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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

MELODY HOLMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001933

APPENDIX

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INDEX

INDEX.....i

TRIAL TRANSCRIPT (Dated August 12, 2013) 1

APPLICATION FOR POST-CONVICTION RELIEF.....21

RETURN26

POST-CONVICTION RELIEF HEARING TRANSCRIPT (Dated February 9, 2015)..... 33

ORDER OF DISMISSAL86

INDICTMENTS97

INDEX

	PAGE
Guilty Plea Hearing	3
Certificate of Reporter	20

EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the hearing</i>		

State v. Melody Holmes 2013-GS-04-1179/1181
GUILTY PLEA HEARING August 12, 2013

3

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 10:38 a.m.)

4 THE COURT: All right. Solicitor, if you
5 would, call your case.

6 MR. MCLAIN: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. MCLAIN: Your Honor, before you is Ms.
9 Melody Holmes. She's represented by Mr. Kurt Tavernier.

10 THE COURT: Good morning, Ms. Holmes.

11 THE DEFENDANT: Good morning.

12 MR. MCLAIN: She is pleading guilty on
13 indictments number 2013-GS-04-1180, 2013-GS-04-1179, and
14 2013-GS-04-1181 to the charges of trafficking in cocaine
15 twenty-eight -- between twenty-eight and a hundred grams,
16 possession with intent to distribute crack cocaine, and
17 possession with intent to distribute marijuana.

18 THE COURT: All right.

19 MR. MCLAIN: The State does not have a
20 recommendation, Your Honor.

21 THE COURT: Very well.

22 Ms. Holmes, you have been indicted by the Anderson
23 County Grand Jury on three charges. That would be
24 possession of marijuana with intent to distribute that
25 drug, possession with intent to distribute crack cocaine,

1 and trafficking in powder cocaine in the range of twenty-
2 eight grams but less than one hundred grams. Are you
3 familiar with those charges?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has your attorney had an
6 opportunity to explain to you what those charges mean?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. And did he advise you
9 that for the trafficking in cocaine twenty-eight to one
10 hundred grams, the sentence is a minimum mandatory
11 sentence of seven years up to twenty-five years with a
12 fifty-thousand-dollar fine or possible fifty-thousand-
13 dollar fine; and for the possession of marijuana with
14 intent to distribute that you could receive up to five
15 years; and for the possession of crack cocaine with
16 intent to distribute, you could receive up to fifteen?
17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Now, has your attorney
20 advised you that the trafficking in cocaine charge would
21 be what we commonly refer to in the criminal courts of
22 this state as a non-parolable offense. That is an
23 eighty-five percent offense, one for which you would have
24 to serve at least eighty-five percent of the sentence.
25 Do you understand that?

State v. Melody Holmes 2013-GS-04-1179/1181
Guilty Plea Hearing August 12, 2013

5

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay.

3 And Solicitor, I believe the cocaine, crack cocaine,
4 charge is violent. It would be also the same thing,
5 would it not?

6 MR. MCLAIN: Your Honor, the P.W.I.D. and crack
7 cocaine is not. I'm sorry, Your Honor.

8 THE COURT: It's not. All right. Very well.
9 Thank you.

10 Ms. Holmes, has your attorney had an opportunity to
11 go over the evidence in this case or the discovery
12 materials with you in these cases?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. And has he explained to you
15 how the State would use or attempt to use that evidence
16 against you to prove its case if you were to request a
17 jury trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. And then there's no question
20 that your attorney has advised you that you have a right
21 to a jury trial in these matters?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. I want you to understand
24 that every criminal defendant who comes before the Courts
25 of General Sessions in South Carolina or the Magistrate

1 Courts for that matter, regardless of the seriousness of
2 the offense, always have options. And those options in
3 this case would be either to enter a guilty plea or to
4 have a jury trial. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. And it's my understanding
7 that you are here before me this morning to plead guilty
8 to these charges; is that correct?

9 THE DEFENDANT: That's correct.

10 THE COURT: Do you understand that if you plead
11 guilty you waive irrevocably your right to a jury trial
12 on these charges? That is, you could not come back later
13 and say, well, now I'm not satisfied. I want to have a
14 jury trial. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. And do you realize that if
17 you plead guilty, you're not only giving up your general
18 right to a jury trial -- and certainly that's what you
19 do. But do you understand that when you waive your
20 general right to a jury trial, you waive many, many
21 rights that go along with the jury trial? There are so
22 many rights that go along with a jury trial that if you
23 and I sat down for the rest of the year, we could
24 probably not discuss all of them. But some of those
25 rights that I would like to point out to you, just by way

State v. Melody Holmes 2013-GS-04-1179/1181
Guilty Plea Hearing August 12, 2013

7

1 of illustration -- this is not all of them. Just by way
2 of illustration, these are some of the rights that I
3 think, well, at least in my opinion, are some of the more
4 important ones that I want to give you by way of
5 illustration. There would be things like your Fifth
6 Amendment right to remain silent. If you were to have a
7 jury trial and you -- if you had one, you would not have
8 to testify. No one could make you testify. Of course,
9 if you wanted to testify in your jury trial, you
10 certainly could, but you would not have to. And that
11 right is so important that if you chose not to, I would
12 explain to the jury that they could not use your silence
13 against you in any way, form or fashion.

14 You'd also have the Right to be represented by an
15 attorney through every -- as you are now -- through every
16 step of the way. Every part of the jury trial, you would
17 have the right to have an attorney with you. And at the
18 end of the trial, you would have the right to require me
19 to instruct that jury that they could not convict you
20 unless they were all firmly convinced. That is, they
21 were convinced beyond a reasonable doubt of your guilt.
22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you realize that you would be
25 giving up all these rights and the other rights that are

1 collateral to or that attach to your jury trial if you
2 plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: That just makes sense, doesn't it?

5 THE DEFENDANT: I guess.

6 THE COURT: Okay. If you give up your right to
7 a jury trial, you're giving up all the rights that go
8 along with it?

9 THE DEFENDANT: Yeah, all my rights.

10 THE COURT: All right. Now, I want to talk to
11 you a moment about -- well, let me ask you, is that what
12 you want to do?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Let me ask you about Mr.
15 Tavernier, your attorney. Has he -- or do you need any
16 more time to discuss this with him?

17 THE DEFENDANT: No.

18 THE COURT: Okay. Are you satisfied with him?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Do you need him to do
21 anything else for you this morning?

22 THE DEFENDANT: No.

23 THE COURT: Okay. You are fully satisfied with
24 him?

25 THE DEFENDANT: I'm satisfied.

State v. Melody Holmes 2013-GS-04-1179/1181
Guilty Plea Hearing August 12, 2013

9

1 THE COURT: Okay. Now, Mr. Tavernier, having
2 reviewed this case, do you believe that the State does
3 have sufficient evidence by which it could convince a
4 jury of your client's guilt beyond a reasonable doubt if
5 she were to go to trial?

6 MR. TAVERNIER: Absolutely, Your Honor.

7 THE COURT: And do you concur in that, Ms.
8 Holmes?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Now, Ms. Holmes, I'm
11 looking at your sentencing sheet. And it would appear
12 that you are forty-three. Are you forty-three?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. And it tells me that you are
15 from here in Anderson. Is that right?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you a life-long resident of
18 Anderson County?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. You were born and raised
21 here?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you married?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you have any children?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. And how many children do you
3 have?

4 THE DEFENDANT: Three.

5 THE COURT: Are any of those children under
6 eighteen?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do any of them live with you?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. So your children are all
11 grown?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. Ms. Holmes, how far did you
14 go in school?

15 THE DEFENDANT: Eleventh grade.

16 THE COURT: Okay. And have you been working
17 anywhere?

18 THE DEFENDANT: Not since '08, 2008.

19 THE COURT: What kind of work did do back then?

20 THE DEFENDANT: I was a vendor for Home Depot.

21 THE COURT: I didn't hear you.

22 THE DEFENDANT: A vendor for Home Depot.

23 THE COURT: For Home Depot, okay. And have you
24 ever had any mental health problems or addiction issues
25 that might interfere with your ability to understand what

State v. Melody Holmes 2013-GS-04-1179/1181
Guilty Plea Hearing August 12, 2013

11

1 we are doing here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you understand what we're doing?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. And Ms. Holmes, have you had
6 any drugs or alcohol, anything of that nature that might
7 cloud your mind or prevent you from understanding what
8 we're doing here today in the last twenty-four hours?

9 THE DEFENDANT: No.

10 THE COURT: Okay. Very well. Now, I want you
11 to listen very carefully. The Solicitor is about to tell me
12 why you were charged with these offenses.

13 MR. MCLAIN: Your Honor, on February 13th,
14 2013, members of the Anderson County Narcotics Division,
15 along with members of the Anderson County Sheriff's
16 Office SWAT Team, did execute a search warrant at
17 Choctaw Street in Anderson County, which is the residence
18 of Ms. Holmes. Upon entering the house, they did find
19 over thirty-three grams of cocaine. Ms. Holmes was
20 arrested at that point. And as she was being booked in
21 to the detention center, they found another seven point
22 three grams of crack cocaine and a hundred and forty-five
23 grams of marijuana.

24 THE COURT: On her person?

25 MR. MCLAIN: On her person, Your Honor.

1 THE COURT: All right. And Ms. Holmes, is that
2 what occurred?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. And is that what you did?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And is that why you're pleading
7 guilty to these three charges?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Has anybody promised you
10 anything, threatened you in any way? Has anyone done
11 anything that you feel was inappropriate or improper in
12 order to get you to plead guilty to these charges?

13 THE DEFENDANT: No, sir.

14 THE COURT: Okay. Do you think you've had all
15 the time you need to think about it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. And do you believe that this
18 is the best way for you to resolve this matter, that
19 these pleas are in your best interest?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And Ms. Holmes, are you
22 pleading freely and voluntarily? See, that's something
23 that I have to determine, whether or not your plea is
24 free and voluntary. Are you pleading freely and
25 voluntarily?

State v. Melody Holmes 2013-GS-04-1179/1181
Guilty Plea Hearing August 12, 2013

13

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. And have you been
3 truthful with me in answering the questions that I've put
4 to you today?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Thank you, ma'am. Now,
7 Ms. Holmes, at the end of these proceedings I will be
8 sentencing you. You have a right to appeal what I do
9 here today. Most people don't understand that you can
10 file an appeal from a guilty plea, but you certainly can.
11 It's difficult, but you can. In order to do that, you
12 must, you must, in the next ten days file what's called a
13 notice of intent to appeal, or you waive, give up, any
14 rights of appeal you may have. I don't know that you
15 would want to appeal. But if you did, you must file a
16 notice of intent to appeal within the next ten days.

17 Now, I'm sure that you don't know how or where to do
18 that. But if you were to want to do that, Mr. Tavernier
19 would be available to get you started to file that for
20 you. And then you could hire an attorney to perfect your
21 appeal or continue with your appeal. Or if you couldn't
22 afford one, one would be appointed for you. Do you
23 understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: What's the magic number? How many

1 days?

2 THE DEFENDANT: Ten.

3 THE COURT: Ten. You're absolutely right.

4 Okay.

5 Ms. Holmes, I find that there is a substantial
6 factual basis for this plea and that this plea is made
7 freely, voluntarily, knowingly, and intelligently and
8 with the advice of a very competent attorney with whom
9 Ms. Holmes tells me she is satisfied, and I will accept
10 Ms. Holmes' plea in this matter.

11 Anything further from the State?

12 MR. MCLAIN: Your Honor, we would just ask that
13 you exercise your discretion in sentencing her.
14 Investigator Mark Gregory from the Anderson County
15 Sheriff's Office Narcotics Division, and he would like to
16 talk a little bit about his involvement with Ms. Holmes.

17 THE COURT: Certainly, he may.

18 INVESTIGATOR GREGORY: Good morning.

19 THE COURT: Yes, sir.

20 INVESTIGATOR GREGORY: Your Honor ---

21 THE COURT: And this was Mr. ---

22 INVESTIGATOR GREGORY: Investigator Gregory,
23 Mark Gregory.

24 THE COURT: Gregory. All right, Mr. Gregory.

25 INVESTIGATOR GREGORY: Yes, Your Honor. Your

State v. Melody Holmes 2013-GS-04-1179/1181
Guilty Plea Hearing August 12, 2013

15

1 Honor, for the past six, seven years we've had a nuisance
2 in Anderson County, and it is Ms. Holmes' sons. One is
3 currently serving a sentence in federal prison. The
4 other is currently incarcerated in the Anderson County
5 Jail. Ms. Holmes has been able to facilitate her sons'
6 being a nuisance to this county.

7 And when I say nuisance, involved in numerous
8 shootings, drug dealing, robberies, and other
9 conspiracies that would just take too long to speak about
10 today. They have been enabled by their mother to be able
11 to have a place to go back to and somebody to look after
12 them and somebody to turn a blind eye to the criminal
13 activities that they've been committing for years.
14 That's all I have, Your Honor.

15 THE COURT: All right. Mr. Tavernier, tell me
16 about your client.

17 MR. TAVERNIER: Thank you, Your Honor. May it
18 please the Court. With all due respect to what
19 Investigator Gregory has informed the Court about, I
20 don't believe that any of that, Your Honor, is relevant
21 to any of Ms. Holmes' conduct.

22 THE COURT: And I acknowledge that.

23 MR. TAVERNIER: And she has never been charged
24 in any drug offense or conspiracy offense in the past.

25 THE COURT: It's my understanding that she has

1 no prior drug record; is that correct?

2 MR. TAVERNIER: That is correct, Your Honor.

3 Her indications to me -- and I think when she has an
4 opportunity to address the Court -- are that we have --
5 she has requested of me and I have discussed with her
6 the, and quite frankly, the pending charges against her
7 son and whether conspiracy would be one of those
8 elements. And I have discussed with her, and she has
9 adamantly maintained from the start -- and I believe she
10 told officers, which is basically why we have no defense
11 -- that all the drugs were hers. That she maintained
12 that this alone was her own enterprise. We've discussed
13 that. And that's, quite frankly, Your Honor, the basis
14 for the plea, because she has indicated to -- I believe,
15 between three to four officers were present when she
16 claimed full responsibility for the drugs.

17 She is aware that you have no discretion in awarding
18 her the mandatory minimum, and we have discussed that.
19 What I have been requested to ask of the Court is to
20 defer her reporting for approximately one month. In her
21 defense on that, Your Honor, she has reported to every
22 court appearance required of the Court. She was charged
23 in February, Your Honor -- this appears to be somewhat on
24 a fast track for disposition -- and has made all the
25 appearances through the public defender's office. I am

State v. Melody Holmes 2013-GS-04-1179/1181
GUILTY PLEA HEARING August 12, 2013

17

1 in private practice, Your Honor. I do drug cases on a
2 contract basis. But she has made every appearance. She
3 was here on Thursday, both in the morning and in the
4 afternoon for the motions that were heard before Judge
5 Macaulay. And she appeared this morning, Your Honor,
6 knowing full well what was pending before her.

7 So if Your Honor deems it appropriate, we would ask
8 that -- and maybe a charge that's held in abeyance
9 pending her reporting or something of that nature to
10 possibly enhance the sentence if you retain jurisdiction
11 to ensure that she controls her own future pertaining to
12 sentencing if she fails to report. But that, quite
13 frankly, Your Honor, is the only thing that she has
14 requested, that I inform the Court and ask the Court for
15 some leniency in that regard.

16 THE COURT: All right. Let me hear from the
17 Solicitor's office concerning a request for delayed
18 reporting.

19 MR. MCLAIN: Your Honor, the State opposes
20 that. We don't see the reason or why she would need
21 thirty days to report. And while it's true that she has
22 been present when sent bond cards the past several
23 months, she wasn't showing up to turn herself in to go
24 spend multiple years in prison those times either.

25 THE COURT: All right. And Mr. Tavernier, I

1 would respectfully deny your motion for that relief in
2 that it's very rare that I grant such a motion. And I
3 don't do so or have never done so over the objection of
4 the State. And in this case, I don't see any real good
5 reason for it or any reason for it actually.

6 The sentence of this Court is that as to the offense
7 of possession of cocaine base or crack cocaine with
8 intent to distribute is that she be committed to the
9 South Carolina Department of Corrections for a period of
10 seven years. As to the possession of marijuana with
11 intent to distribute, the sentence of the Court is she be
12 committed to the State Department of Corrections for a
13 period of five years. And as to the trafficking in
14 cocaine twenty-eight to one hundred grams, the sentence
15 of the Court is that she be confined in the State
16 Department of Corrections for a period of seven years.
17 All of these sentences are concurrent. And she's to be
18 given credit for any time that she has served.

19 Mr. Tavernier, do you know how many days she has
20 served? I will enter it on the ---

21 MR. MCLAIN: I believe it's fifteen, Your
22 Honor.

23 THE COURT: Fifteen; is that correct?

24 MR. TAVERNIER: Yes, sir.

25 THE COURT: I will enter it on the sentencing

State v. Melody Holmes 2013-GS-04-1179/1181
Guilty Plea Hearing August 12, 2013

19

1 sheet so that we're sure that she gets that credit, okay?

2 Thank you very much.

3 MR. TAVERNIER: Your Honor, if I may, she has
4 requested to address the Court. If ---

5 THE COURT: I am so sorry, Ms. Holmes. I
6 overlooked that. I'll be glad to hear from you. Yes,
7 ma'am?

8 THE DEFENDANT: Yes, I just want to address to
9 you and the Court that the drugs was mines. I bought all
10 the drugs. Everything in the house was mines. Nobody
11 else is accountable but me.

12 THE COURT: Very well. Thank you, ma'am.

13 THE DEFENDANT: Thank you.

14 THE COURT: And my sentence would not change in
15 that regard. All right. Thank you. Good luck to you,
16 Ms. Holmes.

17 MR. TAVERNIER: Thank you, Your Honor.

18 (WHEREUPON, the hearing ended at approximately 10:58
19 a.m.)

20 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1

CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 13th day of August 2013.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

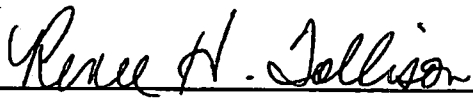
12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14

December 12, 2013

15

16



17

Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of Anderson

In the Court of Common Pleas

2013-CP-04-02236

Melody Holmes 239097
Full name and prison number (if any) of Applicant.

vs.

The State of S.C.
Name of Respondent.

Atty. Gen.

**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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention CGGI SRE 18 4450 Broadriver Rd.
Columbia S.C. 29210
2. Name and location of Court which imposed sentence Anderson County
General Session Court, Anderson S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Unknown 2013-GS-10-Marijuana
 - (b) Unknown 2013-GS-10-Crack Cocaine
 - (c) Unknown 2013-GS-10-Cocaine
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 07-12-13 - 7 yrs - Concurrent
 - (b) 07-12-13 - 7 yrs - Concurrent
 - (c) 07-12-13 - 7 yrs - Concurrent

A TRUE COPY

OCT - 13 2013

Richard R. King
CLERK OF COURT

5. Check whether a finding of guilty was made

- (a) after a plea of guilty yes
- (b) after a plea of not guilty NO
- (c) after a plea of nolo contendere NO

6. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. NO
- ii. NO
- iii. NO

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

- i. NO
- ii. NO
- iii. NO

(c) the date of each such result:

- i. NO
- ii. NO
- iii. NO

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

- i. NO
- ii. NO
- iii. NO

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Attorney didn't appeal.
- (b) N/A
- (c) N/A

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

- (a) Entrapment Defense - Conspiracy
- (b) 4th Amendment USCA - Denied Due Process
- (c) 6th Amendment USCA - Forced to plead Guilty

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) State used a informant to set up a buy.
- (b) Search Warrant invalid didn't state Cocaine or Crack Cocain
- (c) Council failed to suppress evidence.
Council failed to give me discovery evidence
Council failed to impeach state's evidence
of video. Camera. Identity uncertain

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NO
- ii. NO
- iii. NO
- iv. NO

(b) the name and location of the Court in which each was filed:

- i. NO
- ii. NO
- iii. NO
- iv. NO

(c) the disposition thereof:

- i. NO
- ii. NO
- iii. NO
- iv. NO

(d) the date of each such disposition:

- i. NO
- ii. NO
- iii. NO
- iv. NO

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

- i. NO
- ii. NO
- iii. NO
- iv. NO

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) Attorney didn't raise the issue.
- (b) Attorney didn't raise the issue
- (c) ~~Attorney didn't raise the issue~~ After discovery eri.

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Pre-trial hearing
Kurt Tarnener Public Defender Anderson County
- ii. Kurt Tarnener. Public Defender Anderson County
Guilty plea trial
- iii. N/A
N/A

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

- i. Pre trial Hearing
- ii. Guilty Dec
- iii. N/A

18. State clearly the relief you seek in filing this application.

Sentence vacated - Fast and Speedy Trial (120) days
Reopen State evidence and appeal bond

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

N/A

STATE OF SOUTH CAROLINA

County of Anderson County

VERIFICATION

2013-CP-04-02236

I, Melody Holmes 239097

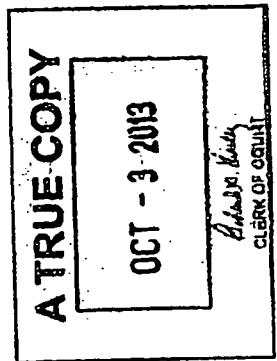
being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Melody Holmes

SWORN to and subscribed before me this 1st day of October, 19 2013

Kathy R. Barner (L.S.)
Notary Public

My Commission Expires August 12, 2015



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

2013-CP-04-02236

I, _____, 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:

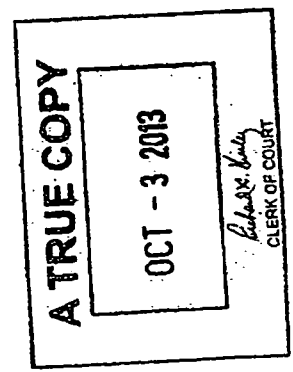
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

X Melody Holmes
Applicant

SWORN or affirmed to and subscribed before me this 1st day of October, 19 2013

Kathy R. Barner
Notary Public

My Commission Expires August 12, 2015



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	Case No. 2013-CP-04-2236
Melody Holmes,)	
S.C.D.C. No. 239097,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the application for post-conviction relief filed October 3, 2013 would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the June 2013 term of the Anderson County Grand Jury for possession of crack cocaine with intent to distribute (2013-GS-04-1179), and trafficking in cocaine, 28 grams or more, but less than 100 grams, first-offense (2013-GS-04-1180), possession of marijuana with intent to distribute, first offense (2013-GS-04-1181). Applicant was represented by Kurt Tavernier, Esq. On August 12, 2013, the State called its case. Applicant entered a guilty plea as indicted. The Honorable J. Cordell Maddox, Jr., sentenced Applicant to seven (7) years imprisonment for possession with intent to distribute crack cocaine, seven (7) years imprisonment for trafficking in cocaine, and five (5) years imprisonment for possession with intent to distribute marijuana. The sentences were to be served concurrently. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction, the applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel:
 - a. "Counsel failed to suppress evidence;"
 - b. "Counsel failed to give me my discovery;"
 - c. "Counsel failed to impeach State's evidence of video camera. Identity uncertain;"
2. "Entrapment defense – Conspiracy:"
 - a. "State used informant to set up a buy."
3. "Fourth Amendment USCA – Denied due process:"
 - a. "Search warrant invalid didn't state cocaine or crack cocaine."

Any claims not specifically enumerated in the PCR application or amendments **not filed timely ten (10) days prior of the evidentiary hearing** will be opposed by the State, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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 (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 (1985).

Respondent submits that 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, 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.

The Respondent submits that Applicant's second and third allegations for Post-Conviction Relief that should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss these allegations.

V.

Applicant further alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

VII.

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

Respectfully submitted,

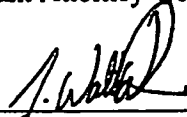
ALAN WILSON
Attorney General

JOHN W. McINTOSH

Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Dec 3rd, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE TENTH CIRCUIT
COUNTY OF ANDERSON)	
)	2013-CP-04-2236
)	
MELODY HOLMES, # 239097)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent)	
<hr/>		

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

Hugh W. Welborn, Esq.
Post Office Box 173
Anderson, SC 29622

DATED this 31st day of December, 2013

Troyesh Brailey
Troyesh Brailey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

MELODY HOLMES,)
)
 PLAINTIFF,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
_____)

2013-CP-04-02236

FEBRUARY 9, 2015

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

APPEARANCES:

HUGH WELBORN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

WALT WHITMAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Melody Holmes Welborn Whitmire				
Kurt Tavernier Welborn Whitmire Judge				
Closing - Welborn				
Closing - Whitmire				
				PAGE
Certificate of Reporter				

Melody Holmes -vs- State of South Carolina (2013-CP-04-02236)
Exhibit List

3

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1

FEBRUARY 9, 2015

2

(WHEREUPON, court convened with all parties

3

present and the following proceedings were had.)

4

THE COURT: Who's next?

5

MR. WHITMIRE: Melanie Holmes, Your Honor.

6

May it please the Court?

7

THE COURT: Yes, sir, just one second,

8

please.

9

All right, Mr. Whitmire.

10

MR. WHITMIRE: May it please the Court? The

11

next matter before Your Honor is Melanie Holmes versus

12

State of South Carolina, Case Number 2013-CP-04-2236.

13

Ms. Holmes was indicted June 2013 term by the Anderson

14

County Grand Jury for trafficking cocaine, twenty-eight

15

grams or more but less than a hundred, possession with

16

intent to distribute crack cocaine and possession of

17

marijuana.

18

She was represented by Mr. Tavernier. She

19

subsequently pled guilty straight up in front of Judge

20

Maddox. Judge Maddox sentenced her to seven years for

21

possession with intent to distribute marijuana -- I

22

correct myself; it was possession, Your Honor --

23

trafficking cocaine and possession. All of these

24

served concurrently. She did not file a notice of

25

appeal. She has, however, filed a timely post

1 conviction relief application. We are here on that
2 matter today. She is present and represented by Mr. --
3 represented by counsel. To turn matters over, her
4 allegations stand at five. There's a failure to
5 investigate, a defense of entrapment, failure to object
6 to a purported defective search warrant, failure to
7 review and provide her a copy of discovery materials,
8 and failure to make a motion to suppress.

9 THE COURT: Mr. Welborn?

10 MR. WELBORN: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. WELBORN: I'd like to call Melody Holmes
13 to the stand.

14 THE COURT: Come around, please, ma'am.

15 THE CLERK: Right here first, please, ma'am.
16 I'd like to ask you to raise your right hand.

17 THE WITNESS: Yes, sir.

18 THE CLERK: Do you solemnly swear or affirm
19 that the testimony you'll give the court today in this
20 case to be the truth, the whole truth and nothing but
21 the truth?

22 THE WITNESS: Yes, sir, I do.

23 THE CLERK: If you would take the witness
24 stand, please, ma'am.

25 MR. WELBORN: Please the Court?

1 THE COURT: Yes, sir.

2 MELODY HOLMES,

3 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. WELBORN:

6 Q. You're Melody Holmes?

7 A. Yes, sir.

8 Q. Ms. Holmes, you are currently incarcerated on
9 these charges that you pled guilty to that was
10 mentioned by opposing counsel just a few minutes ago;
11 is that correct?

12 A. Yes, sir.

13 Q. And you were previously represented in those
14 particular cases that were referenced, you were
15 represented by Mr. Tavernier, who's seated beside Mr.
16 Whitmire; is that correct?

17 A. Yes, sir.

18 Q. Now, you have alleged several things in your
19 return, and you also just a moment ago showed me
20 another sentencing sheet that I had not seen or perhaps
21 I had failed to find it for some reason. So let's talk
22 about those things. First of all, you stated that your
23 lawyer, Mr. Tavernier, was ineffective because he
24 failed to suppress evidence. And I think you allege
25 that evidence would be in a video; is that correct?

1 A. Yes, sir.

2 Q. Tell the Court about that.

3 A. Well, Your Honor, in the court -- I'm new to all
4 this -- and I had asked Mr. Kurt Tavernier to suppress
5 the evidence. He said that had to count. So when I
6 approached him, he said you'll go two weeks before you
7 go to Court. I never signed in general session. I
8 never been in general session. My case is a mess. So
9 he kept calling me. I guess after he got the young man
10 -- that don't look like Mr. McClain to me; I don't
11 know. Well, any way ---

12 Q. The prosecutors from that case is not in this
13 courtroom, to answer that question.

14 A. Oh, okay.

15 Q. Mr. Tavernier is right here. Go ahead.

16 A. Well, anyway, he said, well, I don't think they
17 going to allow you to see the camera because that's my
18 evidence right there. So he had me come to the
19 courtroom at ten o'clock. I did. So ---

20 Q. Who is he? Who had you come to the courtroom at
21 ten?

22 A. Mr. Tavernier.

23 Q. Go ahead.

24 A. So he said when I got here at ten ---

25 Q. Let me interrupt; I'm sorry.

1 A. Yes, sir.

2 Q. Can you pull the microphone a little bit closer
3 straight in front of you? There you go. Thank you.
4 Go ahead.

5 A. He said -- so when I got here he said could you
6 to come back at two; the judge ain't going to be able
7 to hear you. I said, yes, sir. So I come before --
8 came back at two. Came back before Judge Macaulay. It
9 was Kurt Tavernier telling me -- Kurt was just telling
10 me all kind of stuff. You better not take this to
11 trial. I don't know what all -- he just brainwashed
12 me. They just made a fool out of me. You're going to
13 get a hundred years plus the state going to tax you.
14 Me being so stupid, what they got off me, I thought
15 that was my evidence. That's not my evidence. My
16 evidence is the -- why they had come to my house. They
17 denied me for seeing the film.

18 Q. Let's stop right there. So your first allegation
19 is there was a video that you wanted to see?

20 A. Correct.

21 Q. Now, what would that video have shown or do you
22 have any idea?

23 A. The way he tell me that -- well, he didn't say
24 who was in the video. He didn't say -- I said, well,
25 specifically who was it they said? I said, that's

1 where you wrong about it; wasn't nobody there at my
2 house. He said, but we have a video of you. They
3 never presented it to me.

4 Q. But did your lawyer ask the Court to let you look
5 at that video? Or did he file a motion for anybody to
6 even look at it?

7 A. No. He didn't file no motion. They was just
8 carrying on back there, just laughing at me. That's
9 what they did. They was in a big courtroom like this
10 laughing at me.

11 Q. Now, who was laughing at you?

12 A. Kurt Tavernier, Rame Campbell, the detective Mark
13 Gregory.

14 Q. So they were laughing at you when you asked to
15 see the video or what were they laughing at you about?

16 A. Yes. I mean they was laughing about -- he wasn't
17 representing me. I wanted -- everything I was telling
18 him, it was just going in one ear out the other ear. I
19 mean this case is a mess. It's a mess.

20 Q. Okay. Well, that's why I'm asking these
21 questions. I want to make sure the Court understand
22 it. Let me ask you some more specific questions; okay?
23 Now, I want to make sure we're clear about this video
24 because that's the thing that I think you're most upset
25 about.

1 A. Right. If you don't have no evidence you have no
2 case.

3 Q. So you wanted to see a video. And how do you
4 know they even had a video? Did they tell you?

5 A. Yes.

6 Q. Who's they?

7 A. Kurt Tavernier, everyone -- basically when I
8 first went there they gave me a list. I think a motion
9 of discovery said the video. My house had been under
10 surveillance for seventy-two hours.

11 Q. Okay. Now, and Mr. Tavernier then, according to
12 you, he just ignored the video. He didn't file a
13 motion or anything about seeing the video; is that
14 correct?

15 A. Correct.

16 Q. And you're telling the Court that that would have
17 shown somebody doing something, a crime, but it
18 wouldn't be you; is that correct?

19 A. Correct.

20 Q. Now, you also say that your lawyer failed to give
21 me my discovery. Now, what did he not give you that
22 you wanted?

23 A. The main thing that I was focused on was the
24 video. The video.

25 Q. All right. Besides the video, we've already

1 established, for some reason, you never saw a video?

2 A. No, sir.

3 Q. And you wanted to see it and you asked to see it?

4 A. Right.

5 Q. And you told the Court he didn't even file a
6 motion about it?

7 A. Correct.

8 Q. So let's talk about then what else in your
9 discovery besides the video you didn't get to see.

10 A. I mean, he showed me everything else. It was
11 just that the fact that ---

12 Q. Okay. Stop. What else did he show you? You
13 said he said everything else.

14 A. That's what I was telling you back there, Judge
15 McIntosh, this is a -- he was in on this case. You had
16 possession of this case.

17 Q. Well, I'm going to get there in just a moment.

18 A. Okay. Okay.

19 Q. I'm going to let you say whatever you want to
20 say.

21 THE COURT: Stop for one second. I had
22 possession of this case?

23 THE WITNESS: Yes. Dealing with -- you want
24 me to bring it to you? It was dealing with my son, he
25 was a Defendant in this case. I was an alibi and a

1 witness in this case.

2 MR. WELBORN: Your Honor, I was going -- I'll
3 get to that right now if it please the Court?

4 THE COURT: Yeah. I mean, if it's a matter I
5 need to consider whether I need to recuse myself ---

6 MR. WELBORN: All right. We'll get to it
7 right now.

8 THE COURT: --- I need to hear it.

9 Q. All right. You've alleged somehow that Mr.
10 McIntosh, Judge McIntosh at the time a judge, had
11 something to do with this case that you now have said,
12 well, that would be a conflict of being in this case on
13 this PCR. And he just asked you, so I'm going to ask
14 you for the record, tell me about that alleged conflict
15 or perceived conflict that you think he would have in
16 being in this case?

17 A. Okay. Your Honor, you had possession of this
18 case. I was a witness and I was an alibi witness to
19 this case. So I feel that it would be a conflict of
20 interest. Yes. And I'm ---

21 THE COURT: Hang on. I had -- you were an
22 alibi witness in your own case?

23 THE WITNESS: It was another -- it was a
24 Defendant. It would appear to be my son.

25 THE COURT: Let's do this; I want to take a

1 break anyway. Talk to her, Mr. Welborn, and see if
2 there's any realistic grounds or valid grounds for me
3 to consider recusal. If it is, I certainly will. If
4 it's not, we'll proceed with this hearing; okay?

5 MR. WELBORN: Before we take that break can
6 we hear about one more minor thing involving similar
7 ...

8 THE COURT: Yes, sir.

9 Q. You stated for the record, and we'll try to
10 clarify this next thing, you've got your sentencing
11 sheet with you up there; is that correct?

12 A. Yes, that's correct.

13 Q. Now, you just told me a while ago that another
14 judge besides Judge Maddox heard this thing because
15 it's on the sentencing sheet, so Judge -- what did you
16 say; Hyman?

17 A. Yes. Judge Maddox, Cordell Maddox ---

18 MR. WELBORN: May I approach the witness?
19 Can you hand this to me, please?

20 THE WITNESS: Your Honor, Judge Cordell
21 Maddox did not sentence me. Judge Larry B. Hyman
22 sentenced me. What they did was put his name on my
23 sentencing sheet. Now that was right. But the
24 transcript, they got Cordell Maddox. And I can prove
25 that I went in front of him doing probation that

1 morning. They wanted me to be here at nine o'clock.
2 Oh, it was just a mess. And I was the first one seeing
3 him. They have this paperwork wrong. It's in my case
4 that they have done. And Mr. Shirley, Richard Shirley,
5 that man was nowhere in the courthouse that day.

6 MR. WHITMIRE: Objection. Relevance.

7 THE COURT: Overruled.

8 THE WITNESS: He wasn't in that room with us.

9 MR. WELBORN: May I approach the bench with
10 her sentencing sheet that she says was in this case?
11 And it appears to be.

12 Q. Just so the Court understands. Your son
13 originally was charged in this case along with you, as
14 well; is that correct?

15 A. Yes, sir, my son and another fellow.

16 Q. And he was subsequently dismissed when you pled
17 guilty; is that correct?

18 A. I don't know what went on with that case.

19 Q. Well, he's not incarcerated right now; is he?

20 A. No. In fact, they dismissed his charges.

21 Q. That's my question.

22 A. Okay.

23 Q. So is it a possibility, then, when you say Mr. --
24 Judge McIntosh was involved, is it a possibility he
25 might have had a hearing regarding your son's case at

1 another point?

2 A. Yes. In this case, this case right here.

3 Q. But would that have been a preliminary hearing or
4 do you have any idea what kind of hearing it was?

5 A. It was a trial.

6 Q. A trial?

7 A. Yes.

8 Q. He went through a trial even though it was
9 dismissed for him?

10 A. Yes, sir.

11 Q. Let me see if I can clarify this for the Judge;
12 okay?

13 A. Yes, sir.

14 Q. Here's what happened. You and your son together
15 were charged in something involving a conspiracy and
16 some drugs. And at some point you pled guilty, that's
17 what this indicates, and your son was dismissed. And
18 at some point you're alleging that Judge McIntosh in
19 another proceeding in an earlier time with your son had
20 something to do with him, but not with you; is that
21 accurate?

22 A. Yes. Judge McIntosh is the one that dismissed
23 the charges.

24 Q. Okay. But Judge McIntosh did not have anything
25 to do with you? He didn't hear you on any of this; did

1 he?

2 A. No, sir.

3 Q. Okay. Now, ---

4 A. But he in with the case. That's why I was saying
5 he had possession of the case.

6 MR. WELBORN: All right. Judge, that's the
7 best I can do with that.

8 THE COURT: Let's do this. I'm going to let
9 you step down. I'm going to take a break. And I want
10 you to talk with her. I have no independent
11 recollection of this matter whatsoever, I can assure
12 you.

13 MR. WELBORN: Oh, I'm certain.

14 THE COURT: But talk to her a little bit
15 further.

16 Mr. Whitmire, I'm going to allow, under the facts
17 of this case, Mr. Welborn to speak to the witness,
18 although she's been sworn and placed on the stand, for
19 the sole and limited purpose of determining if there's
20 any valid reason I should consider recusing myself.
21 Other than that, you can't have any other conversations
22 with Mr. Welborn; okay? You can only talk to him about
23 whatever you allege my involvement was in any
24 tangential collateral matter to this there was. And
25 I'll be back in a few minutes; okay?

Melody Holmes -vs- State of South Carolina (2013-CP-04-02236)
Melody Holmes - Direct Examination by Mr. Welborn

17

1 THE WITNESS: Yes, sir. Thank you.

2 THE COURT: Thank you.

3 MR. WHITMIRE: Without objection.

4 MR. WELBORN: May I get the sentencing sheet
5 back, Your Honor?

6 THE COURT: Yes, sir, you may.

7 Let's take about ten minutes. If you need more
8 time, let me know, please.

9 MR. WELBORN: Yes, sir.

10 THE WITNESS: Thank you.

11 MR. WELBORN: And I'll be careful and talk
12 only about this.

13 THE COURT: Thank you very much.

14 (WHEREUPON, the Court stood at recess for a short
15 break.)

16 THE COURT: Mr. Welborn, we broke on this
17 matter so you could speak with Ms. Holmes a little bit
18 further to determine whether or not there was a matter
19 that I needed to consider recusing myself on; is that
20 correct?

21 MR. WELBORN: Yes, sir, and that's all that I
22 talked to her about, Your Honor.

23 THE COURT: And have you had sufficient time
24 to speak with her?

25 MR. WELBORN: I have had sufficient time to

1 speak with her, Your Honor, and in all candidness,
2 nothing is any clearer right now. She says the
3 following: That her son had a trial, a full-day trial
4 on these charges in front of Your Honor and that a jury
5 came back and after a full day found him not guilty.
6 And that you were the judge.

7 THE COURT: Okay.

8 MR. WELBORN: However, Mr. Tavernier has no
9 recollection of -- doesn't know about any of that. He
10 just knows that the son -- charges would have been in
11 this case except she took full responsibility for the
12 contraband that was found in her home. And that
13 because of that the son was not charged in these
14 particular charges. She's of the opinion that he was
15 and that he was found not guilty by Your Honor. I have
16 no independent proof of that.

17 THE COURT: I found him not guilty or the
18 jury found him not guilty?

19 MR. WELBORN: The jury.

20 THE COURT: Well, assume for the sake of
21 argument that that is correct. What basis would there
22 be for me to recuse myself, having sat in a co-
23 Defendant trial, essentially?

24 MR. WELBORN: I see no conflict of interest
25 there.

1 THE COURT: Okay. Ms. Holmes, other than the
2 fact that I supposedly sat on his trial, can you think
3 of any other basis for me to step down off this case?

4 THE WITNESS: I couldn't hear you, Your
5 Honor.

6 THE COURT: Other than the fact that I
7 supposedly sat over or presided over a trial with a co-
8 Defendant, can you think of any basis other than that
9 that I should recuse myself in this matter?

10 THE WITNESS: No, sir, Your Honor.

11 THE COURT: Okay. Let's continue. I'll take
12 that under advisement. I don't want to delay the
13 proceedings, but if there's good ground, I certainly
14 don't have a problem recusing myself.

15 I'll tell you, Ms. Holmes, I certainly don't have
16 any independent recollection of you. I have no
17 independent recollection of your son, if that makes a
18 difference to you. But I'll -- let's continue this
19 hearing and then I'll decide that as we go; okay?

20 MR. WELBORN: Yes, sir.

21 THE COURT: Ms. Holmes, will you come back
22 around, please, ma'am.

23 THE WITNESS: Yes, sir.

24 MR. WHITMIRE: Your Honor, may I put one
25 thing on the record first?

1 THE COURT: Yes, sir.

2 MR. WHITMIRE: The applicable transcript of
3 the lower proceeding plea was held by Judge Hyman. It
4 wasn't Judge Maddox. There's a syntax error,
5 typographical error on the transcript. But the
6 dispositive document is in fact issued by Judge Hyman
7 as the plea judge. That has absolutely no bearing on
8 us going forward today nor does it prejudice applicant
9 in anyway in her preparation of this case. As long as
10 Judge Hyman is not here in the PCR, there are no
11 issues. Mr. Tavernier can testify further just to make
12 it clear for the record.

13 THE COURT: So in other words, the transcript
14 of record shows that the plea was taken in front of
15 Judge Maddox; whereas it was actually taken by Judge
16 Hyman because he signed the sentencing sheets?

17 MR. WHITMIRE: Yes, Your Honor. And as has
18 been explained to me, Judge Hyman and Judge Maddox were
19 both presiding over general sessions that week and in
20 and out in different pleas. So the confusion is
21 understandable. Didn't catch it on the sentencing
22 code. But that is a dispositive document, just to make
23 the record clear for any issues going forward.

24 THE COURT: Mr. Welborn, does that affect
25 your ability to proceed with this matter?

1 MR. WELBORN: Not at all. And I agree with
2 what they said. That's an honest typo, for lack of a
3 better way to put it.

4 THE COURT: Okay. Very good. You may
5 continue.

6 MR. WELBORN: May I approach the witness to
7 give this back to her?

8 THE COURT: Yes, sir, you may. You're
9 talking about the sentencing sheet itself?

10 MR. WELBORN: No, I don't need to talk about
11 it anymore. It's just she brought it with her. May I
12 continue examining my witness, Your Honor?

13 THE COURT: Yes, sir.

14 Q. All right. Ms. Holmes, you've alleged, again
15 back in your transcript, the biggest thing, and I'm not
16 going to belabor this, but I want to move on. I want
17 to refresh for the Court's memory, the biggest concern
18 you have is there was a video and you never got to see
19 it; is that correct?

20 A. Yes, sir.

21 Q. All right. Let's move to the next thing.

22 A. Can I say something?

23 Q. You may. Go ahead.

24 A. To Your Honor, to the Court, I was trying to tell
25 Mr. Welborn; I didn't want to go no further with my

1 case because I wanted to see the video because of the
2 subpoena for the evidence.

3 THE COURT: You wanted to see the video
4 today?

5 THE WITNESS: Yes, sir.

6 THE COURT: Is that what you're asking?

7 THE WITNESS: Yes, sir. I don't want to go
8 forward with my case. I mean, ...

9 MR. WELBORN: Your Honor, I tried to explain
10 to my client, we're getting to that through Mr.
11 Tavernier, but I couldn't talk about it while Your
12 Honor was out of here. I said that was a Court order.

13 THE COURT: All right. Keep going.

14 MR. WELBORN: I will.

15 Q. All right. Ms. Holmes, ---

16 A. Yes, sir.

17 Q. --- you also said that your lawyer failed to give
18 you your discovery. Besides the video, you said that
19 was the biggest thing, anything else he didn't give you
20 that you thought was discovery?

21 A. Not to my knowledge.

22 Q. Now you -- thank you. You also said that your
23 lawyer failed to impeach the state's evidence of the
24 video camera and the identity of whoever was on the
25 video that was uncertain because of that, uncertain to

1 you. Is that basically the same as not seeing the
2 video? Is that what you're saying, again?

3 A. Yes, sir.

4 Q. Thank you. You also have alleged that there was
5 an entrapment defense of conspiracy that the Court -- I
6 mean, Mr. Tavernier could have used or should have
7 used. Is that what you're trying to tell the Court?

8 A. Yes, sir.

9 Q. And what would that conspiracy have shown had he
10 done that for you?

11 A. I was the victim in the film.

12 Q. It's your ---

13 A. I wasn't the one that was in the video that they
14 say they have, you know.

15 Q. Okay. You've also stated that the State used an
16 informant to set up a buy and that you need to have the
17 confidential informant identified; is that correct?

18 A. Yes. I need to know something about this; yes.

19 Q. And you're saying to the Court that Mr. Tavernier
20 was deficient in his duties by not getting that
21 information or having the Court rule on it; is that
22 correct?

23 A. Correct.

24 Q. And he didn't file a motion or anything; is that
25 correct?

1 A. No, sir.

2 Q. Thank you. You also stated that you were denied
3 due process under the fourth amendment because your
4 search warrant didn't state cocaine or crack cocaine;
5 is that correct?

6 A. Yes, sir.

7 Q. Now, how was your lawyer deficient in not
8 bringing that up?

9 A. He didn't bring none of that up.

10 Q. And what should have been brought up -- how would
11 that make your case to where you pled guilty
12 involuntarily, is my question?

13 A. Okay. I pled guilty -- I was so scared --
14 everything that Mr. Tavernier would comment, it was
15 negative. I would say, well, who I sold something to?
16 You know who you sold something to. You just better
17 take this plea. Take this plea, if you don't -- first
18 he said three years and then he went to seven. Then he
19 went to twelve. I said, what? Wouldn't show me no
20 evidence. Everything that -- he was just throwing it
21 at me. I'd never been in general sessions. I went to
22 see him like three times. The third time I think I met
23 him up here on that Thursday, and that's when we was
24 doing the motion. And he said come back at two, which
25 I did. They denied it. Monday morning you have to be

1 here; it's going to trial or you better take this
2 guilty plea. You better take this guilty plea. So I
3 came over Monday morning. I had already been out six
4 months, out of jail six months. Came Monday, Mr.
5 Tavernier came and got me from the bench. The Judge
6 want to see you. I said, the Judge want to see me? I
7 didn't know. And the Judge, Mr. Hyman, I was
8 surrounded by six people in there. Oh, they went on
9 and on and on. Ma'am, you better take this trial or
10 take ---

11 MR. WHITMIRE: Objection. Hearsay.

12 THE WITNESS: Take this ---

13 THE COURT: Just one second. Identify who it
14 was speaking, please, Mr. Welborn.

15 Q. Who was speaking and telling you to do this
16 stuff?

17 A. Judge Hyman.

18 Q. Judge Hyman was telling you to plead guilty?

19 A. Judge Hyman was saying -- no, this is what he
20 said. This is what Judge Hyman said, you can take this
21 plea or take a trial. You will not leave here today.
22 You're going to have to take one or the other, one or
23 the other.

24 Q. Okay.

25 THE COURT: I sustain the objection. That's

1 -- is that a meeting that you said occurred before your
2 plea?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. I sustain the objection.

5 Q. Now, what you're really telling the Court then is
6 that you pled guilty involuntarily because your lawyer
7 didn't find out anything about who's on the video and
8 that would have proven it wasn't you; is that correct?

9 A. Yes, sir.

10 Q. And you want to see that video; is that correct?

11 A. Yes, sir.

12 Q. Thank you. Answer -- is there anything else you
13 want to tell the Court about why you should be granted
14 post conviction relief that I've not asked you?
15 Anything else at all?

16 A. Just the video. I mean, I want to see the video.

17 Q. I got it. Thank you. Answer anything opposing
18 counsel may have.

19 MR. WHITMIRE: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. WHITMIRE: I'll be brief, Your Honor.

22 **CROSS EXAMINATION**

23 **BY MR. WHITMIRE:**

24 Q. Ms. Holmes, if I recall correctly, you said Mr.
25 Tavernier made a fool out of you?

1 A. Yes.

2 Q. And everyone was just laughing at you in Court?

3 A. Yes.

4 Q. And this was your first experience in general
5 sessions?

6 A. Since about fourteen years ago; yes, sir.

7 Q. You had a conviction in 1996 for forgery?

8 A. Yes. I've done my time for that.

9 Q. Who was your attorney?

10 A. It might have been Nancy Jo Thomason.

11 Q. And you have a 2004 conviction for forgery?

12 A. Yes.

13 Q. Who was your attorney on ---

14 A. Charles Anderson. Like I said, I done my time
15 for that, sir.

16 Q. And how were they different than Mr. Tavernier?

17 A. They went by -- they took me step by step what
18 was going on. Mr. Tavernier never told me nothing.
19 Just leading me on a wild goose chase. At first he --
20 like I said, he was talking, he was talking -- just
21 talking wild.

22 Q. How many times did Mr. Tavernier meet with you
23 before this guilty plea?

24 A. No more than three times. And like I said, I
25 think the third time was here in the courtroom and they

1 called me to come up here. Because I never signed in
2 at general sessions. I went to his office about two
3 times.

4 Q. You were out on bond?

5 A. Yes, sir. For six months.

6 Q. Did you attend all of your appointments?

7 A. Yes, sir.

8 Q. Did you ever try to make additional appointments
9 or ask him when you were confused about something?

10 A. No. I would ask him while I was there.

11 Q. How many times did you, if you can remember, did
12 you meet with your other attorneys in your prior cases?

13 A. Several times.

14 Q. And what else made Mr. Tavernier such a bad
15 attorney compared to the two previous attorneys you
16 had?

17 A. He wouldn't help me with no evidence. I would
18 ask him what's the State's evidence? He didn't -- I
19 mean, he didn't help me at all.

20 Q. If I recall correctly, you said I believe, Ms.
21 Thomason and Mr. Anderson did those things for you?

22 A. Correct.

23 Q. Did you ever bring this to Mr. Tavernier's
24 attention and said, hey, I remember my prior attorneys
25 going over these things?

1 A. No. I wouldn't think I would have to. Every
2 time I asked him stuff, he would cut me down.

3 Q. Ultimately why did you plead guilty?

4 A. I pled guilty of what he said and then he said if
5 I take it to the jury -- I forget how he had it, if I
6 take it to trial and all this that -- it -- he was just
7 telling me all different kinds of stuff just to scare
8 me. You better take this plea. If you don't take this
9 plea right here, they're going -- the state's going to
10 get you. They're going to attach about three or four
11 more years onto your time. He forced me into taking
12 this plea. Because I wanted the video because I knowed
13 they said they had the video ---

14 Q. Thank you, Ms. Holmes. And your testimony today
15 is that you're innocent of these offenses?

16 A. Until I've been proven guilty, yeah.

17 Q. Did you share everything you knew with Mr.
18 Tavernier during your case?

19 A. Yes.

20 Q. When the police served that search warrant and
21 found all those drugs in your home, what did you tell
22 the police?

23 A. That what they found in my home was some crack
24 cocaine -- I mean powder. I had cocaine and marijuana
25 on me. It was mine.

1 Q. Did you tell this to Mr. Tavernier?

2 A. Yes. He knew that.

3 Q. Y'all talked about your options?

4 A. Yes. He told me they want your son. You better
5 -- if you don't turn on your son, the State's going to
6 give you this and give you that. I said, my son don't
7 have nothing to do with this.

8 Q. I'm a little confused. You're saying you pled
9 guilty because you were forced into it by his
10 ineffectiveness?

11 A. Yes. The way he was telling me about how much
12 time -- everything that he was telling me was negative.
13 So that's why I pled guilty.

14 Q. Not to protect your son?

15 A. No. My son is the wrong man.

16 Q. One more question. You said that Mr. Tavernier
17 told you, we're going to trial today or you're going to
18 plead guilty?

19 A. Yeah. They sent me one postcard to my mom's
20 house and it had a black mark for a trial. And that
21 was the date when I had came up here. They had sent
22 that out to my mom's house. It said a trial. I mean
23 ---

24 Q. Ms. Holmes, -- I'm sorry to interrupt you. You
25 can continue. My fault.

1 A. I was just saying, everything was just crushed
2 and crumbed all in together. And my paperwork, I
3 notice they don't have no evidence on this. It says in
4 my paperwork here where the state don't have no
5 evidence.

6 Q. So if I'm correct, you were arrested on
7 Valentine's Day 2013?

8 A. Yes, the day before Valentine's.

9 Q. Tried half a year later or your plea was half a
10 year later?

11 A. Yeah.

12 Q. And what you're saying is the State was telling
13 you, you're going to go to trial six months after
14 picking up these charges or you're going to plead
15 guilty today?

16 A. No, sir. All of a sudden it came down -- I never
17 had general sessions -- general sessions never wrote me
18 to come in and sign that. Never. I went to see, like
19 I said, Mr. Kurt Tavernier, about twice. And the third
20 time was up here. I never signed in. So I didn't know
21 my court date was coming up that soon. I never had a
22 chance to go out and try to get a lawyer or nothing.

23 Q. Your testimony is the case was going -- the State
24 was going to try you just that short after picking up
25 these charges?

1 A. I didn't know they was going to try me.

2 Q. Well, I'm confused. Did Mr. Tavernier tell you
3 the State was going to try you that day when you pled
4 guilty if you did not plead guilty?

5 A. He said they're bringing -- if you plead guilty
6 -- they're bringing all this stuff down. You better
7 not plead guilty -- that's the drugs they got off me
8 and stuff. That's what I thought. I didn't know no
9 better about the evidence, why they had come at my
10 house. You have to have a reason to come to my house.
11 Supposed to have a reason to come in my house. It was
12 all confused to me. Everything was -- it's still
13 halfway confused to me.

14 Q. Did y'all talk about pleading guilty, the pros
15 and cons of it, before going in front of Judge Hyman?

16 A. He just said that -- first he said twelve years,
17 then he say seven. He said you better take them seven.
18 So me -- I'm surrounded by six people in the room,
19 yeah, I'm going to take that plea. I didn't know what
20 was going to go on. I was scared to take a trial.
21 Still scared because I know there's stuff that's done
22 that's not supposed to be done in this case.

23 Q. One more question, Ms. Holmes. Or two more.
24 These forgery convictions, did you go to trial or did
25 you plead guilty?

1 A. I pleaded guilty. And I have done my time for
2 them charges.

3 Q. And Mr. Tavernier, did -- did Mr. Tavernier
4 explain to you that you don't have to plead that day if
5 you want to go to trial and have an opportunity to look
6 at that video?

7 A. No, he did not. When ---

8 Q. Never?

9 A. When I got in there, it was a trial that day.
10 You are to take them seven years. I wasn't leaving,
11 point blank. Point blank, I wasn't ---

12 Q. You were on bond?

13 A. Yes, I was out on bond.

14 Q. You weren't sitting in detention here?

15 A. No, sir, I was out.

16 MR. WHITMIRE: No further questions, Your
17 Honor.

18 Thank you, Ms. Holmes.

19 THE COURT: Redirect?

20 MR. WELBORN: No redirect.

21 THE COURT: Thank you, ma'am. You may step
22 down.

23 MR. WELBORN: May I call my next witness?

24 THE COURT: Yes, you may.

25 MR. WELBORN: Call Kurt Tavernier.

1 THE CLERK: Do you solemnly swear or affirm
2 the testimony you give the Court today in this case be
3 the truth, the whole truth and nothing but the truth?

4 MR. TAVERNIER: So help me God.

5 THE CLERK: All right. Take the witness
6 stand, please, sir.

7 MR. WELBORN: Please the Court?

8 THE COURT: Yes, sir.

9 KURT TAVERNIER,

10 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. WELBORN:

13 Q. You're Kurt Tavernier?

14 A. Yes, I am.

15 Q. How long have you been practicing law in South
16 Carolina, Mr. Tavernier?

17 A. Since 1989.

18 Q. What's your main area of practice?

19 A. Criminal law.

20 Q. And you've also, I think, worked in the
21 solicitor's office on occasion, as well; is that
22 correct?

23 A. That's correct.

24 Q. And prior to that, I believe you were a police
25 officer in Greenville City; is that correct?

1 A. That's correct.

2 Q. Now, having had all that experience, you still
3 practice mainly criminal law; is that correct?

4 A. That's correct.

5 Q. Now, at some point you got introduced to Melody
6 Holmes here, my client; is that correct?

7 A. Yes, sir.

8 Q. And she's alleged that there are certain things
9 that you did and didn't do in her case. And you've
10 heard those things. We've discussed those. She's
11 first alleged that you failed to suppress evidence,
12 that was a video that she wanted to see it and that
13 would have proved that she hadn't done anything, she
14 wasn't a part of that. Now, tell the Court what, if
15 anything, you know about a video?

16 A. The video to which she is referring is a
17 videotape of a transaction that occurred outside of her
18 residence on the front porch. I think she lives in a
19 duplex, if I'm not mistaken, and they shared a front
20 porch. And the video reflected a transaction between
21 an individual and a confidential informant. That
22 individual on the video was not Ms. Holmes. It was a
23 white -- it was a black male on the video. That was
24 the basis and predicate for which they signed the
25 affidavit in order to obtain the search warrant.

1 Q. And ---

2 A. If I may?

3 Q. Please.

4 A. Because they wanted to see the video in order to
5 obtain the identification of the CI, I asked to see it.

6 The State would not let us see it.. I filed a motion.

7 The motion was heard on August 8th in front of Judge

8 Macaulay. He denied our allowance to see the video in

9 order to protect the confidential informant's identity.

10 Q. Now, do you have that order with you today?

11 A. I don't have the Order. I have the hearing

12 notice that I had.

13 Q. Well, the Order was denied for you to see the
14 video?

15 A. Correct.

16 Q. You do have that today; don't you? Didn't I see
17 that a little while ago?

18 A. I had the notice of the hearing. I don't have
19 the exact Order.

20 Q. All right. But it is your testimony that there
21 is an Order that denied your being able to see the
22 video; is that correct?

23 A. There should be. Judge Macaulay denied our
24 motion that day.

25 Q. And was Ms. Holmes with you on that day when that

1 happened?

2 A. No. I don't believe Kendra was able to get her
3 on the phone. I filed the motion on August 6th. We
4 heard it on August 8th. And Kendra was trying to reach
5 her on the phone. And we did not get any response.

6 Q. Kendra was your secretary at the time?

7 A. Kendra Gurley; yes. I'm sorry.

8 Q. Okay. Now, assuming for the purposes of the
9 Court's hearing here that you had insisted on taking
10 this case to trial, would you theoretically then have
11 been allowed at some point to know who the confidential
12 informant was?

13 A. No.

14 Q. Until you got to a trial, though ---

15 A. Not even for the trial because it was only a
16 predicate for the search warrant. The actual elements
17 of her criminal offense were possession of drugs; in
18 this case thirty-three grams of cocaine, half a pound
19 of marijuana and I think ten grams of addition, I
20 think, crack.

21 Q. Well, she's very concerned about this video and
22 claims that it in some way would exonerate her. Tell
23 the Court how that would not have happened?

24 A. We went over this repeatedly. She was told she
25 was not the one in the video. Most likely it was

1 either Zachary Hall or her son, Datravenous Mills. And
2 it had nothing to do with her trial. Her trial was
3 based on the offense of trafficking cocaine; having
4 thirty-three grams in her possession, having a half
5 pound of marijuana, which was taken from her at booking
6 at the detention center, and taking roughly ten grams
7 of crack off her at the booking center.

8 Q. So what you're saying is, she's upset about a
9 video that really didn't have relevance to her specific
10 case; is that correct?

11 A. It had nothing to do other than it was the
12 predicate for the affidavit for the search warrant.
13 Did not show any transaction other than between the CI
14 and a black male. Had nothing to do with her.

15 Q. All right. She also states that you failed to
16 give her discovery, besides the video, and I think that
17 was the biggest thing. Did you ever give her anything
18 you had from the solicitor's office?

19 A. March 26th -- the file was opened on February
20 26th. March 26th Kendra Gurley, and there's an
21 affidavit in the file -- I don't know if I have it up
22 here with me -- which Melody signed acknowledging that
23 she received all the discovery we had in the case up to
24 that point. And the only discovery that I received
25 subsequent to that was a copy of the lease to make sure

1 she was in fact the owner of the -- or on the lease
2 agreement for the residence.

3 Q. Now, do you have -- I think you showed me a while
4 ago, but is that on your desk over here, that Order ---

5 A. Yes. I don't have it up here.

6 Q. I think acceptance of service of it or something
7 like that?

8 A. Yes. It was signed by -- no, here it is. I do
9 have it.

10 MR. WELBORN: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 A. And her driver's license -- or a copy of it is
13 attached to the back of that.

14 MR. WELBORN: Can the Court give me just a
15 moment?

16 THE COURT: Yes, sir.

17 Q. Now, she also alleges, Mr. Tavernier, that you
18 failed to impeach the State's evidence of the video
19 camera or the identity; we talked about that?

20 A. Yes, sir.

21 Q. She also alleges that there was some entrapment
22 defense or a conspiracy, that the State used an
23 informant to set up a buy and that the confidential
24 informant's identity was needed. What's your response
25 to that?

1 A. Once again, the basis for the charges for which
2 she was going to face trial were trafficking, which was
3 possession of thirty-three grams of cocaine, according
4 to the lab report, half a pound of marijuana, and
5 roughly ten grams of cocaine base substance that was
6 located on her when she was booked into the detention
7 center. There is no conspiracy regarding that. And
8 there's no entrapment that can be allocated, because
9 she was not charged with any distribution to any
10 individual. In addition to that, in front of either
11 five or six officers when the execution of the search
12 warrant was taken care of when they were sitting in the
13 living room, she admitted to every officer -- in front
14 of every officer, that she was taking full
15 responsibility for all drugs that were found; they were
16 all hers. And that her son and whoever the other
17 individual -- Zachary Hall, I think -- had nothing to
18 do with any of the drugs found on the premises.

19 Q. And did she also state something to that effect
20 in her trial transcript that day when she pled guilty?

21 A. Yes. I felt, you know, from day one that all the
22 information in my interviews with Randy Alexander, the
23 officers, Mark Gregory, that she was covering up for
24 her son. Because I believe he was in fact the target
25 for narcotics. But you know, she took responsibility.

1 I felt she was covering for him. Quite frankly, if
2 Datravious Mills had taken responsibility for the
3 drugs, she would not be in jail. But she was taking
4 the hit for her son.

5 Q. Okay. Did she tell you that?

6 A. No. She denied that from day one. She said, no,
7 I'm not covering for him. But, you know, I wasn't born
8 yesterday and didn't just get off the boat. I've been
9 around this for a long time.

10 Q. How many times did you meet with her?

11 A. Probably half a dozen.

12 Q. And what's this about you trying to force her to
13 plead guilty or she's going to get all kinds of
14 additional time?

15 A. She may perceive it as being forced. I was
16 trying to convince her it was in her best interest to
17 plead guilty because of the time she was facing. She
18 was looking at a mandatory minimum of seven years based
19 on the weed. And it would have went up to twenty-five
20 years. If she had gone to trial, she was looking at
21 zero to fifteen on the PWID, seven to twenty-five on
22 the trafficking, and I believe it was up to ten years
23 -- I can't remember exactly on the weight of the
24 marijuana -- it may have been either five or up to ten
25 years on the marijuana. And trying to talk her into --

1 you know, she wanted a trial. She was hung up on the
2 CI. And I said, if you go to trial, force them to go
3 through all the rudiments of trial, you're not going to
4 get your mandatory minimum seven years. You're going
5 to get a lot more than that.

6 Q. And based on what you've testified to, she
7 wouldn't have known about the CI in any event; is that
8 correct?

9 A. She was not going to -- the CI's identity was not
10 going to be disclosed. I had raised all kinds of
11 cases, and there are one or two cases on point where
12 the State is not required to disclose the CI if she has
13 not been charged with the predicate defense -- or
14 predicate offense of distribution.

15 Q. Thank you. Answer anything that counsel may
16 have.

17 MR. WHITMIRE: Just a handful of questions,
18 Your Honor.

19 THE COURT: Yes, sir.

20 **CROSS EXAMINATION**

21 **BY MR. WHITMIRE:**

22 Q. Good afternoon, Mr. Tavernier. Was Ms. Holmes
23 ever confused on the offenses for which she was charged
24 on?

25 A. Confused, no. Because from day one, the first

1 time I met with her, she admitted the charges, was
2 taking full responsibility. And I went down the list,
3 that seven years, five years and fifteen years were the
4 minimums that were the possible sentences she would be
5 facing on those various charges.

6 Q. Throughout the representation did she waiver on
7 her posture here?

8 A. No. The one thing she was adamant about was
9 wanting to find out who the CI was. And the second
10 thing was that she was taking full responsibility so
11 that her son would not be charged.

12 Q. Just for the record, a question or two. What is
13 your general practice in advising a client on the
14 ultimate decision of pleading versus going to trial?

15 A. It is their decision. I try to give them as
16 strong advice as I can; explain, whether they want to
17 hear it or not, what the consequences are. And it's
18 their decision. I was ready to go to trial. I had all
19 my additional motions ready to go. Motions in limine
20 prior -- because of her prior convictions; all those
21 things. I had things ready to go. I was ready to go
22 for trial if we needed to go.

23 Q. Was she on the trial docket the week she pled?

24 A. Yes.

25 Q. At any point leading up to that week or during

1 the plea itself did she waiver on her decision?

2 A. Not that I was aware.

3 Q. Anything else unusual -- or unusual period about
4 this plea?

5 A. No. I just learned a little bit about the
6 culture and why her son wouldn't step up and take
7 responsibility for the drugs, because based on the
8 intelligence or information I had received from the
9 various officers, Mr. Mills, her son, was the primary
10 target.

11 Q. Last question to confirm, she took responsibility
12 from the day of arrest?

13 A. Yes, the very day when she was sitting in the
14 living room in front of all the officers.

15 Q. No further questions. Always I appreciate your
16 time, Mr. Tavernier.

17 THE COURT: Redirect?

18 **REDIRECT EXAMINATION**

19 **BY MR. WELBORN:**

20 Q. Was there ever an offer to her of three years by
21 you?

22 A. The only thing that may have come would have been
23 possibly a reduction in the weight if it was less than
24 twenty-eight grams, then the mandatory sentence would
25 be three to ten on trafficking. That may have been

1 discussed if she had probably pled early on or
2 whatever, but she pushed it to the limit. And that may
3 have been discussed that that was a possibility. But
4 with her position, it never came to fruition.

5 Q. And did you at any time force her to plead saying
6 that if you don't do it, your son's going to go to
7 jail?

8 A. No. I told her if she did go to trial, he was
9 going to be going to trial and he would likely face the
10 seven to twenty-five mandatory minimum, also, that she
11 was facing. And she said, well they're hers. And I
12 said, well that's the only way that he'll possibly be
13 saved, if in fact the jury believes it.

14 Q. Thank you.

15 THE COURT: May I ask a couple of questions,
16 Mr. Tavernier? And I'm concerned with regard to this
17 motion that I recuse myself. And that's the only thing
18 I'm addressing, really.

19 EXAMINATION

20 BY THE COURT:

21 Q. Do you have any knowledge of my involvement in
22 any case involving her, Ms. Holmes, or her son at all?

23 A. Not that I'm aware of, Your Honor.

24 Q. In reading the transcript, it appears that there
25 were some charges pending against at least one of her

1 sons?

2 A. Datravious Mills; a trafficking charge.

3 Q. Okay. So at the time she pled, those charges
4 were pending?

5 A. Yes, sir.

6 Q. And then somewhere else it sounds like -- I think
7 one of the law enforcement pointed out that another son
8 was in federal prison at the time?

9 MS. HOLMES: Yes, Your Honor.

10 A. I'm not exactly sure where he was, but they have
11 a pretty good pedigree in the criminal justice system.

12 THE COURT: All right. Very good. Any other
13 questions as a result of mine?

14 MR. WHITMIRE: No, Your Honor. Be happy to
15 address the issue of conflict in closing. Just ask
16 that Mr. Tavernier be released from his subpoena or his
17 voluntary willingness to come.

18 THE COURT: Mr. Welborn, you have anything
19 else?

20 MR. WELBORN: No further questions.

21 THE COURT: Ms. Holmes, you have an attorney.
22 You need to go through your attorney, please, ma'am.

23 MR. WELBORN: Nothing further.

24 THE COURT: All right. Thank you. You may
25 be released.

1 Mr. Welborn, be glad to hear from you.

2 MR. WELBORN: May I have a moment, please?

3 THE COURT: Sure.

4 **CLOSING STATEMENT**

5 **BY MR. WELBORN:**

6 Your Honor, my position continues to be that the
7 State has no evidence against her and that she's saying
8 this video would be proof of that. And that's the
9 strongest point she can make, is that she should have
10 been able to see it and also that she thinks that she
11 ought to have the relief granted. She thinks the
12 identity would have been someone besides her and that
13 none of this stuff would have occurred. So she's
14 asking that her relief be granted.

15 THE COURT: All right.

16 MR. WHITMIRE: May it please the Court?

17 THE COURT: Yes, sir.

18 **CLOSING STATEMENT**

19 **BY MR. WHITMIRE:**

20 Addressing the issue of potential conflict, the
21 conflict rules in PCR are very narrow. It is the Judge
22 who heard the underlying proceeding of that particular
23 applicant. Now on collateral cases and collateral
24 facts it has never been extended further. It's
25 important to also note, Your Honor, that when applicant

1 had the opportunity, she could not find a viable reason
2 why Your Honor should not hear her case. That's ---

3 THE COURT: Let me just address that now.
4 I'm going to deny her motion that I recuse myself.
5 Number one, it appears to me from reading the
6 transcript and listening to the testimony and what I
7 heard, one of her sons was in federal prison. She
8 acknowledged that. The other one, who might have been
9 tangentially or collaterally related to the underlying
10 charges that she took, according to the transcript, the
11 charges were still pending. And so there's no way I
12 can put my hands on it.

13 I have no independent recollection of Ms. Holmes
14 nor her son and she's not articulated any basis for me
15 to recuse myself. And so I deny that request,
16 respectfully, to Ms. Holmes. So go ahead, please.

17 CLOSING STATEMENT CONTINUED

18 BY MR. WHITMIRE:

19 Just a very quick argument, Your Honor, on the
20 ultimate decision to plead guilty. Under Holme v.
21 State and its prodigy of cases, I think the record
22 corroborates Mr. Tavernier's very compelling and
23 consistent testimony that Ms. Holmes pled guilty
24 because she took full responsibility from the very
25 beginning to protect her son. She remained consistent

1 in that decision throughout the representation. Mr.
2 Tavernier represented her to the best of his abilities.

3 Furthermore, any issues concerning the CI or the
4 tape would be irrelevant because I believe the State
5 has shown today that her decision to plea had nothing
6 to do with the disclosure of evidence. It was simply a
7 family matter.

8 Thank you, Your Honor.

9 THE COURT: Let me say this. As to the
10 request to view the video that was made today, I'm
11 denying that motion. It would be immaterial for the
12 Court to view. As to the explain the pleas, the
13 charges that Ms. Holmes pled to would not warrant
14 disclosure of the tape nor the CI. And as was
15 explained by Mr. Tavernier on the record, that was
16 someone else on the tape. It was just the underlying
17 basis for which the search warrant was issued to search
18 Ms. Holmes' residence and that from the very beginning
19 she accepted responsibility for possession of the drugs
20 and in fact had possession of the drugs, and at least
21 two articles of the drugs at the time she was booked
22 into the detention center.

23 The fact that the transcript of record shows Judge
24 Maddox when in actuality it was Judge Hyman is of no
25 consequence. Clearly Judge Hyman heard the case. That

1 was a Scribner's error. There was multiple judges
2 apparently that week and it doesn't change the outcome
3 and there's been no prejudice articulated by the
4 applicant.

5 Going through the colloquy between the Court and
6 Judge Hyman, it's clear to me that the Defendant
7 understood what she was doing. She freely and
8 voluntarily waived her constitutional rights. And she
9 was advised of all of her rights adequately. She on
10 multiple occasions, but in particular on page four and
11 five of the transcript, acknowledged that she was
12 satisfied with the services of her attorney and that
13 her attorney -- that Mr. Tavernier had gone over the
14 evidence with her.

15 She further told the Court that she did in fact
16 want to go forward with her guilty plea. And she
17 acknowledged that there was sufficient evidence in the
18 record that she would more than likely have been
19 convicted at trial if they were to go forward with a
20 trial, and that she did not need any additional time to
21 plead. And that is in addition to all the other
22 factors that the Court properly went over in denying --
23 in her guilty plea before the Court.

24 I deny the application. And for the reasons set
25 forth just now and in the State's brief, I'm going to

Melody Holmes -vs- State of South Carolina (2013-CP-04-02236)
Closing Statement by Mr. Whitmire

51

1 ask Mr. Whitmire to prepare me an Order and to give a
2 copy of that Order to Mr. Welborn before they give it
3 to me.

4 MR. WHITMIRE: Thank you, Your Honor. I'll
5 draw up a proposed Order and get it to Mr. Welborn
6 first.

7 THE COURT: All right. Thank you, gentlemen.

8

9 [END OF REQUESTED TRANSCRIPT OF RECORD]

1

CERTIFICATE OF REPORTER

2

I, the undersigned Danette P. Hanks, do hereby
3 certify that the foregoing is a true, accurate, and
4 complete transcript of record of all the proceedings
5 had and evidence introduced in the trial/hearing of the
6 captioned case, relative to appeal, in the Court of
7 Common Pleas for Anderson County, South Carolina, on
8 the 9th day of February, 2015.

9

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10 material is reproduced as read by the speaker.

11

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

13

January 25, 2016

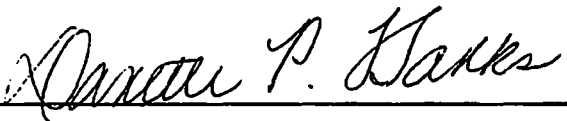
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Danette P. Hanks

1

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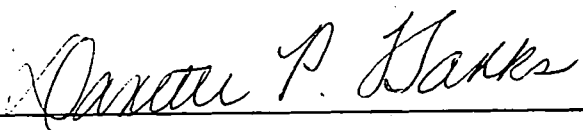
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A handwritten signature in cursive script that reads "Danette P. Hanks". The signature is written in black ink and is positioned above a solid horizontal line.

Danette P. Hanks

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ANDERSON SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Melody Holmes,
S.C.D.C. No. 239097,) C.A. No. 2013-CP-04-2236

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL
(with prejudice) **TRUE COPY**

SEP - 9 2015

This matter comes before the Court by way of a post-conviction relief (PCR) application

filed on October 3, 2013. The State filed its responsive pleading. A hearing on the State's motion was convened on February 9, 2014 at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the June 2013 term of the Anderson County Grand Jury for possession of crack cocaine with intent to distribute (2013-GS-04-1179), and trafficking in cocaine, 28 grams or more, but less than 100 grams, first-offense (2013-GS-04-1180), possession of marijuana with intent to distribute, first offense (2013-GS-04-1181). Applicant was represented by Kurt Tavernier, Esq. On August 12, 2013, the State called its case. Applicant entered a guilty plea as indicted. The Honorable Larry B. Hyman, Jr., sentenced Applicant to seven (7) years imprisonment for possession with intent to distribute crack cocaine, seven (7) years imprisonment for trafficking in cocaine, and

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APPELLATE COUNSEL

five (5) years imprisonment for possession with intent to distribute marijuana. The sentences were to be served concurrently. Applicant did not appeal his guilty plea or sentence.

At the PCR hearing, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. failure to obtain and discuss the buy/bust surveillance video with Applicant;
 - b. failure to independently investigate and evaluate potential impeach value in the surveillance video;
 - c. failure to move to suppress the narcotics based on a defective search warrant;
 - d. failure to pursue an entrapment defense.

SUMMARY OF TESTIMONY AT THE PCR HEARING

(a) Applicant's testimony

Applicant testified that it was her opinion that this Court should be recused from the present action. Applicant further testified that this Court presided over her co-defendant son's companion case. Applicant noted that she was a purported alibi witness in the defenses' case. Applicant testified that she "thinks that she remembers" this Court presiding over a one day trial for her son's case that resulted in an acquittal. However, Applicant also testified that the State dismissed her son's charges after she pled guilty. Ultimately, Applicant waived on whether her versions of the procedural history of her son's case necessitated this Court's recusal in the present action.

On the merits of the PCR action, Applicant testified that counsel "made a fool out of her." She stated that "he never told me nothing, he led me on a wild goose chase." Applicant acknowledged that she had obtained bond during the pendency of her charges. At the focal point of Applicant's post hoc contentions, she testified that counsel failed to provide her a copy

of the surveillance video of the buy/bust. She testified that she informed counsel that she did not want to proceed further with the case until she reviewed the surveillance video. Applicant testified that counsel informed her that her residence was under police surveillance for seventy-two (72) hours at the time of her arrest. Applicant testified that when she informed counsel of her desire to view the surveillance video, "he laughed at her." Applicant opined that the surveillance video should have been used to impeach the informant's credibility.

Applicant gave her opinion that the police conducted an illegal search of her residence pursuant to a defective search warrant. Applicant's opinion was based upon her testimony that the affidavit of probable cause did not clarify whether the contraband was cocaine or crack-cocaine. Last, Applicant testified that counsel should have pursued an entrapment defense based on the fact that informant initiated the narcotics transaction. She testified she stills wants know the identity of the informant.

Counsel's testimony

Counsel testified to his course of conduct during the representation. Counsel has primarily practiced criminal law since 1989 admission into the South Carolina Bar. Prior to practice, counsel's profession was law enforcement. Counsel held approximately six attorney/client consultations with Applicant. He provided Applicant a copy of the State's discovery disclosure at an early point in the representation.

Counsel gave brief summary of the events that led to Applicants arrest. He obtained and reviewed the buy/bust surveillance video. He explained that the surveillance video captured a narcotics transaction between an unidentified informant and an unknown male on the front porch of Applicant's residence. Counsel made a motion to compel the State to disclose the identity of

the informant; it was denied.¹ Counsel agreed with the propriety of Judge Macaulay's ruling. In counsel's professional opinion, the identity of the informant was a "red herring" in Applicant's case. First, Applicant was arrested for having dominion of half (1/2) a pound of marijuana, thirty-three (33) grams of cocaine, and ten (10) grams of crack-cocaine. She admitted her culpability and remained consistent in this posture throughout the duration of the case. Counsel stated Applicant's dominion of the various narcotics was unrelated to the facts of the buy/bust. Furthermore, he stated that an entrapment defense was unavailable in her case because she did not sell the contraband in the buy/bust. Instead, Applicant claimed dominion of the narcotics in her residence that were discovered by police. Counsel stated that the surveillance video established sufficient probable cause to obtain a search warrant. Counsel did not identify a meritorious suppression defense from the police search and seizure protocol here.

Counsel testified that he did not force a plea on Applicant where it was ultimately her decision to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant fell well short of meeting her burden to even make a credible prima facie showing on any of her allegations. In contrast, to

¹ Counsel noted that Applicant was not present for this motion hearing before Judge Macaulay.

Applicant's case, which solely relied on her suspect and unrealistic testimony, counsel provided compelling testimony on the matters at issue. His testimony was the product of clear diligence and preparation to testify in the PCR forum. This Court finds counsel's PCR testimony further evidenced the competency of his representation concerning the allegations at issue. The State's case against Applicant was simple and straight forward. She admitted to police that the various narcotics, found in her residence, belonged to her.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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. at 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, *supra*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Kolle v. State, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010)

A.

This Court finds that Applicant's pro se motion for recusal was improper and frivolous. See Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (Counsel is best able to use professional judgment to determine which arguments are relevant). Second, the motion was made and ultimately abandoned by Applicant. Regardless, Applicant has failed to meet her burden of production to establish a showing of any cognizable conflict to this Court's disposition of the present case. See Floyd v. State, 303 S.C. 298, 299, 400 S.E.2d 145, 146 (1991).

B.

This Court finds Applicant's allegation (a) ineffective assistance of counsel -- failure to obtain and discuss the buy/bust surveillance video with Applicant is without merit.

"Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). "Rule 5 permits inspection of evidence in the State's possession which [is] material to the preparation of his defense or [is] intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant upon request by the defendant."

Hyman v. State, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012) (citing Rule 5(a)(1)(C), SCRCrP). The Hyman Court determined the State “struck the appropriate balance by allowing defense counsel to view the videotape and providing Petitioner with stills during negotiations.” Id.

This Court finds counsel’s testimony on the matter persuasive and dispositive. Counsel took sound courses of action at the appropriate junctures. Counsel testified that although Applicant wanted to know the identity of the informant, Judge Macaulay’s adverse yet sound ruling had no legitimate bearing on her decision to plead guilty and protect her son from additional culpability. This Court finds counsel’s testimony credible and finds his assessment on the matter logical. In contrast, Applicant has presented no credible, let alone compelling justification of why she should be allowed to depart from the presumption of verity in her assurances to Judge Hyman concerning her satisfaction with counsel’s representation. Therefore, this allegation is denied and dismissed with prejudice.

Similarly, this Court finds Applicant’s allegation (b) ineffective assistance of counsel -- failure to independently investigate and evaluate potential impeachment value in the surveillance video to be without merit.

This Court again finds counsel’s testimony concerning the video surveillance recording to be dispositive. Regardless, Applicant failed to present any evidence to establish how the disclosure of the informant’s identity would benefit to Applicant’s case. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result”). Where further discussion on the matter is unnecessary, this allegation is denied and dismissed with prejudice.

C.

This Court finds Applicant's allegation (c) ineffective assistance of counsel --failure to move to suppress the narcotics based on a defective search warrant is without merit.

The Second Circuit expressed understandable reluctance to require defense counsel to file boilerplate motions merely to vindicate professional competence without regard to the grounds for the motion. U.S. v. Ditommaso, 817 F.2d 201, 215 (2nd Cir. 1987). Finally, counsel is not required to file a suppression motion that would have been meritless on the facts and law. Ceja v. Stewart, 97 F.3d 1246, 1253 (9th Cir. 1996). And even with debatable Fourth Amendment claims, the deference owed to trial counsel will carry the argument. Mason v. Godinez, 47 F.3d 852, 856-57 (7th Cir. 1995).

This Court finds Applicant again has failed to meet her most basic burden of production for this allegation. Applicant testifies that the search warrant failed to specify if the contraband was either cocaine or crack-cocaine. First, she has failed to produce the arrest warrant and its affidavit of probable cause in support of her allegation. Second, even assuming Applicant's contention here is correct, she has failed to produce any evidence or testimony to explain how search and seizure procedure in her case was illegal. See Huddleston v. U.S., 485 U.S. 681 (1988) (the defendant had made no showing that the evidence would have been suppressed).

Kolle v. State, 386 S.C. 578, 591, 690 S.E.2d 73, 80 (2010), is further instructive here. In granting the Kolle petitioner PCR relief, the Circuit Judge found his attorney was ineffective for failure to inspect discoverable State records and materials that, if presented, would have been outcome determinative for suppression under the exclusionary rule.² The Kolle petitioner

² The narcotics that established the factual predicate for the State's trafficking case were the inadmissible fruits of an unlawful search. The police responded to notice complaint concerning Kolle's apartment. No one answered the door. The officer observed what he reasoned to be "fresh" evidence of forced entry on the Apartment's exterior. Concerned about the welfare of possible occupants, the officer discovered crack cocaine during his protective sweep. A field test positively identified the narcotics. He obtained a search warrant and returned to the apartment within the hour. More narcotics were recovered. Kolle, at 582-84, 690 S.E.2d at 75-76.

presented critical evidence that negated the justification made to the General Session Judge at the pre-plea motion hearing that established the exigency for the warrantless entry into the apartment. Id. Similar to the present case, the Kolle petitioner pled guilty and challenged the voluntariness of the plea in PCR. Notably distinct, the Kolle petitioner actually presented tangible evidence to support his PCR case that included exhibits of the police call/dispatch logs among other things. Id. at 590-91, 690 S.E.2d 79, 80. Therefore, this allegation is readily denied and dismissed with prejudice.

D.

This Court finds Applicant's allegation (d) ineffective assistance of counsel -- failure to pursue an entrapment defense is without merit.

"The affirmative defense of entrapment is available where there is the conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for trickery, persuasion, or fraud of the officer." State v. Brown, 362 S.C. 258, 607 S.E.2d 93 (Ct.App.2004) (citation omitted). The defense of entrapment is not available to a defendant who is predisposed to commit a crime independent of governmental inducement and influence. Thus, the entrapment defense consists of two elements: (1) government inducement, and (2) lack of predisposition. Id. The fact that a government official merely affords opportunities or facilities for the commission of the offense does not constitute entrapment. State v. Johnson, 295 S.C. 215, 367 S.E.2d 700 (1988) (citing Sherman v. United States, 356 U.S. 369 (1958)).

This Court finds counsel's testimony compelling and dispositive on this matter. Counsel testified that Applicant was implicated after the contraband was found in her residence. He explained that third parties buy/bust narcotics transaction concerned a categorically distinct

matter to facts and evidence of Applicant's culpability. This Court agrees with counsel and finds the allegation to be facially lacking in merit. Again and in the alternative, Applicant has ignored her burden to present competent evidence in support of her allegation here. Therefore, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

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

CONCLUSION

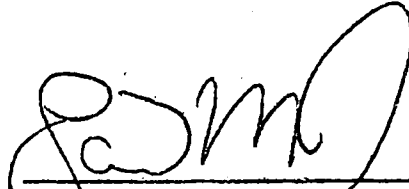
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4 day of Sept, 2015.



LAWTON MCINTOSH
Residing Judge
Eleventh Judicial Circuit

Anderson, South Carolina

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ANDREWS SC
SEP 10 10 46
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Anderson)

INDICTMENT

JUN 25 2013

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Drugs/ Possession of Crack Cocaine with Intent to Distribute

That Melody Holmes on or about February 13, 2013 in Anderson County, South Carolina, did possess with intent to distribute, dispense, or deliver a quantity of Crack Cocaine, a schedule II controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver Crack Cocaine, all in violation of Section 44-53-375, 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. 2013GS04 01179

WITNESSES

M J Gregory, Anderson Co. Sheriff's Office

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUN 25 2013

Term

ARREST WARRANT NUMBER

2013A0410900025

THE STATE

vs.

Melody Holmes

COMMITMENT

8/12/13 RT

ACTION OF GRAND JURY

TRUE BILL

JUN 25 2013

[Signature]

Foreperson of Grand Jury
Date: Foreperson

AGM

Indictment for

**Drugs/ Possession of Crack Cocaine with Intent
to Distribute**

SC Code: 44-53-0375 (B) (1)
CDR Code: 3014

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Anderson)

JUN 25 2013

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Drugs / Trafficking in Cocaine, 28 g or more, but less than 100 g - 1st offense

That Melody Holmes, on or about February 13, 2013, in Anderson County, South Carolina, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of more than twenty-eight (28) grams but less than one hundred (100) grams of Cocaine, a schedule II controlled substance, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), 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. 2013GS04 01180

WITNESSES

M J Gregory, Anderson Co. Sheriff's Office

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUN 25 2013

Term

ARREST WARRANT NUMBER

2013A0410900024

THE STATE

vs.

Melody Holmes

COMMITMENT

8/2/13-Rt

ACTION OF GRAND JURY

TRUE BILL

JUN 25 2013

D. L. Collier

Foreperson of Grand Jury

Date:

AGM

Indictment for

Drugs / Trafficking in Cocaine, 28 g or more, but less than 100 g - 1st offense

SC Code: 44-53-0370(e)(2)(b)1

CDR Code: 2359

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Anderson)

INDICTMENT

JUN 25 2013

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Drugs / Possession of Marijuana with Intent to Distribute

That Melody Holmes on or about February 13, 2013, in Anderson County, South Carolina, did possess with intent to distribute, dispense, or deliver a quantity of Marijuana, a schedule I controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver Marijuana, 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. 2013GS04 01181

WITNESSES

M J Gregory, Anderson Co. Sheriff's Office

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUN 25 2013

Term

ARREST WARRANT NUMBER

2013A0410900026

THE STATE

vs.

Melody Holmes

COMMITMENT

8/12/13 RT

ACTION OF GRAND JURY

TRUE BILL

JUN 25 2013

D. Kelly

Foreperson of Grand Jury

Date: Foreperson

AGM

Indictment for

VERDICT

Drugs / Possession of Marijuana with Intent to Distribute

SC Code: 44-53-0370(b)(2)
CDR Code: 0186

Foreperson of Petit Jury

Date: