

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

Roger L. Couch, Circuit Court Judge

CHRISTOPHER LYNN THOMAS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000212

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JUSTIN J. HUNTER
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

-----x

STATE,

Plaintiff,

Case No.

-against-

2007-DR-46-3011

CHRISTOPHER THOMAS

Defendant.

-----x

July 10, 2013

York, South Carolina

B E F O R E:

HONORABLE LEE S. ALFORD

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

JENNIFER COLTON, Esquire

Attorney for the Plaintiff

BJ BARROWCLOUGH, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

EXHIBITS.

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NO.

DESCRIPTION

I.D.

EVD.

NO EXHIBITS RECEIVED

1 THE COURT: Sir, you are Christopher Lynn Thomas.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Solicitor, you may
4 proceed.

5 MS. COLTON: Thank you, Your Honor. Your Honor,
6 as you stated this is Mr. Christopher Lynn Thomas. I am
7 standing in for Mr. Springs who prosecuted this case
8 back in 2007. The Indictments are 2007-GS-46-3011,
9 possession of a firearm during the commission of a
10 violent crime, 2007-GS-46-3012, trafficking in crack
11 cocaine. I believe that's second offense, Your Honor
12 and 2007-GS-46-3013. At some point Mr. Thomas and Mr.
13 Springs entered into a plea agreement and it was
14 determined essentially that Mr. Thomas would enter into
15 a plea of guilty and be sentenced in front of Judge
16 Nettles. Mr. Thomas did enter into that plea.
17 Sentencing was deferred until Judge Nettles came back
18 and when Judge Nettles was here Mr. Thomas failed to
19 appear for his sentencing and the State and defense
20 proceeded in Mr. Thomas's absence and he was sentenced
21 by Judge Nettles to all three charges. And there is a
22 bench warrant as well that I ask be lifted.

23 THE COURT: Well, I have in front of me the
24 Indictments, the sealed Indictments in this case signed
25 by Judge Nettles on 11-28-07. On the trafficking and

1 crack cocaine I understand he plead guilty to this but
2 he deferred sentencing and he was not here when he was
3 suppose to be here for the sentencing; is that correct?

4 MR. BARROWCLOUGH: Yes, Your Honor. Viewing this
5 situation, Miss Colton is standing in for Mr. Springs.
6 Back in 2007 Miss Toni Johnson was representing Mr.
7 Thomas, but yes, I pulled the file and according to our
8 records on October 2nd of 2007 Mr. Thomas did enter his
9 plea to those charges and then pursuant to a plea
10 agreement in which there was some talk of the plea
11 agreement that between that day and November 28th he
12 would be available to the drug unit for interviewing and
13 things of that nature. There is really no -- I have no
14 indication whether or not any of that occurred but on
15 November 28, 2007 he was sentenced in his absence
16 according to what Miss Johnson indicated on the file.

17 Judge, if you want I have a copy of the plea
18 agreement.

19 THE COURT: Yes, can I see it please. (Handed
20 up).

21 This is pretty standard in so far as deferred
22 sentencing is concerned, and that is, all plea bargains
23 is off if he doesn't show up for the sentencing.

24 MR. BARROWCLOUGH: That is what the agreement says.

25 THE COURT: So he didn't show up for sentencing so

1 the judge is free to sentence him up to the maximum
2 amount for failing to show and he was suppose to
3 cooperate with the police. I don't know if he did that
4 or not.

5 MS. COLTON: I will tell Your Honor there is a
6 note Mr. Springs that he did not provide any assistance
7 to law enforcement.

8 THE COURT: I guess the trial judge -- or the
9 sentencing judge had that information available to him
10 at the time of sentencing.

11 All right. Anything you wish to say on his behalf
12 counsel?

13 MR. BARROWCLOUGH: Well judge, just in talking--

14 THE COURT: Well, let me tell you what the
15 sentence is first.

16 MR. BARROWCLOUGH: Yes.

17 THE COURT: May be you need to know that before
18 you offer any mitigation. Actually he could have come
19 out a lot worse then he came out in the sentencing.

20 In case number 2007-GS-46-3012 Christopher Lynn
21 Thomas having plead guilty to trafficking crack cocaine
22 in an amount between 10 and 28 grams, second offense, of
23 course the sentence -- the possible sentence was five to
24 thirty with no parole and serious, and Judge Nettles
25 sentenced him to eight years on that charge, which I

1 think is very generous on his part. Very lenient on his
2 part.

3 Case number 2007-GS-46-0311, Christopher Lynn
4 Thomas having plead guilty to possession of crime during
5 the commission of a violent crime he got five years
6 concurrent. He got five months credit for time served
7 on all of these.

8 Case number 2007-GS-46-3013, Christopher Lynn
9 Thomas having plead guilty to possession of marijuana
10 with intent to district, second offense, which carries
11 up to ten years. He again received a sentence of eight
12 years to run concurrent with credit for time served. He
13 couldn't have gotten much better than what he got.
14 Actually he could have gotten a lot worse. Anything you
15 wish to say on his behalf?

16 MR. BARROWCLOUGH: Judge, just to explain his
17 absence, it was indicated in the file back at the time
18 that Miss Johnson was representing him as well as
19 talking to him now that he has suffered ongoing problems
20 with his stomach. He has been in and out of hospitals
21 over these years and although he can not articulate
22 exactly why he did not come to Court on that day but
23 that his best guess is a hospitalization and that by the
24 time he got out that he had just let this go by the
25 wayside.

1 THE COURT: That's easy enough to bring proof of
2 that to Court, which he didn't do and he had since 2007,
3 Your Honor.

4 MR. BARROWCLOUGH: Yes, sir.

5 THE COURT: To correct that situation.

6 MR. BARROWCLOUGH: That is all Your Honor.

7 THE COURT: Mr. Thomas, anything you want to say?

8 THE DEFENDANT: Yes, sir. I really -- I really
9 been sick and I owe like 1.5 million dollars in hospital
10 bills. Honestly speaking I was sick.

11 I really feel like I wasn't give a fair shot on
12 these charges because I told these people again and
13 again that I hadn't did this. It's been six years since
14 that charge and I haven got in any trouble.

15 THE COURT: It doesn't make any difference.

16 THE DEFENDANT: I understand.

17 THE COURT: You plead guilty to them. You plead
18 guilty at the time and they went all through that with
19 you and you said you were guilty under oath. So I don't
20 want to hear that part of it. Do you have anything in
21 mitigation? I'll be glad to hear from you. I don't
22 think you really got anything. You have been out since
23 2007 when you were sentenced and you been on the run for
24 six years. Frankly, you know, I think that you received
25 a very have good sentence on this charge. You could

1 have easily gotten thirty years. Do you not understand
2 that?

3 THE DEFENDANT: Yes.

4 THE COURT: You got eight and the sentence range
5 that you agreed to even if you did what you were suppose
6 to was five to eight. You could have gotten eight
7 anyway. So even though you didn't do anything you were
8 suppose to do.. you didn't shown up and you hadn't
9 shown up for six years you're still getting eight years.
10 I think you are very fortunate man in my opinion.

11 MS. COLTON: Thank you.

12 MR. BARROWCLOUGH: Thank you, Your Honor.

13

14

END OF TRANSCRIPT

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 10th day of July, 2013.

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

July 8, 2013

Aileen Butler

2013CP4603701

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

2013 DEC -9 AM 9:07

IN THE COURT OF COMMON PLEAS

County of York

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

FILED STATE 1024
2013 DEC -5 PM 2:21

CHRISTOPHER LYNN THOMAS 25486A
Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention York County Detention Center
2. Name and location of Court which imposed sentence York County Detention Center - York County - York S.C. 29745
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) J163499
 - (b) J163500

(c) J163498

5. The date upon which sentence was imposed and the terms of the sentence:

(a) SEALED SENTENCE FROM 2007 OPENED JULY - 2013

(b) (8 YEARS) 8 YEARS FOR 0 TRAFFICKING AND PWID MARI. 5 YEARS FOR

(c) POSS. OF FIREARM →

6. Check whether a finding of guilty was made:

(a) after a plea of guilty PLEA WAS SIGNED IN 2007 SO I COULD GET OUT ~~ADULT~~ ^{ON THE BASIS CHARGES,} NOT

(b) after a plea of not guilty ACCEPTED AND CHARGED

(c) after a plea of nolo contendere IN MY ABSENCE.

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

NO - COUNSEL SAID I COULDN'T APPEAL

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

(a) COUNSEL SAID THAT I COULDN'T APPEAL BECAUSE IT WAS A SEALED SENTENCE. THEN I FIND OUT THAT I COULD HAVE APPEALED. ONLY SAW COUNSEL 5 MINUTES BEFORE JUDGE OPENED SENTENCE.
(b) SENTENCE.

→ 4 1/5

I got a copy of my SED REPORT AND IT ALSO STATED THAT I ~~BEING~~ WAS CHARGED WITH THREATENING A GOVERNMENT OFFICIAL AND WAS SENTENCED TO 8 YEARS FOR THAT ALSO. I HAVE NEVER HEARD OF THIS @ BOGUS CHARGE EITHER. I HAVE NEVER THREATEN ANYONE NOR HAVE I EVER BEEN CHARGED OR WENT TO COURT ON SUCH A CHARGE. ~~THIS~~ THIS IS ANOTHER BOGUS CHARGE AND ~~A~~ THESE MATTERS NEED TO BE ADDRESSED & CORRECTED!

(c) _____

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

- (a) THESE CHARGES ARE BOGUS / NOTHING WAS FOUND IN MY POSSESSION
- (b) → INEFFECTIVE COUNSEL
- (c) THE STATEMENT IN WHICH THE NARCOTICS OFFICES SAID WAS MINE IS TOTALLY FALSE →

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

- (a) I WAS ARRESTED FOR A CHILD SUPPORT WARRANT NOT FOR DRUGS. THEY BROUGHT
- (b) THESE CHARGES AFTER I WAS ~~BEING~~ ALREADY LOCKED UP. THEY FOUND
- (c) NOTHING IN MY POSSESSION. NOT IN MY RESIDENCE. (B) LAWYER NEVER MET ~~NAME~~

12. Prior to this application have you filed with respect to this conviction: ONLY 5 MIN BEFORE GOING IN FRONT OF JUDGE.

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

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

(a) the specific nature thereof:

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

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

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

10. A

→ THE PEOPLE IN WHICH THEY SAY I WAS INVOLVED ~~WAS~~ WITH IS TOTALLY BOGUS
I DON'T KNOW SOME OF THE PEOPLE AND THE OTHER PERSON I DON'T EVEN
SPEAK WITH. ANYONE WHO KNOWS ME KNOW THAT I ~~WAS~~ WOULD NEVER
ASSOCIATE WITH THOSE KIND OF PEOPLE! EVEN THOSE PEOPLE WILL
SAY THAT WE HAVE NEVER ASSOCIATED! THE POLICE WERE JUST
TRYING TO GET A CONVICTION NO MATTER WHAT! THE STATEMENTS
IN WHICH I'M REFERRING TO THE POLICE ~~REPORTS~~ ~~WERE~~ ~~WRONG~~
~~AND~~ ~~THEY~~ ~~TOOK~~ ~~STORIES~~ ~~FROM~~ ~~THEIR~~ ~~INFORMANT~~ ~~AND~~ ~~PIECED~~ ~~THEM~~
TOGETHER TO MAKE THEIR OWN STORY. THESE ARE STATEMENTS THAT
ARE TOTALLY WRONG AND ARE PLAIN OUT LIES! THEN THEY HAVE CHARGED
ME WITH THREATENING SOMEONE AND I HAVEN'T HEARD OF THIS
CHARGE UNTIL I GOT A COPY OF MY SLED REPORT. NOT ONLY HAVE
THEY GIVEN ME ANOTHER BOGUS CHARGE BUT I WAS CONVICTED
OF IT AND SENTENCED TO 8 YEARS.

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) ~~None~~ Ineffective Counsel
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? NONE
- (c) your sentencing? SEALED SENTENCE - NO
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? TOLD I WAS NOT ABLE TO APPEAL BY COUNSEL
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

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

- i. B.J. BEARCLOFF - YORK COUNTY PUBLIC DEFENDER OFFICE YORK S.C. 29715
- ii. _____
- iii. _____

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

- i. OPENING OF THE SEALED SENTENCE - 5 MINUTES OF TALKING AND FIRST TIME MEETING HIM. CHARGES ARE FROM 2007
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application: DISMISSED AND RELEASED!

I WOULD LIKE TO GO IN FRONT OF A JUDGE AND HAVE A FAIR TRIAL, THESE CHARGES ARE WRONG. I DIDN'T HAVE ANYTHING TO DO WITH THESE CHARGES. I WAS TOLD THAT THE REASON I WAS CHARGED IS BECAUSE I SAID THEY WERE MINE. THIS IS UNTRUE, THEY WERE TRYING TO FORCE THESE CHARGES ->

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

NO

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, CHRISTOPHER LYNN THOMAS, 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.

Chris Thomas

SWORN to and subscribed before me this 3rd day of December 2013

[Signature]
Notary Public

My Commission Expires: April 12, 2023

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

I, CHRISTOPHER LYNN THOMAS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

X Christopher Thomas
Applicant

SWORN or affirmed to and subscribed before me this

3rd day of December, 2013

Sharon Ann Flaw-Tyler
Notary Public

My Commission Expires: April 12, 2013

| | | |
|-----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF YORK |) | SIXTEENTH JUDICIAL CIRCUIT |
| |) | |
| |) | |
| Christopher Lynn Thomas, #254868, |) | 2013-CP-46-3701 |
| Applicant, |) | |
| |) | |
| v. |) | RETURN |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| |) | |

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 5, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at August 2007 term of the York County Grand Jury for Trafficking in Crack Cocaine (2007-GS-46-3012), Possession of Marijuana with Intent to Distribute (PWID) (2007-GS-46-3013) and Possession of a Firearm during the Commission of a Violent Crime (2007-CP-46-3011). B.J. Barrowclough, Esquire, represented him. On November 28, 2007, the Applicant, after due notice of his hearing, was found guilty of the charges as indicted *in absentia* before the Honorable Michael G. Nettles. The sentence was sealed until Applicant was located. On July 10, 2013, the Applicant was sentenced by the Honorable John C. Hayes, III, pursuant to a negotiated sentence, to eight (8) years for Trafficking Crack Cocaine, 2nd offense, eight (8) years,

concurrent, for PWID Marijuana and five (5) years, concurrent, for the possession charge. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s), Applicant's records from SCDC, the application and a letter from SC Court Administration explaining why Applicant's guilty plea transcript does not exist. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "These charges are bogus/nothing was found in my possession"
 - i. "I was arrested for a child support warrant not for drugs. They brought these charges after I was already locked up. They found nothing in possession. Not in my residence."
2. "Innefective(sic) Counsel"
 - i. "Lawyer never met me only 5 min. before going in front of judge."
3. "The statement in which the narcotics officers said was mine is totally false."

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

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that,

but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON

Assistant Attorney General

By: 

~~ATTORNEYS FOR RESPONDENT~~

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

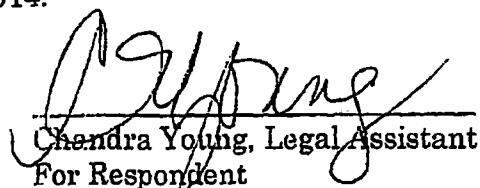
February 20, 2014.

| | | |
|-------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF YORK |) | |
| |) | |
| |) | 2013-CP-46-3701 |
| |) | |
| CHRISTOPHER L. THOMAS, 254868 |) | |
| |) | |
| Applicant, |) | |
| |) | |
| vs |) | AFFIDAVIT OF SERVICE BY MAIL |
| |) | |
| STATE OF SOUTH CAROLINA, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

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

Leah Moody, Esquire
235 East Main Street; Suite 100
Rock Hill, SC 29730

DATED this 20th day of February, 2014.


 Chendra Young, Legal Assistant
 For Respondent

1 State of South Carolina

Court of Common Pleas

2 County of York

3

4 Christopher Lynn Thomas,)

Transcript of Record

5 Applicant,)

vs.)

2013-CP-46-03701

6)

7 The State of South Carolina.)

8

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November 7, 2016
York, South Carolina

10

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B E F O R E:

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The Honorable Roger L. Couch, Judge

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

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Leah B. Moody, Esquire
Attorney for the Applicant

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Justin James Hunter, Assistant Attorney General
Attorney for the State

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Stacy S. Johnson, RPR
Circuit Court Reporter

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| 6 | | |
| 7 | <u>E X H I B I T S</u> | |
| 8 | <u>NO.</u> | <u>DESCRIPTION</u> <u>ID.</u> <u>EVD.</u> |
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NO EXHIBITS WERE INTRODUCED

P R O C E E D I N G S

1
2 **THE COURT:** All right. We're on the record in the
3 case of Christopher L. Thomas, as Petitioner, against the
4 State of South Carolina. It's a petition for PCR. The
5 State is present and represented by Mr. Hunter. The
6 Applicant is present and represented by Ms. Moody.

7 Mr. Hunter, I'll hear from the State.

8 **MR. HUNTER:** Yes, Your Honor. Some procedural
9 history. He was indicted at the August 2007 term of the
10 York County Grand Jury for PWID marijuana, trafficking in
11 crack cocaine, 10 to 28 grams, and possession of a firearm
12 during the commission of a violent crime.

13 Your Honor, from our records I believe he was
14 represented by Ms. Toni Johnson at the plea. November 20,
15 2007, he pled guilty as indicted before Judge Nettles. I
16 believe what happened was sentencing was deferred for
17 mitigation; however, the Applicant failed to show at the
18 sentencing hearing. He was sentenced by Judge Nettles and
19 the sentence was sealed in his absence. That was in 2007.

20 On July 10, 2013, he appeared with Mr. B.J.
21 Barrowclough of the PD's office and appeared before Judge
22 Alford who published his sentence to him, which was five
23 years for the -- for the firearm charge and eight years for
24 the trafficking in crack cocaine charge and also eight
25 years for the PWID marijuana charge. He did not file a

1 notice of appeal. He filed this current action December 5,
2 2013. He's present today represented by Ms. Leah Moody.

3 **THE COURT:** All right. I'll hear from you, Ms. Moody.

4 **MS. MOODY:** Thank you, Your Honor. May it please the
5 Court? My client's position is that -- well, it was
6 continued on multiple occasions, this case. On 11-18-2014,
7 Judge Lee issued a continuance in order for us to obtain
8 the actual transcript from the 11-28-2007 sentencing.

9 **THE COURT:** All right.

10 **MS. MOODY:** Then it was -- the transcript was not the
11 correct one, it was the actual unsealing of the sentence.
12 The judge was Judge Cole; who continued it to obtain the
13 correct transcript, which was January 21, 2015. When they
14 got in contact with the court reporter for that transcript,
15 the court reporter's records -- they don't keep them but
16 for so long, the records were destroyed.

17 My client still feels that the actual plea should
18 not have accepted by the Court based on the fact that he
19 says that the charges were -- well, I'll read from the
20 statement of what he said. He said the charges are bogus,
21 nothing was found in his possession, and he said he had
22 ineffective assistance of counsel, the statement in which
23 the narcotics officer said was his was totally false, and
24 so allowing that plea to go forward -- or, excuse me, the
25 plea agreement where he signed for the five to eight

1 years he feels that his lawyer was ineffective assistance
2 of counsel and that was Toni Johnson. It has on the
3 notice for hearing that it is B.J. Barrowclough, but
4 Mr. Barrowclough's only role in the sentencing was for the
5 Court to unseal the sentence.

6 If the Court would like to hear from my client, he's
7 ready to take the stand.

8 **THE COURT:** Just one second.

9 **MS. MOODY:** Okay.

10 **THE COURT:** Ms. Moody, I'm looking and I see that
11 there was a plea agreement entered into that I have in the
12 folder.

13 **MS. MOODY:** Yes, sir.

14 **THE COURT:** It looks like that was signed October 2nd
15 of 2007 and that provided that the sentencing would take
16 place November 26th of 2007. The sentencing actually took
17 place on the 28th. Did your client appear at the 28th
18 hearing?

19 **MS. MOODY:** No, sir, Your Honor.

20 **THE COURT:** Did he appear on the 26th?

21 **MS. MOODY:** No, sir.

22 **THE COURT:** So he did not appear at all for
23 sentencing?

24 **MS. MOODY:** That's correct.

25 **THE COURT:** And he was out on bond in the meantime,

1 I suppose?

2 **MS. MOODY:** Yes, sir.

3 **THE COURT:** And just to be sure I've got the dates
4 right, he was actually sentenced by Judge -- I'm not sure
5 who the judge was that opened it. Was it Judge Nettles?

6 **MS. MOODY:** Judge Nettles --

7 **THE COURT:** He signed the sentence and sealed it.

8 **MS. MOODY:** And then -- hold on, Your Honor. Your
9 Honor, my client tells me that Judge Alford --

10 **THE COURT:** Alford issued the sentence?

11 **MS. MOODY:** Yes, sir.

12 **THE COURT:** All right. Yes, ma'am. If you wish to
13 call witnesses, you may do so.

14 **MS. MOODY:** Your Honor, I call Mr. Thomas to the
15 stand.

16 **THE COURT:** Come forward and testify, sir.

17 **THE CLERK:** Please raise your right hand and place
18 your left hand on the Bible.

19 (Whereupon, Christopher Lynn Thomas was duly sworn by
20 the Clerk of Court.)

21 **THE COURT:** Please have a seat on the witness stand,
22 sir. And, please, state your name.

23 **THE WITNESS:** Christopher Thomas.

24 **THE COURT:** Thank you. Ms. Moody, your witness.

25 **MS. MOODY:** Thank you, Your Honor.

1 CHRISTOPHER LYNN THOMAS,
2 having been duly sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MS. MOODY:
5 Q. Mr. Thomas, please state your full name for the
6 record.
7 A. Christopher Lynn Thomas.
8 Q. Okay. And what are you currently incarcerated for?
9 A. Drugs.
10 Q. Do you recall the charges?
11 A. A trafficking charge, a gun charge and a marijuana
12 charge.
13 Q. Okay. And when did you receive this sentence?
14 A. Originally, 2007.
15 Q. No, when did you actually come before the Court?
16 A. Oh, 2013.
17 Q. Okay. And on November 28, 2007, were you available
18 for court?
19 A. No.
20 Q. Okay. Where were you located?
21 A. I had left. I left -- I left the city.
22 Q. Okay. And who was your attorney at the time?
23 A. Toni Johnson.
24 Q. Okay. And did Ms. Johnson -- was Ms. Johnson your
25 only attorney?

1 A. Yes.

2 Q. Okay. So from the date of arrest through your signing
3 the plea agreement, Ms. Johnson was your attorney?

4 A. Yeah.

5 Q. Okay. And did you at any time go over your discovery
6 with Ms. Johnson?

7 A. Yeah, I was kind of forced to sign the plea because
8 -- I kept telling her that I had nothing to do with it.
9 She said that the officer said that I said it was mine.
10 There was no written statement and no recorded statement
11 of me saying this. The officer in question since been --
12 has since been fired from York County Department -- well,
13 the York County Sheriff's Department. He went to Chester
14 and he was fired from Chester also, okay? This officer
15 has a bad history and I told her that, you know, I didn't
16 want to sign it because -- that's why I stayed in there so
17 long because I wasn't gonna sign, but I was forced. She
18 says if I didn't sign it that the solicitor at the time,
19 which was -- oh, God, what's his name? It's on my paper.
20 E.B. Springs. That's his name. E.B. Springs said that
21 if I didn't sign on that day that I was going -- going in
22 front of Judge Hayes and everybody knows how Judge Hayes
23 have a history of doing people with drug charges.

24 Q. All right. Well, let me ask you this. You just
25 indicated that Ms. Johnson forced you to sign the plea

1 agreement?

2 A. Well, actually E.B. Springs, he came and talked to me
3 personally and told me if I didn't sign it on that day that
4 was going the next day in front of Judge Hayes.

5 Q. For a trial?

6 A. Yeah.

7 Q. Okay. So you had a plea offer that Mr. Springs
8 offered to you?

9 A. Yeah, I had several of them. I wasn't -- I didn't
10 want to sign them because I wasn't guilty.

11 Q. Okay. And you indicated to Ms. Johnson that you
12 wanted a trial?

13 A. Yeah, I didn't want to sign a plea, but E.B. Springs
14 made it abundantly clear if I didn't sign that plea that
15 day I was going in front of Judge Hayes on the next -- on
16 the following day.

17 Q. For a trial?

18 A. For a trial.

19 Q. Okay. And so you signed the agreement?

20 A. I did.

21 Q. Did you have an opportunity to read the agreement?

22 A. I did.

23 Q. Did you discuss it with Ms. Johnson or was that
24 agreement just with Mr. E.B. Springs?

25 A. It was just -- I really didn't discuss it with anybody

1 because I had made up my mind that I wasn't gonna get a
2 fair trial, so I felt like the best thing for me to do was
3 just do what they wanted me to do so I could do what I
4 needed to do.

5 Q. So you signed the agreement and then what happened
6 next?

7 A. I went to the York County prison farm, the detention
8 center, and I paid my way out and I left.

9 Q. What do you mean?

10 A. I had an old child support warrant, so I paid my money
11 for the child support warrant and I left.

12 Q. Okay. So in 2007 you just left?

13 A. Yeah.

14 Q. And then --

15 A. I felt like I wasn't gonna get a fair trial. I mean,
16 I tried to tell these people. It was my word against a
17 police officer's word. It's not gonna happen in my favor
18 even though I hadn't been in trouble in years on top of
19 years, but it was just -- I just felt like the best thing
20 for me to do was just take my chances really.

21 Q. Okay. So you realize we're here for post-conviction
22 relief, correct?

23 A. Yeah.

24 Q. And in this post-conviction relief hearing, you're
25 alleging that your attorney failed to properly advise you

1 as -- was ineffective in advising you in this particular
2 case?

3 A. Yeah.

4 Q. Okay. And that somehow you were prejudiced?

5 A. Yeah.

6 Q. Okay. Can you tell the Court what your attorney
7 failed to do?

8 A. She failed to really go on my advice. I was
9 telling -- everything I tried to tell her it was like it
10 was useless and she was like set on just following what
11 they were saying. She just wanted -- it's like I didn't
12 feel like she gave me her best effort. She wasn't on my
13 side.

14 Q. And so how were you prejudiced?

15 A. Because the things that I wanted her to do they were
16 null and void. The only thing she wanted to do was get me
17 -- she was just set on, well, they -- the officer said
18 that you admitted to it, but I didn't admit to it. I said
19 where's the evidence? Where's my -- the written statement,
20 the recorded statement of me saying this? The gun that
21 they found, my fingerprints wasn't even on the gun. The
22 bag of -- with the drugs in it, my fingerprints wasn't on
23 the bag. All this was -- came back from the lab.

24 Q. So why didn't you go to trial?

25 A. In front of Judge Hayes?

1 Q. Well, how much time were you facing?

2 A. Five to thirty.

3 Q. Okay. But you signed a plea agreement for five to
4 eight?

5 A. Yeah. It was either sign the plea agreement or go in
6 front of Judge Hayes on a drug charge with my word against
7 the police's word and facing thirty years. On the drug
8 charges, I know I wasn't found guilty on them. I knew I
9 wasn't guilty. If I was guilty, then I would admit to it,
10 but I wasn't guilty. They found nothing in my possession
11 on the -- on the night of the arrest. They went back to
12 the young lady's house where I did live and they found
13 drugs. During my incarceration in the county building the
14 young lady and her brother were arrested for drugs. When
15 I tried to tell these people that, they were just hellbent
16 on me being the one with the drugs.

17 Q. So when you signed this agreement with E.B. Springs
18 and your attorney, did you read the paragraph where it said
19 the Defendant should he not appear --

20 A. Yeah.

21 Q. -- fail to appear that they would go on without you?

22 A. Yeah. Yeah, I did.

23 Q. And so when you were at -- or when you were
24 incarcerated or in jail for child support, had you received
25 your sentence?

1 A. No.

2 Q. All right.

3 A. I -- I was in jail for child support maybe three days.

4 Q. And then you left?

5 A. Yeah, I paid -- paid the money to get out.

6 Q. Do you recall when you came back to be sentenced the
7 sealed -- the sealed sentence was opened?

8 A. If I'm not mistaken, it was July -- I don't know,
9 July 8th or something like that.

10 Q. Of what year?

11 A. Of 2013. July the 10th maybe, something like that.

12 Q. In that period of time, was your attorney supposed to
13 perform any task for you?

14 A. No.

15 Q. And so what relief are you seeking from the Court
16 today?

17 A. I would like -- me, personally, I would like for the
18 sentence to be vacated or opened back up for a retrial.

19 Q. So you're willing to go to trial?

20 A. Yeah.

21 Q. Okay. Given the fact that Judge Hayes is still in
22 this circuit?

23 A. I mean, I've -- I've got enough evidence to prove my
24 point. I mean, I really feel like I have enough evidence
25 to prove my point.

1 Q. And what type of evidence is that?

2 A. The young lady and her brother have been -- she's
3 gotten in trouble for the drugs since then, the officer who
4 said that I said that he's no longer with this department
5 or the department following this one. I mean, I don't -- I
6 wasn't under no surveillance or anything. I mean, it was
7 just like a -- a spur of the moment case when I didn't have
8 anything on me. Nothing was found in my possession. The
9 gun doesn't have my fingerprints on it, the bag that the
10 drugs were found in doesn't have my fingerprints on it, so
11 why am I the one charged with it? It was two and a half
12 hours later before they brung me those charges.

13 Q. Okay. And the relief that you're -- you're seeking
14 from the Court is a retrial or vacating the sentence?

15 A. Either one, yeah.

16 Q. Do you understand this Court can't vacate your
17 sentence?

18 A. Yes.

19 Q. So the only option is to find that your attorney is
20 ineffective assistance of counsel and then you would start
21 all the way over?

22 A. Okay. Yeah.

23 Q. Recognizing you will be starting all the way over to
24 the original charges that you have?

25 A. Yeah.

1 Q. With the possibility of the same judge being in the
2 same circuit hearing your case?

3 A. Yeah.

4 Q. Is there anything else you would like to tell the
5 Court?

6 A. No, that's it.

7 **MS. MOODY:** No further questions for this witness.
8 Please answer any questions the State may have.

9 **THE COURT:** The State may question the witness.

10 **MR. HUNTER:** May it please the Court, Your Honor?

11 CROSS-EXAMINATION

12 BY MR. HUNTER:

13 Q. Mr. Thomas, you just went over with your attorney the
14 fact that if you go back you'd face thirty years?

15 A. (Nods head.)

16 Q. Okay. So do you agree it was in your best interest to
17 plead to eight years rather than face thirty?

18 A. It was a forced plea though. I mean, I -- my lawyer
19 wasn't on my side. It's like she wasn't fighting for me or
20 something. It was just like sign the plea or we'll go in
21 front -- go to trial tomorrow.

22 Q. Did you ever express your concerns to the judge?

23 A. No, I didn't go in front of a judge.

24 Q. You didn't go in front of the judge because fled,
25 correct?

1 A. Yeah.

2 Q. Okay. So are you alleging anything that --
3 specifically that your attorney should have done or -- or
4 didn't do?

5 A. She should have -- I feel like she should have just --
6 all the evidence that was there and she still wants me to
7 sign the plea, she's still talking about a plea when no --
8 my fingerprints weren't found on the gun, the gun that I'm
9 charged with, that was not in my possession. Nothing was
10 in my possession. I was locked up in the city jail for a
11 child support warrant when this stuff was found at this
12 young lady's house, but if you read those indictments, the
13 indictment says the gun was found in my possession, which
14 it wasn't. No finger -- my fingerprints were not on the
15 gun. The drugs were found in my possession, which they
16 weren't. My hand -- my fingerprints weren't on the bag of
17 drugs. The marijuana was found in my possession, which it
18 wasn't.

19 Q. So the only reason why you decided to plead guilty was
20 to avoid a trial with Judge Hayes?

21 A. Yeah.

22 Q. Okay. And, I guess, despite that did you express your
23 concerns with all this evidence to Ms. Johnson?

24 A. My lawyer, yeah.

25 Q. Okay.

1 A. And the only thing she kept referring to was we have
2 a police said -- a police officer said that you said it was
3 yours.

4 Q. And you agree that you did sign this plea agreement,
5 correct?

6 A. Yeah, I signed it.

7 Q. Okay. And after you fled, did you have any
8 communication with your attorney after that?

9 A. No.

10 Q. Okay.

11 **MR. HUNTER:** I have nothing further, Your Honor.

12 **THE COURT:** Anything further, Ms. Moody?

13 **MS. MOODY:** No, sir, Your Honor.

14 **THE COURT:** You may step down, sir.

15 (Witness excused.)

16 **THE COURT:** Counsel, do you wish to call any other
17 witnesses?

18 **MS. MOODY:** No, sir, Your Honor.

19 **THE COURT:** Does the State wish to call any witnesses?

20 **MR. HUNTER:** No, Your Honor, but I just -- for
21 the record, listed in his application was Mr. B.J.
22 Barrowclough's name, not Ms. Toni Johnson. That's why we
23 did not subpoena her to be here today and the State feels
24 like we don't really have to call him because he was simply
25 there for the publication of the sentence.

1 **THE COURT:** Right.

2 **MR. HUNTER:** And also just due to the fact that any
3 records of what happened in 2007 have been destroyed for a
4 few years now or quite a while now they've been destroyed.
5 The State feels like that it really can't put up any -- any
6 evidence and I guess if I had known that all of this was
7 going to transpire would have made a motion to dismiss. I
8 believe that based on the evidence presented the State
9 feels like Mr. Thomas can't prove his case and right now
10 the State would move for summary judgment.

11 **THE COURT:** Ms. Moody, anything you'd like to argue
12 with the Court -- argue to the Court?

13 **MS. MOODY:** Well, Your Honor, obviously I don't want
14 the Court to grant a summary judgment motion based on what
15 my client is requesting. He's indicated that he felt like
16 his attorney was not representing him when he entered his
17 plea and signed the plea agreement and I guess the
18 testimony -- the Court has to take the testimony --

19 **THE COURT:** His own testimony was that the reason he
20 pled was because -- he was offered his right to a trial by
21 jury, he just didn't want to go in front of the judge that
22 was holding court that week --

23 **MS. MOODY:** Yes, sir.

24 **THE COURT:** -- and he felt like he couldn't get a fair
25 trial, so he decided to take the plea agreement. Isn't

1 that what I heard from the stand?

2 **MS. MOODY:** Yes, sir.

3 **THE COURT:** That he said he felt like his attorney
4 wasn't arguing in his best interest, but certainly he had
5 a right to a trial by jury, he was offered that right, and
6 he chose to plead. I've got a copy of the signed plea
7 agreement. He obviously signed it. I'm sure there was a
8 colloquy with the judge. I don't know exactly what was
9 said, but he's been doing this a while and I've got a --
10 what I believe was said in a colloquy that was -- I assume
11 the -- you indicate it was Judge Hayes that took the plea
12 or Nettles?

13 **MS. MOODY:** Judge Nettles took the plea.

14 **THE COURT:** Nettles took the plea. I think Judge
15 Nettles would do a normal plea colloquy. It was obviously
16 accepted. Judge Nettles signed the -- signed the
17 sentencing sheet. I'm -- I'm at a loss as to what the
18 deficiency of the attorney was. There's no indication
19 that had witnesses been interviewed or evidence been
20 discovered that he would have not pled guilty. He
21 indicates the reason he pled was the judge that was there
22 and what -- it would be his word against a police officer
23 he said and he didn't feel like he had a chance. That's
24 what he testified to and he probably did feel that way, I
25 don't know, but it's certainly not grounds to find that

1 the attorney was deficient. So I'm gonna deny the relief.
2 I'll grant the summary judgment request.

3 **MS. MOODY:** Thank you, Your Honor.

4 **THE COURT:** The testimony is insufficient.

5 (Whereupon, the proceedings were concluded at
6 1:10 PM.)

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3 C E R T I F I C A T E

4 I, Stacy S. Johnson, Official Court Reporter for
5 the Eleventh Judicial Circuit of the State of South
6 Carolina, do hereby certify that the foregoing is a true,
7 accurate and complete transcript of record of all the
8 proceedings had and the evidence introduced in the hearing
9 of the captioned case in Circuit Court on the 7th day of
10 November, 2016.

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

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

15 April 24, 2017

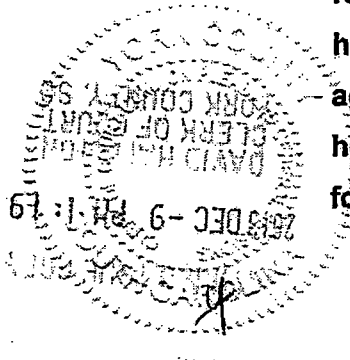
16
17 Isl Stacy S. Johnson
18 STACY S. JOHNSON
19 CIRCUIT COURT REPORTER
20
21
22
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25



PLEA AGREEMENT

The State and the Defendant, Christopher Lynn Thomas, have made the following plea agreement:

- (1) The Defendant will plead guilty to Trafficking in Crack Cocaine, weight 10 to 28 grams, as a second offense, and to Possession With Intent to Distribute Marijuana, second offense, and Possession of Weapon During Commission of a Violent Crime, and sentencing will be deferred until November 26, 2007.
- (2) Between the time the Defendant pleads guilty, and the time he is sentenced, the Defendant will make every effort to assist the local narcotics police officers in their investigations.
- (3) At the Defendant's sentencing, it is agreed that the sentence will be between 5 and 8 "no parole years," with the ultimate sentence determined by the sentencing Court, after hearing from the State and the Defendant. The judge who takes the Defendant's guilty plea, and the judge who sentences him need not be the same judge.
- (4) Should the Defendant be in a position to reasonably give assistance to the narcotics police officers, and not do so, the State will have the right to call the Defendant back into a term of General Sessions prior to November 26, 2007, and proceed to sentencing within the 5 to 8 year range.
- (5) Should the Defendant fail to appear for his sentencing on November 26, 2007, he hereby acknowledges and is on notice that he will be sentenced in his absence, and the 5 to 8 year agreement will have been breached by his failure to appear, and he may be sentenced to any lawful sentence, up to the maximum, for the crimes charged.



Agreed:

E B Springs IV
E. B. Springs IV,
Assistant Solicitor

York, South Carolina

Oct. 2, 2007

Signed and sworn by both
parties before:

Christy Benfield,
Clerk of Court
On October 2, 2007

Agreed:

Christopher Lynn Thomas
Christopher Lynn Thomas

Witnessed by Defendant's attorney:

Joni D. Johnson

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Christopher Thomas,)
 SCDC# 254868)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3701

ORDER OF DISMISSAL

FILED-RECEIVED
 2017 JAN 11 PM 4:12
 DAVID HAMILTON
 S.C.D.P. & G.S.
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 5, 2013. Respondent made its Return on or about February 20, 2014. An evidentiary hearing into the matter was convened on Tuesday, November 8, 2016 at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. This Court had before it a copy of Applicant's records from the York County Clerk of Court, the signed plea agreement, the July 10, 2013 sentencing transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the August 2007 term of the York County Grand Jury for Trafficking in Crack Cocaine (2007-GS-46-3012), Possession of Marijuana with Intent to Distribute (2007-GS-46-3013) and Possession of a Firearm during the Commission of a Violent Crime (2007-CP-46-3011). B.J. Barrowclough,

Esquire, represented him. On October 2, 2007, Applicant entered a plea agreement and pled guilty before the Honorable Michael Nettles.¹ Sentencing was deferred to November 28, 2007; however Applicant absconded and was sentenced in his absence. The sentence was sealed until Applicant was located. On July 10, 2013, Applicant was sentenced by the Honorable John C. Hayes, III, pursuant to a negotiated sentence, to imprisonment for eight years for Trafficking Crack Cocaine, 2nd offense; eight years, concurrent, for PWID Marijuana; and five years, concurrent, for the weapons charge. Applicant did not appeal his conviction or sentence.

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

1. "These charges are bogus/nothing was found in my possession"
 - a. "I was arrested for a child support warrant not for drugs. They brought these charges after I was already locked up. They found nothing in possession. Not in my residence."
2. "Ineffective Counsel"
 - a. "Lawyer never met me only 5 min. before going in front of judge."
3. "The statement in which the narcotics officers said was mine is totally false"

II. SUMMARY OF THE TESTIMONY

Applicant testified that in November 2007, before his trial, he left the city. He testified that Toni Johnson, Esquire, was his attorney and he was forced to sign a plea agreement even though he was innocent. Applicant testified that the solicitor told him that if he did not sign a plea agreement then he would have to proceed to trial. He testified that he read the agreement and signed the agreement because it was what he needed to do. Applicant testified that he absconded because he felt like he would not get a fair trial. He further testified that his counsel did not give her best effort and forced him to plead guilty without seeing all of the evidence.

¹ Respondent has previously provided documentation to this Court that Applicant's plea hearing transcript is not available as it was destroyed after five years, pursuant to SCACR 607.

Bill
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III. APPLICABLE LAW

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

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

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

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IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective in any way. This Court finds that Applicant had the right to a jury trial but purposefully fled because he did not want to participate. This Court finds that the lack of the plea transcript is attributable to Applicant's absconding, as it would have been destroyed in 2012. This Court further finds that Judge Nettles would have gone through a normal plea colloquy with Applicant during his plea hearing and nothing has been produced to show otherwise. In summary, this Court finds that Applicant has failed to show that Counsel was ineffective or that her performance was deficient. Likewise he has failed to show that he was prejudiced by Counsel's actions as he has failed to show that he would not have pled guilty but would have gone to trial on these charges.

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.

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V. CONCLUSION

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


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

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 30th day of December, 2016.

Spaulding, South Carolina



 ROGER COUCH
 Presiding Judge
 Sixteenth Judicial Circuit

DOCKET NO. 2007-GS-46-03011

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

WITNESSES

DE Anderson

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

Defendant

COURT OF GENERAL SESSIONS

August 16, Term 2007

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

im

ARREST WARRANT NUMBER

J-163498

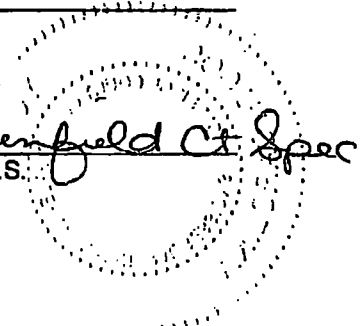
THE STATE

vs.

Defendant

Witness:

C.C.C. PLS. AND G.S.



Christopher Benfield Ct. Spec

ACTION OF GRAND JURY

CHRISTOPHER LYNN THOMAS

TRUE BILL

Off Hampshire
Foreperson of Grand Jury

Date: 9-13-07

VERDICT

Indictment for

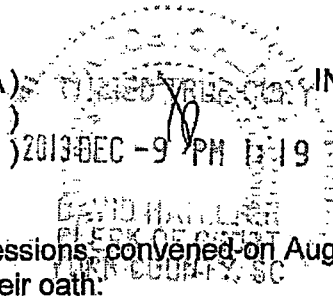
**POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME**

SC Code: 16-23-490
CDR Code: 549

Foreperson of Petit Jury
Date:

Name of
Page and Number

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)



At a Court of General Sessions, convened on August 16, 2007, the Grand Jurors of York County present upon their oath.

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

The Defendant, Christopher Lynn Thomas, did in York County on or about May 31, 2007, while committing the crime of Trafficking in Crack Cocaine, a crime of violence, did have in his possession a .38 caliber revolver, all in violation of Section 16-23-490, 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.

E B Spry

ASSISTANT SOLICITOR

WITNESSES

DE J Anderson

jm

ARREST WARRANT NUMBER

J-163499

ACTION OF GRAND JURY

TRUE BILL

DM Hengehni
Foreperson of Grand Jury
9-13-07

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-46-03012

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 16, Term 2007

THE STATE

vs.

CHRISTOPHER LYNN THOMAS

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: §44-53-375
CDR Code: 0451

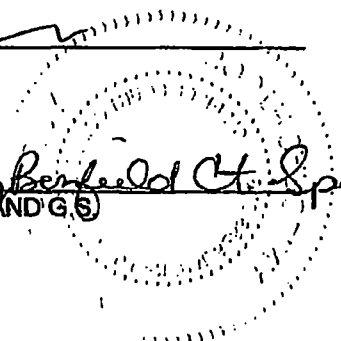
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

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

Defendant

Witness:
Christy Benfield Ct. Spec.
C.C.C. PLS. AND G.S.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

2013 DEC -9 PM 1:19

At a Court of General Sessions, convened on August 16, 2007, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN CRACK COCAINE

That on or about May 31, 2007, in York County, South Carolina, the Defendant, Christopher Lynn Thomas, did knowingly sell, deliver, purchase, or bring into this State, or did otherwise aid, abet, attempt, or conspire with Samantha Etheredge to sell, deliver, purchase, or bring into this State, or the Defendant Christopher Lynn Thomas was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of 10 grams or more, but less than 28 grams of crack cocaine, as defined and otherwise limited in Sections 44-53-110, 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. 2007-GS-46-03013

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

WITNESSES

DEU Anderson

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

August 16, Term 2007

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

jm

ARREST WARRANT NUMBER

J-163500

[Signature]
x Defendant

THE STATE

vs.

Witness:
Christopher Benedict Ct Spec.
C.C.C. PLS. AND S.S.

CHRISTOPHER LYNN THOMAS

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

9-13-07

VERDICT

Indictment for

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

SC Code: 44-53-370
CDR Code: 187

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA) INDICTMENT
 COUNTY OF YORK)
) 2013 DEC 29 PM 1:18

At a Court of General Sessions convened August 16, 2007, the Grand Jurors of York County present upon their oath

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

That on or about May 31, 2007, in York County, South Carolina, the Defendant, Christopher Lynn Thomas, did possess with intent to distribute, dispense, or deliver a quantity of marijuana, a 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 with Samantha Etheredge to 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