can be lowered?

4 A I think the Court sentences and has that power, but I
5 don't think -- I think they could, but I don't know if
6 that's common practice.

7 MR. SHELDON - Okay. I don't have anymore
8 questions, Your Honor.

9 THE COURT - Anything else for this witness?

10 MR. HUNTER - Nothing else.

11 THE COURT - Sir, you can step down.

12 MR. SMITH - Thank you.

13 THE COURT - Thank you. Anything else on behalf
14 of the State?

15 MR. HUNTER - Nothing else from the State, Your
16 Honor.

17 THE COURT - All right. Anything -- anybody want
18 to sum anything up? I'll be happy to hear from you if you
19 want to.

20 MR. SHELDON - Your Honor, the only -- the only
21 reason I'll do a summary on this case is because of the
22 complex procedural history. Basically, at -- we're relying
23 on the transcript. To start with, the issue of Mr. Hancock
24 - we're relying on the transcript for November 29th, 2012.
25 Clearly, Judge Hayes allowed him to, potentially, -- he did

1 orally make a motion to reconsider, which was timely, must
2 be done -- must be done the same week of the plea. Mr.
3 Hancock did that. Mr. -- Judge Hayes then allowed him to
4 file a supplemental motion, essentially, asking for a lower
5 sentence, which was never done. That doesn't exist in the
6 file. There's no evidence that that motion was ever filed.
7 So Judge Hayes allowed for it to happen, but the attorney
8 never actually did it. Going back to Mr. Smith, there's no
9 -- the transcript was lost. It's not the State's fault,
10 but it's also not the defendant's fault, and it was
11 requested timely. I mean I think everybody will agree to
12 that, that it was within the five years, so the transcript
13 being lost, Your Honor, is unfortunate. There's nothing
14 that Mr. Smith has in his notes that reflects that he was
15 ever told of the 15 years that were hanging over his head
16 prior to the plea. There's nothing on the sentencing sheet
17 that indicates that there was a 15-year sentence, and so,
18 Your Honor, -- and he's testified that had he known it was
19 15 years prior to the plea, he wouldn't have taken it, that
20 he would've taken his chance with a cap of five. Your
21 Honor, we believe that arises to the level of ineffective -
22 - clearly, had he taken the cap of five, the outcome
23 would've been different, because he wouldn't have gotten
24 more than five. And so, Your Honor, we'd ask the Court to

1 find ineffective assistance on that ground, as well, and
2 that's, essentially, where we're at.

3 THE COURT - All right. On behalf of the State?

4 MR. HUNTER - Your Honor, just briefly. I believe
5 he testified that he rejected the cap of five, and as far
6 as whether or not there's any notes that indicate whether
7 the 15-year cap was ever relayed -- some notes -- I believe
8 he testified that he -- it was normal practice to relay
9 that information to go over the potential sentences that
10 he'd be facing, and the fact that it is negotiated would
11 make -- the State would believe that that was relayed to
12 him at some point prior to going into drug court. Your
13 Honor, we -- the State would believe -- as unfortunate it
14 is that the transcript was lost, the State would just argue
15 that he hasn't met his burden of showing that Mr. Smith did
16 not relay at all. (sic)

17 THE COURT - All right. All right, well, I'll
18 take this matter under advisement. I want to take a look
19 at the things that are here in the Judge's packet for this,
20 and I want to take a look at my notes a little bit further
21 and I'll -- but I'll -- I'd anticipate issuing a decision
22 very shortly. All right?

23 MR. SHELDON - Thank you, Your Honor.

24 MR. HUNTER - Would you like proposed orders?

1 THE COURT - If you would like -- if you'd like to
2 submit a proposed order, I'd be happy to take it.

3 MR. SHELDON - I think we've actually already done
4 that for Judge Kinard, so ---

5 THE COURT - All right. If you want to do that,
6 then that'll be fine, and I'll take a look at it. Thank
7 you.

8 MR. HUNTER - Thank you.

9 MR. SHELDON - Thank you, Your Honor.

10 THE COURT - Thank you.

11 (END OF TRANSCRIPT)

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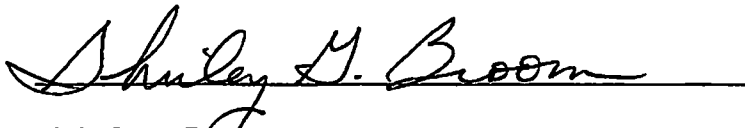
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 29 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Robert Shaver vs. State of South Carolina, as taken by me in The Court of Common Pleas for the Sixteenth Judicial Circuit on August 1, 2016, and provided by me this the 25th day of Oct., 2016.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP461792

Robert Shaver

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other:
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

16-RECEIVED
2016 SEP 26 PM 1:10
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, S.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2162

Judge Code

9/22/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan J. Sheldon

Justin Hunter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton York County Clerk Of Court - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

h2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Robert Shaver #234875,)
)
) Petitioner,)
)
) vs.)
)
) State of South Carolina,)
)
) Respondent,)
)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

File Book No.: 2013-CP-46-1792

ORDER

2016 SEP 26 PM 1:31
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC
 LED-RECEIVED

The Applicant Robert Shaver pled guilty on March 31, 2011 before the Honorable John C. Hayes, III to Distribution of a Schedule II Narcotic (Morphine) and Distribution of a Schedule I (both first offense). Applicant was sentenced to fifteen years and one year concurrent respectively and that was suspended on a sentence of drug court. Applicant was terminated from drug court and on November 29, 2012 was sentenced by the Honorable John C. Hayes, III to fifteen years on the distribution of a Schedule II charge and one year on the Distribution of a Schedule I charge to run concurrently.

The Applicant filed this post-conviction relief application on June 7, 2013, wherein Applicant alleges ineffective assistance of trial counsel. The Applicant was represented by Phil Smith of the York County Public Defender's Office for his initial plea into Drug Court and by William Hancock of the York County Bar for the imposition of his sentence after failing out of Drug Court.

The parties stipulated to the fact that there is no transcript available from the initial plea in 2011. A transcript is available for the actual imposition of Applicant's sentence. The parties

agree that the transcript was requested timely and it is neither the fault of the applicant nor the State that no transcript exists from the original sentencing.

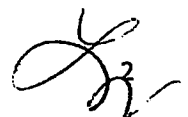
This matter was originally heard by The Honorable J. Ernest Kinard, Jr. on April 13, 2015. Judge Kinard instructed both attorneys to prepare orders following the testimony at that hearing. However, shortly thereafter Judge Kinard passed away prior to ruling on either order that was submitted to him.

The case was then assigned to The Honorable Brian M. Gibbons to review and determine if a ruling could be made on the transcript, or if an additional evidentiary hearing was needed. Judge Gibbons determined that a *de novo* hearing was needed due to the lack of an original transcript from the initial plea.

Ultimately, Judge Gibbons relinquished jurisdiction to York County and issued an Order instructing the Attorney General to schedule the case on the normal PCR docket in York County as soon as it could be heard. This matter was heard on a *de novo* basis before this Court on August 1, 2016.

The court heard testimony from the Applicant regarding his original sentencing. Applicant stated that his attorney, Phil Smith, said he could either accept a five year sentence or plead into drug court. Applicant testified that Mr. Smith did not explain to him everything involved with Drug Court. Applicant also testified that he believed that the suspended sentence would be similar to the active five year sentence that he turned down. Applicant stated that he did not know that the suspended sentence was going to be fifteen years and had he known that he would not have accepted drug court.

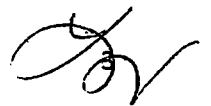
Applicant also testified that he hired Attorney Hancock for the sentencing hearing, and that Attorney Hancock told him he would be able to get him less time. The transcript from the



sentencing hearing reflects that the Applicant was sentenced to fifteen years, but that Mr. Hancock would be permitted to file a Motion to Reconsider the Sentence for downward departure. The Court allowed Mr. Hancock time to do this, but there is no evidence that this Motion was ever filed. Applicant testified that he had never received a copy of any Motion. The Court file does not contain any motion regarding the reconsideration of the sentence.

The Court then heard from Mr. Smith. Mr. Smith testified that he was the original plea attorney, but denied that he had forced Applicant to plea and stated that he did not promise him a five year suspended sentence. Mr. Smith was questioned about the sentencing sheets themselves, and he acknowledged that they simply listed "Drug Court" as the sentence and made no reference to the active time that could be imposed. Mr. Smith testified that this was not common and that absent a transcript, the only thing he could rely upon are the notes that he took at the plea. Mr. Smith acknowledged that the notes he took during the plea were minimal. Mr. Smith acknowledged that the "15" portion of his notes was written at a different time than the rest of the sentencing note and was most likely written sometime after his notes from the plea. Mr. Smith offered no other explanation. Mr. Smith also stated that he had an email from Drug Court referencing a fifteen year sentence, but this email was sent after the imposition of the sentence itself and was not an email prepared prior to sentencing as some sort of plea agreement. Mr. Smith acknowledged that absent the transcript there was no filed document referencing the fifteen year suspended sentence.

Mr. Smith also testified that he had done hundreds of pleas in front of Judge Hayes and that in his experience Judge Hayes always examined the defendant as to the voluntariness of the plea and the standard plea colloquy. Mr. Smith had never been part of a plea where Judge Hayes did not engage in this practice.



Mr. Hancock is deceased. Unfortunately, he was not alive for the original PCR hearing, so there is no testimony regarding the circumstances surrounding the reconsideration of the sentence other than the transcript from the imposition of the sentence.

STANDARD OF LAW

In an action for post-conviction relief, the burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence. Frasier v. State, 351 S.C. 385, 570 S.E.2d 172 (2002) (citing Rule 7.1(e), SCRPC); Butler v. State, 286 S.C. 441, 442 (1985). "To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different." Johnson v. State, 480 S.E.2d 733, 735 (1997)(citing Underwood v. State, 309 S.C. 560 (1992); Simmons v. State, 308 S.C. 481 (1992)). In this way, an ineffective assistance of counsel claim involves a two prong analysis: (1) that counsel's performance was deficient and (2) that counsel's performance prejudiced the Applicant. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Demonstrating error requires a showing that counsel's performance fell below the "reasonableness under professional norms." *Id.* at 117. In order to show prejudice, the Applicant must prove that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson, 480 S.E.2d at 735(citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)). With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).



I. Trial Counsel was ineffective for failing to offer reasonable and sound advice regarding the original plea into drug court.

It is unclear from the lack of transcript exactly which parts of the original plea, if any, were negotiated and because there is no transcript available it is impossible to tell. Applicant testified that he believed that when he turned down the five year active sentence offer from the State and accepted the plea into drug court that the suspended sentence would be substantially similar. Applicant also testified that had he known he would receive a suspended fifteen year sentence that he would not have accepted the plea.

It appears that Mr. Smith likely did not communicate the possible punishment of Applicant's plea into drug court and had he done so the outcome would have been substantially different in favor of the defendant. This is bolstered by the lack of communications regarding the original fifteen year sentence in trial counsel's file. The sentence itself was written in different colored ink and, by counsel's own admission, most probably written at a different time than the rest of the sentencing notes. The only other document that contains fifteen years on it is the email sent by drug court after the imposition of the sentence. Neither of these documents were produced prior to sentencing. Trial Counsel's actions constitute prejudice.

II. Trial Counsel was ineffective in not filing a Motion to Reconsider for downward departure.

At the sentencing hearing for the failure out of drug court, Mr. Hancock specifically asked the Court to reconsider the fifteen year sentence based on the downward departure portion of the drug court statute. The Court allowed him time to formally file that motion, but sentenced the Applicant in the interim. There is no evidence that motion was ever filed. The applicant testified that he never received that motion and that motion was not in the Court file. Mr.

Hancock was ineffective in not following through with filing a formal Motion to Reconsider Applicant's sentence. There is no way to say whether or not the Court would have reduced the sentence based on the reconsideration, but the Court did bend the rules in allowing him to have time to file the motion. He specifically asked for permission to file a motion reconsidering the sentence, was granted an extension of time to do so, and never actually did so. Mr. Hancock's actions constitute reversible error and prejudice.

There is also nothing in the record that indicates Mr. Hancock ordered a transcript from the original guilty plea into drug court. As a result, Mr. Hancock was left with accepting the fifteen year sentence as being accurate. Mr. Hancock's failure to order a transcript to confirm the fifteen year sentence constitutes reversible error and prejudice.

CONCLUSION

This Court finds the Applicant has satisfied the first prong of the Strickland test – that both Mr. Smith and Mr. Hancock failed to render reasonably effective assistance under prevailing professional norms. Mr. Smith failed to produce any evidence that he informed the applicant that the active five year plea would balloon to a fifteen year suspended sentence if he agreed to Drug Court. Mr. Smith's file contains nothing documenting a fifteen year suspended sentence prior to the imposition of the sentence.

Mr. Hancock asked the Court to allow him to file a motion for downward departure from the sentence but failed to ever do so. Clearly, applicant wanted him to do so. He paid Mr. Hancock to represent him at sentencing and was sentenced to the maximum sentence. It is a natural and reasonable inference to assume that applicant would want a maximum imposed sentence to be reconsidered if possible.

This Court also finds the Applicant has satisfied the second prong of the Strickland test – that he was prejudiced by counsels’ performance. Applicant testified that he would not have taken the plea offer had he known that the suspended sentence was fifteen years. Absent a transcript, this Court has no way to know for sure that the sentence was fifteen years, but even if the Court assumes it was, it is likely that the defendant would have believed that the suspended sentence would be similar to the five year active sentence he was originally offered. The applicant testified to the same. Again, there is no evidence in counsel’s file that the fifteen year suspended offer was relayed to applicant prior to the sentencing.

Furthermore, it is equally reasonable to conclude that applicant was prejudiced by Mr. Hancock’s failure to file a reconsideration of the original sentence. The trial court went out of its way to allow him to do so. He received a maximum sentence on the charge. Yet, somehow, this motion was never filed and the reconsideration of the sentence was never heard. This Court concludes the Applicant has met his burden of proving counsel failed to render reasonably effective assistance.

Based on the testimony of the witnesses, a careful review of the record and all of the foregoing, the Court finds and concludes that the Applicant has met his burden in establishing that the Applicant is entitled to post-conviction relief. For the foregoing reasons, this application for post-conviction relief is granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Applicant has met his burden in establishing that he is entitled to post-conviction relief and the same is hereby granted. Applicant is ordered remanded to the custody of the York County Detention Center pending further proceedings on this case.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'S. J. 7', located in the bottom right corner of the page.



Hon. Letitia Verdin
Presiding Judge
Sixteenth Judicial Circuit

Greenville, South Carolina

9/22, 2016



STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Robert Shaver,)
 S.C.D.C. No. 234875,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-1792

RESPONDENT'S MOTION TO RECONSIDER

Respondent, pursuant to Rules 59(a) and (e), SCRCP, would respectfully show unto this Court:

I.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 7, 2013. Respondent made its Return on or about October 1, 2013. An evidentiary hearing into the matter was convened on August 1, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. By order filed September 26, 2016, the Court granted relief on two grounds raised in the Application. Respondent received a copy of this order on September 29, 2016.

II.

Respondent respectfully asks this Court to reconsider its judgment granting Applicant post-conviction relief based on the following.

Plea Advice

In the order granting relief, the Court found that Applicant's plea counsel was ineffective for failing to offer reasonable and sound advice regarding the original plea into drug court. Counsel testified that he explained the potential sentences to Applicant, and Applicant wanted a Drug Court plea. Counsel testified that Drug Court pleas are negotiated before the defendant enters Drug Court, so Applicant would have known what he was facing if he failed out of Drug Court. Counsel testified that he believed Applicant knew that he would receive a fifteen year sentence – that was negotiated – if he failed out of Drug Court. Furthermore, Counsel testified that he relayed the State's offer of a five year cap, but Applicant rejected this offer. Applicant testified that he wanted a five year cap – the same deal that he originally rejected. Regardless of the fact that the potential sentence was not written on the original sentencing sheet, it is clear from the testimony that Applicant knew what he was facing regarding his Drug Court plea. As such, there is no evidence to support the finding that counsel was ineffective regarding his advice to Applicant.

Downward Departure

First, this Court should reconsider granting relief based on sentencing counsel's failure to file a downward departure, this Court erred as a matter of law in finding Counsel ineffective for failing to file a downward departure motion. The only motion for a downward departure found in South Carolina's Code is found in S.C. Code Ann. § 17-25-65. This statute indicates the State, not defense counsel, is the party who must move for a sentence reduction. See S.C. Code Ann. § 17-25-65(C) ("A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant's case arose.") Thus, it is an error of law to find sentencing counsel ineffective for failing to do something which he has no statutory authority to do.

Accordingly, this Court should reconsider its ruling that sentencing counsel was deficient for failing to file a motion for a downward departure.

Motion to Reconsider

This Court also found that Applicant's sentencing counsel was ineffective for failing to file a motion to reconsider for a downward departure. At the sentencing hearing, sentencing counsel asked the court to reconsider the sentence and the court allowed him time to formally file the motion. Sentencing counsel never filed the motion. The Court should reconsider granting relief on this ground because there is no showing of prejudice. A motion to reconsider requires more than simply filing a motion, and for Applicant to suffer prejudice, he has to show that there was some basis for the motion to be filed. Applicant has failed to show that there was any basis whatsoever for the motion. He has failed to show that a motion to reconsider would have been successful or that there were any grounds that would have possibly been successful in the motion to reconsider. The Order of Dismissal concedes the fact that it is speculation to say whether or not the motion would have been granted, however Applicant never even addressed what new or additional evidence existed that his sentencing counsel should have been presented on the motion to reconsider.

In all, Applicant has wholly failed to show that he was prejudiced because he has failed to show that this motion would have been meritorious and, more importantly, he has failed to show any evidence that the outcome would have been different had sentencing counsel filed the motion.

Furthermore, the PCR Court's ruling fails to specify relief. The Court granted relief on plea counsel's failure to give proper advice concerning the plea. The relief in this case would be for Applicant's plea to be vacated. The Court also granted relief on sentencing counsel's failure to

file a motion to reconsider. The relief in that case would seemingly be for Applicant to file a belated motion to reconsider, which is not proper in post-conviction relief.

III.

WHEREFORE, Respondent respectfully requests the Court to amend the final judgment to reflect a finding that plea and sentencing counsel were not ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

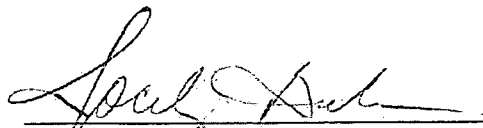
October 11, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF YORK)	
)	
)	2013-CP-46-1792
ROBERT SHAVER, #234875,)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Nathan J. Sheldon, Esquire
The Law Office of Nathan J. Sheldon, LLC
PO Box 36682
Rock Hill, SC 29732-0510

DATED this 11th day of October, 2016.



 Jocelyn Baker, Legal Assistant
 For Respondent

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013-CP-46-1792

FILED-RECEIVED

2017 MAR -9 PM 4:08

DAVID HAMILTON
 C.C.C.P. & GS
 YORK COUNTY, SC

Robert Shaver

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRCR (Vol. Noqsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court: Court denies Respondent's Motion To Reconsider.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.



Circuit Court Judge

2162

Judge Code

2/22/2017

Date

For Clerk of Court Office Use Only

3/9/17

3/9/17

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Nathan J. Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Multiple horizontal lines for additional information.