

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge
—————

RECEIVED

OCT 12 2017

S.C. SUPREME COURT

UMAR ABDUL CLEA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000889

—————
APPENDIX
—————

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South Carolina Commission on Indigent
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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2012-GS-21-1156

STATE OF SOUTH CAROLINA,
 Plaintiff,

-vs-

UMAR ABDUL CLEA,
 Defendant.

TRANSCRIPT OF RECORD

September 4, 2013
 Florence, South Carolina

B E F O R E:

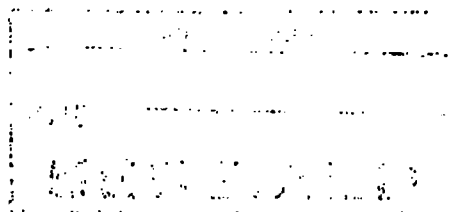
THE HONORABLE D. CRAIG BROWN, Judge

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

MATTHEW OZMENT, Esquire
Attorney for the Plaintiff

SHAUN KENT, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter



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(No Exhibits Presented)

1 SEPTEMBER 4, 2013

2 (WHEREAS this matter was scheduled for a term of General
3 Sessions court, the defendant appeared along with his
4 counsel of record. The proceedings began at 11:05 a.m.)

5 THE COURT: Yes, sir.

6 MR. OZMENT: Your Honor, the State calls Indictment 2012-
7 GS-21-1156, the State v. Umar Clea. He is charged with
8 trafficking 28 grams or more. There are actually three tiers
9 to the heroin trafficking. It's four to 14, 14 to 28, and 28
10 or more. He is going to plead to the lesser included of four
11 to 14, seven to 25 years. There's no recommendation or
12 negotiation.

13 THE COURT: Has he been sworn?

14 THE CLERK: No, sir. Please raise your right hand. Do
15 you swear to tell the truth, the whole truth, and nothing but
16 the truth, so help you God?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Sir, you are Umar Abdul Clea?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you ever been treated for alcohol abuse,
21 drug abuse, or mental illness?

22 THE DEFENDANT: No, sir.

23 THE COURT: Within the last 24 hours, have you taken any
24 medication, drugs, or alcohol?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you aware of any physical, emotional, or
2 nervous problem that would prevent you or keep you from
3 understanding what's going on here today?

4 THE DEFENDANT: No, sir.

5 THE COURT: The State indicates you're pleading guilty to
6 trafficking heroin, four grams or more but less than 14 grams.
7 Is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that this particular
10 offense is considered to be a violent offense as well as
11 serious offense under South Carolina law?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And, Mr. Kent, I'm sure you've explained to
14 him the consequences of pleading to a violent as well as a
15 serious offense?

16 MR. KENT: I have, Your Honor.

17 THE COURT: And do you understand the consequences, Mr.
18 Clea, pursuant to your lawyer, Mr. Kent, explaining to you
19 those consequences?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Well, I know he's explained it to you. I've
24 known your lawyer a long time, but I'm going to hit the high
25 notes on it. Do you understand that by pleading to a serious

1 offense that that's one strike? That's strike one on a three
2 strike rule. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In other words, if you're convicted of any
5 two or more -- two serious offenses after this plea here today
6 and the State has properly noticed you of their intent to seek
7 life without parole, the Court would have no alternative but
8 to give you life. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Understanding that, do you still want to go
11 forward and plead guilty to this charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you also understand that this is a
14 violent offense. In other words, you can count on doing day
15 for day on whatever sentence the Court imposes. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you still want to plead guilty here
19 today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, Mr. Ozment, who is
22 prosecuting this case, has said that this sentence or this
23 plea is being entered into without negotiation or
24 recommendation. Is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Understanding that this is
2 without recommendation or negotiation, understanding that this
3 is considered to be a violent offense as well as a serious
4 offense, and understanding that this Court can give you up to
5 25 years today, how do you plead today? Guilty or not guilty?

6 THE DEFENDANT: I plead guilty, Your Honor.

7 THE COURT: Now, you understand that when you plead
8 guilty, you give up certain important constitutional rights.
9 Do you understand that you have a right to a jury trial? At a
10 jury trial, I would tell the jury that you are presumed
11 innocent, that you are presumed not guilty. The State would
12 bear the burden of proving you guilty beyond a reasonable
13 doubt. You would have the right to question any witnesses
14 against you, as well as the right to present witnesses for
15 your defense.

16 You would have the right to remain silent. If you went
17 to trial and did remain silent, I would tell the jury that
18 they could not hold that fact against you.

19 You would have the right to present any defense you had
20 to the charges against you and if you made any incriminating
21 statements, you would have the right to challenge the
22 admissibility of those statements.

23 Do you understand those rights?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand that when you plead guilty,

1 you give up those rights?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Understanding your rights and
4 understanding that when you plead guilty you give them up, how
5 do you plead here today? Guilty or not guilty?

6 THE DEFENDANT: Guilty, Your Honor.

7 THE COURT: All right. You're represented by Mr. Kent.
8 Are you satisfied with his representation?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you talked with him as often and for as
11 long as you felt necessary for him to represent you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you need any more time to talk to him?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Have you understood your talks with him?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Has he done anything that you believe -- has
18 he done everything you believe he could have done or should
19 have done for you?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has he done anything that you think he
22 shouldn't have done?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Are you completely satisfied?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Have any complaints whatsoever?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Has anybody promised you anything or held out
4 any hope of reward to get you to plead guilty here today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anybody used any threats, force,
7 pressure, or intimidation to get you to plead?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anybody mistreated you in any way,
10 whether it be law enforcement or Solicitor's Office?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you had enough time to make up your mind
13 as to whether or not you want to plead guilty or go to trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What do you wish to do?

16 THE DEFENDANT: Plead guilty, Your Honor.

17 THE COURT: Are you pleading guilty of your own free
18 will?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you understood my questions?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: Mr. Ozment?

23 MR. OZMENT: Your Honor, on April 30th of 2012, Mr. Clea
24 was stopped for following too close on I-95 South here in
25 Florence County. This was a stop by an officer from Sumter

1 County, but that was pursuant to a inter -- inter-county
2 agreement between Florence and Sumter. That was a temporary
3 agreement going on at the time.

4 During the traffic stop, Deputy Tosoni [phonetic] became
5 suspicious that more than just a traffic violation was going
6 on. He ran his canine around that vehicle and the canine
7 positively alerted twice. Officer Tosoni then searched the
8 vehicle. He found in the vehicle what I would call a travel
9 bag, like for your toiletries or a Dopp kit. In that were two
10 clear bags of what appeared to be heroin, another bag that had
11 black tar heroin in it, and then two clear bags that had a
12 white powdery substance, as well as \$1,001 cash.

13 Mr. Clea at the time stated that the bag contained cut
14 drugs. The white powdery substance was originally thought to
15 be cocaine perhaps. It was tested and came back as no
16 controlled substance. It's the State's belief that that was
17 probably something to cut the black tar heroin with.

18 THE COURT: All right. Mr. Clea, you've heard the facts
19 as stated by the solicitor in this case. Do you agree with
20 those facts?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And are you guilty of trafficking heroin,
23 four grams or more but less than 14 grams?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And how do you plead? Guilty or not guilty?

1 THE DEFENDANT: Guilty, Your Honor.

2 THE COURT: All right. I find that there is a
3 substantial factual basis for this plea. I also find
4 defendant's decision to plead guilty has been entered into
5 freely, voluntarily, knowingly, and intelligently. That he
6 has had the advice and counsel of an attorney with whom he's
7 indicated he's completely satisfied. I'll accept his plea and
8 be happy to hear from you, Mr. Kent.

9 MR. KENT: Thank you, Judge. May it please the Court.

10 THE COURT: Yes, sir.

11 MR. KENT: Mr. Clea and I met I guess it was about two
12 years ago and we sat down and we talked over the case as this
13 wasn't the only case he had in several jurisdictions and we
14 talked about his cases and, Judge, to be perfectly candid, the
15 first conversation we had as I sat down and I met with him,
16 after talking with him I said you're entirely too old to be
17 doing this. What's going on with your life? He put his head
18 down immediately and he said that's a conversation we'll have
19 at a later point in time and we did, which I'll get to.

20 Judge, I wanted to thank the Solicitor's Office. As you
21 know, originally we had this hearing scheduled for a
22 suppression motion. Myself and Mr. Clea talked about the
23 suppression motions and I don't want you to think there was
24 any part of disrespect to the Court or to the Solicitor's
25 Office or that he was denying his culpability. The entire

1 matter is very clear on what he had done wrong. However, when
2 we sat down and I talked about his legal issues and this
3 potential issue and told him that he had what I thought was a
4 decent suppression issue, that was something he should look
5 into. So we sat down several times and we talked about his
6 suppression issue.

7 And, Judge, it would have been a close call. I'll be
8 very candid with the Court and I was very candid with the
9 prosecutor, as well as with my client, that it would have been
10 a close call and I told him very clearly just today this is
11 always going to be your decision. Again, he held his head
12 down and he made it clear I'm responsible for what I've done
13 wrong and he took a big sigh.

14 Judge, Mr. Clea is 52 years old, which as I said a few
15 minutes ago, he's entirely too old to be doing something like
16 this. We talked and talked about the suppression, talked
17 about his history, and we talked about his life and we talked
18 about all the mistakes that he has made. He again lifted his
19 head and I said, well, why were you doing this? He said,
20 Shaun, I've done a history of crimes throughout my life. He
21 was very blunt with me. I've lived a life of crime. I've
22 done a lot of stupid stuff through my youth and finally right
23 around 2003, that's when I decided I'm not doing this anymore.

24 He's married. He has five children. He actually has
25 twelve grandchildren. He says I can't live a life in and out

1 of prison if I'm going to try to change myself. So he
2 actually held himself up together, started working for the
3 Baltimore public school system. He worked for the Baltimore
4 public school system and he was there for a while and then
5 they had -- the easiest way to describe it was an internal
6 audit. And so when they had the internal audit, they made
7 everyone come back in and run their fingerprints, and when
8 they run their fingerprints, his criminal record popped up and
9 he was immediately fired.

10 After getting fired from that job, literally the very
11 next day he went to work for Goodwill. He got another job and
12 worked for Goodwill, same situation. He got his job, he
13 started, he came back for the background check and they showed
14 his prior record and the overall course, he realized within a
15 three day period he had lost two jobs. His prior record was
16 coming back to get him. He had children he had to support.
17 He had grandchildren he had to support.

18 He went back to messing with drugs. Not the smartest
19 decision he ever made, but that was the one thing that he had
20 known. He realized it was one of the dumbest decisions he
21 ever made, but he was trying to figure out what was the best
22 way to make money. Sometimes I tell clients there but for the
23 grace of God it could have been me and I'm glad it wasn't, but
24 that don't justify what he does but I understood what he did.
25 He regretted it. He regrets the decision he made and if you

1 read some of the incident reports, he had always tried to talk
2 to law enforcement about what can I do, trying to cooperate.
3 He knew what he was doing was wrong.

4 Judge, I get fearful when I find a man of his age who I
5 come up with with the mandatory minimum sentence is that he's
6 looking at and I'm one of the few defense attorneys who
7 actually agree with mandatory minimum sentences. I think
8 they're effective in certain situations and I think it's
9 effective in this situation. However, what scares me in this
10 situation is someone of his age that whatever sentence the
11 Court deems fit, even if you gave him the minimum, he'll be a
12 60-year-old man when he walks out of chains and that's scary.
13 I believe in our criminal justice system and I believe what's
14 it there for.

15 When I met with Mr. Clea and every time I've talked to
16 him, Judge, I'm not just saying that he is one of the most
17 affable, one of the most intelligent people I've ever met.
18 He's one of the few clients as we've gotten down and we've sat
19 down to talk about suppression motions who actually
20 understands the law. I think in another life he would have
21 made an excellent attorney. His briefs, the motions that he
22 has given me, the legal analysis he has given me has always
23 been spot on to the point that actually this morning before we
24 got done, he actually made a colorful argument about Arizona
25 v. Gant and its applicability in this case, and the two of us

1 were arguing and I kept telling him Arizona doesn't apply and
2 he was trying to explain to me how it does apply because he's
3 very intelligent, entirely too intelligent to find himself in
4 the role that he finds himself in now.

5 Judge, I understand that sentencing in the Court's
6 discretion is probably the most difficult thing that a judge
7 finds himself -- and the two of us have sat on this side of
8 the bench and we've begged the Courts the same way that I'm
9 begging you right now. There is a no fault provision
10 contained inside of the statute what he's pleading to and the
11 no fault provision says no matter what I say, no matter how
12 colorful I am, he is looking at a minimum of seven years and,
13 Judge, I'm not going to be one to say I think that's all you
14 should give him in this situation, but I would ask that we do
15 not go to the highest range of the statute because I do not
16 believe this is a 25-year sentence for this man, mostly
17 because very candidly a 25-year sentence for this man will be
18 a life sentence.

19 So what I ask the Court to do is to take his age into
20 sharp consideration when you decide what sentence to give him.
21 The fact that he did have a colorful suppression argument and
22 on his own after I discussed it with him he decided it was
23 time for him to enter into a plea. I made it clear how much
24 time he was looking for -- looking at. I made it clear what
25 time he was looking at and still understanding all of that, he

1 came in front of you and said I want to plea.

2 He's scared, as you can tell by his face broken down and
3 the sound of his voice as well. He's very scared. He was
4 scared back in there when we started entering into a plea.

5 Judge, I ask that the Court sentence him somewhere in the
6 range of seven to ten years, mostly because of his age because
7 whatever sentence the Court gives him today is going to be
8 such a vast contradiction of what age he's going to be when he
9 gets out. Sometimes you age out of the life of crime. So
10 when he's sixty-five years old getting out of the Department
11 of Corrections, he's going to age out, if he even makes it
12 that long.

13 That would be my plea to the Court, Judge. His family
14 would have been here. I've been in steady contact with his
15 wife. She is very sick. She could not make it and the
16 majority of his family lives in Maryland.

17 THE COURT: All right. Thank you, Mr. Kent. Mr. Clea,
18 anything you want to tell me, sir?

19 THE DEFENDANT: Yes, Your Honor. As my lawyer, Mr. Kent,
20 stipulated that I do take responsibility for what I've done
21 and what I did in the past. However, I've really sincerely
22 tried. When you continue to have your record and your past --
23 my past is what it is. My future is spotless because I
24 haven't touched it yet. However, whenever I go for
25 employment, either my record or I'm over-qualified, and nine

1 times out of ten because I have a felony conviction, I can't
2 get a job.

3 I went to school for CPA, certified public accountant,
4 and because of funding, I couldn't take the bar to be
5 certified. I would do a little side work here and there for
6 people without being on the books paying taxes or being
7 employed, but when I try to get a job, you know, and the last
8 job that I had working for the Baltimore City Public School,
9 this individual teacher from Clinton, Pennsylvania, he had a
10 teacher and student relationship so he lost his job in
11 Pennsylvania. He come to Maryland to work and the same thing
12 happened that transpired there. He had a relationship with a
13 student. The superintendent, when they let him go, he had
14 everyone retake or re-fingerprint and if you had a felony that
15 wasn't ten years old, it was an immediate termination.

16 I lost that job and I was working for Goodyear --
17 Goodwill at the same time part-time. I was working seven days
18 a week for about three years, Monday through Friday at
19 Baltimore City Public School and Saturdays and Sundays at
20 Goodyear -- Goodwill. However, the fiscal year they didn't do
21 as they should have done so what they did -- the solution to
22 their problem was to terminate all part-time workers.

23 I tried the -- the DVD and the CD thing or I'd sell a
24 little clothing. Right? I got a peddler's license, but the
25 peddler's license that I had wasn't a peddler's license that

1 they said that I should have had and the officer, he arrested
2 me, took all my goods. I go to court. The prosecutor in the
3 case because of my record wanted to give me eighteen months.
4 So I had to get a private attorney to represent me. He did
5 the case, but I'm going to prison. However, I have to pay
6 restitution to the Motion Movie Association \$1,500 and give
7 him \$1,000. That's \$2,500. Whatever I do, it's not happening
8 for me.

9 MR. KENT: Thank you, Judge.

10 THE COURT: Do you want to tell me anything else?

11 THE DEFENDANT: Yes. I'm 52 years old, as my lawyer
12 said. I don't want to die in prison, Your Honor, and I beg the
13 Court to not sentence me to where I'll die in prison. They
14 said that the guidelines are seven to 25 and I ask you please
15 to consider my age and not let me die in prison. I don't know
16 what tomorrow may hold. My health could go bad. Anything can
17 happen. Tomorrow is not promised to any of us, but I don't
18 want to die in prison.

19 THE COURT: All right. Thank you, Mr. Clea. Anything
20 else from the State?

21 MR. OZMENT: Your Honor, we went over his record in
22 chambers and I saw Your Honor taking notes of it so I know the
23 Court's aware of that.

24 THE COURT: Give me -- give me his record again.

25 MR. OZMENT: Your Honor, I'm going to go through the

1 South Carolina record first. In '90, he had an ABHAN, '96 an
2 unlawful weapon, five fraudulent checks in '96, shoplifting in
3 '97, possession of a stolen vehicle in '97, ABHAN and
4 shoplifting in '99, and a failure to stop for a blue light in
5 2000.

6 Then he has a Maryland record, which is robbery with a
7 deadly weapon in '84, he had a theft charge in '87, an
8 unlawful handgun in '88, a theft charge in '97, and a
9 distribution of narcotics in 2003.

10 THE COURT: Officer, anything you want to tell me, sir?

11 THE OFFICER: Judge, in my experience dealing with Mr.
12 Clea, we've dealt with him in Sumter County as well. It's my
13 understanding he has pending charges in Richland County for
14 the same thing. He's a lifelong criminal. That's all he's
15 done; that's all he's known. He may have worked in the
16 meantime. He was out on bond when I arrested him for this
17 charge. So he was actually out on bond for trafficking heroin
18 at that time. He's a career criminal and he's 52 years old
19 and he hasn't changed yet, Judge.

20 THE COURT: How long has he been in jail ---

21 THE DEFENDANT: Since June the 26th.

22 THE COURT: --- for -- of last year?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: As far as what he would get credit for here?

25 MR. OZMENT: I can tell you we got a bench warrant on him

1 on June the 27th, 2012.

2 THE COURT: Was he -- what did he -- when was -- when did
3 these charges originate again?

4 MR. OZMENT: These originated on April 30th, 2012.

5 THE COURT: April 30th. How long was he in then?

6 MR. OZMENT: It looks like maybe four days.

7 THE COURT: Mr. Kent, do you have a number on what he's
8 entitled to for credit?

9 MR. KENT: I sure don't, Judge.

10 MR. OZMENT: I know we put a detainer on him while he was
11 still in Maryland. That would have been shortly after the
12 bench warrant.

13 THE COURT: The bench warrant was issued when? June?

14 MR. OZMENT: June 27th, 2012, and once -- once that
15 detainer went on him in Maryland, he's been in custody
16 somewhere to my knowledge since.

17 MR. KENT: That is correct, Judge.

18 THE COURT: All right. I want y'all to check and see
19 what he's entitled to credit-wise because if I just check this
20 box, he's going to end up writing Mr. Kent or a letter to me
21 when he gets to the Department of Corrections because he's
22 going to realize that the Department of Corrections hasn't
23 properly calculated what credit he's entitled to and I want
24 him to be entitled to whatever credit he's entitled to on
25 this. I don't know if the jail needs to check on that or we

1 used to -- when I was part-time with the Public Defender's
2 Office, you used to could get on the website out there and
3 check that. I don't know if -- can you do that anymore, Mr.
4 McKenzie?

5 MR. MCKENZIE: Yes, sir. You can do that.

6 THE COURT: I just want to know what he's entitled to.
7 If y'all will, check on that, please. I mean he's entitled to
8 approximately a year, give or take a couple weeks.

9 MR. OZMENT: Your Honor, it sounds like he was in custody
10 in Maryland from the time we got the bench warrant on him. So
11 I think there's no problem giving him credit from the time.

12 THE COURT: June 27th?

13 MR. OZMENT: I think that's a fair number, Your Honor.

14 THE COURT: 435 days.

15 MR. OZMENT: Yeah. 2012, Your Honor.

16 THE COURT: Mr. Clea, do you understand that?

17 THE DEFENDANT: Yes, sir. June 26th, 2012.

18 THE LAW CLERK: The 27th is the date.

19 MR. OZMENT: June 27th.

20 THE COURT: The bench warrant here was issued the 27th.
21 That's when we're getting credit for here.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right.

24 (Whereupon, there is a pause in the proceedings.)

25 THE COURT: Mr. Kent, you said this and I want to hit on

1 this issue you raised because -- and I -- Mr. Clea, you have
2 every right -- every right to file -- or your lawyer on your
3 behalf, I'll put it that way, has every right to file whatever
4 motions that they deem appropriate in your case, whether it's
5 a suppression motion or whatever, and this Court and no other
6 Court I don't think would ever fault you for doing that.

7 When law enforcement takes your liberty or anybody else's
8 liberty, they are required to go through certain steps to do
9 so, and your lawyer, if he felt like it was a proper issue to
10 pursue, he should do so, and I know he will and he did, and
11 when you plead guilty, you give up any of those, you know,
12 challenges that you may have to a search, et cetera.

13 I've known your lawyer, Mr. Kent, a long time and he does
14 an absolute excellent job for his clients. I think he and I
15 had a couple cases where we represented co-defendants in
16 federal court. Didn't we, Mr. Kent?

17 MR. KENT: Yes, sir, Judge.

18 THE COURT: And he's always done an excellent job for his
19 clients and he's done an excellent job for you in this case in
20 getting the State to reduce it from a mandatory minimum 25
21 year sentence to the range that he's gotten here.

22 I was looking at something up here and handed it to my
23 clerk to read. It was something that I read sometime back.
24 It talks about great moments of decision and we are each
25 tasked -- or our lives will be the sum of the decisions that

1 is committed to the State Department of Corrections for a
2 period of twelve years. Give him credit for 435 days that he
3 has done. Good luck to you, Mr. Clea. Good luck to you.

4 MR. KENT: Thank you.

5 MR. OZMENT: Thank you, Your Honor.

6 THE COURT: Mr. Ozment, did I need to sign something
7 lifting a bench warrant?

8 MR. OZMENT: I do. You do, Your Honor. Thank you.

9 (Whereupon, the proceedings end at 3:58 p.m.)

10

11 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF FLORENCE)

4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Florence County, South Carolina, on the
12 4th day of September, 2013.

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

15

16

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20

March 31, 2014

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FILED FORM 5

STATE OF SOUTH CAROLINA

2013 DEC 23 PM 1:38

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

CONNIE REEL-DEAN
CCCP & GP
FLORENCE COUNTY, SC

Umar Abdul Clea,

20 13 CP 21 3298

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

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Allendale C.I., P.O.Box 1151, Fairfax, SC 29827
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS OF FLORENCE County
3. Name(s) of co-defendant(s) (if any) no
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-21-01156, Drugs, Trafficking in Heroin, Morph., etc.
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sept. 4, 2013
 - (b) Twelve (12), sentence

CERTIFIED: A TRUE COPY
Connie Reel-Dean
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
Revised 3/2003

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ~~yes~~
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
~~No~~
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) ~~The Applicant was never advice he had the right to appeal~~
- (b) his guilty plea.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: **The Applicant was never advice he had a right to appeal, also see the Memorandum that Support this Application for Relief..**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	
Umar Abdul Clea,)	
)	
Applicant,)	
)	
)	
VS..	)	MEMORANDUM OF LAW IN SUPPORT OF
	)	APPLICATION FOR POST-CONVICTION RELIEF
State of South Carolina)	
)	
Respondent.)	
<hr/>)	

PLEASE TAKE NOTICE that the Applicant, Umar Abdul Clea through its under-
signed Pro Se, will move before the Court of General Sessions, at Place and Time
at the Court may appoint, for a Motion for After-Newly Discovered Evidence under
Rule 29 SCRCP, and pursuant to Rule 60 (b)(3), SCRCP. There is no time limit-
ation within which such Motion must be made, and no statute of limitation when a
party seek to set aside a judgment due to fraud upon the Court (Citing Catoe v.-
State, Supra; Aoudo v. Mobil Oil Corporation, 892 F.2d 1115,1118 (1st Cir.1989).

**GROUND A. Did the Solicitor committed a contempt of the proceedings by
unlawfully impaneled its grand jury outside the statute?**

SUPPORTING FACTS AND ARGUMENT

The Defendant humbly contends that the Solicitor committed a contempt of
the proceeding by unlawfully impaneled its grand jury outside the statute. Here,
the GENERAL ASSEMBLY did not made a provision in S.C.Code Ann. 14-5-780 for a "Term
of Court" for "September". As a result, the Solicitor failure to comply with the
statute (14-5-780), which is a contempt of the proceedings.

In the case at hand the indictment reads as follows:

- **At a Court of General Sessions, convened on September 6, 2012 the Grand Jurors of Florence County present upon their Oath:**

Additionally, there is an argument to be made that S.C.Code Ann.14-5-780 is without a provision for September "Term of Court" its violates the contractual obligations contained within Sec.14-5-780 because South Carolina statutory law provides the following:

- **S.C.Code Ann. 14-5-780 Sec.(2), Florence County. The Court of General Sessions for Florence County shall be held at Florence on the Third Monday in January for one week, on the fourth Monday in January for one week, on the first Monday in March for one week, on the Second Monday in March for one week, on the fourth Monday in April for one week, on the first Monday in June for one week, on the Second Monday in June for one week, on the first Monday in October for one week, on the Second Monday in October for one week and on the Second Monday in December for one week.**

Nowhere in S.C.Code Ann.14-5-780 Sec.(2), does the legislature provide for the Month of September within the statute. Here, the Solicitor committed a contempt of the proceedings by the failure to unlawfully impaneled its Grand Jury on September 6, 2012. The statutory construction of 14-5-780, and legislature history is very clear and ambiguous. See Bondholder v. Protective Comm. v. I.C..C., 432 F.2d 2681, 271 (3rd Cir.1970), and authorities cited therein. Also, the legislative history relied upon is not inconsistent with the facts that statute esceded the "Term of Court" in Twelfth Circuit.

Consequently, and in keeping with the mandatory provision of section 14-5-780 and 14-9-210, state has no jurisdiction to issue return of true-billed indictment except during a time when the Court of General Sessions is lawfully convened to oversee the grand jury process. Any acts of the Court taken outside those statutory restrictions would by already determined that NO indictment may be true billed by a grand jury when the Court lacks jurisdiction. The grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of indictment-

can take place. See State v. McClure, State v. Funderburk, and State v. Wheeler.

Thus, under those requirements, No rules can be made or established for process and return of indictments, unless it comports with section 14-9-210 and section 14-5-780 Sec.(2). Otherwise, it would be unconstitutional and null, being without being legal effect.

On the other hand, it appears that the Solicitor unlawfully impaneled its Grand Jury in the Court of Common Pleas. Here, it should be noted that the Court of Common Pleas is vested with No authority to take any action on matters pertaining to return of true-bill criminal indictments. "The Court is made up of the Court of Common Pleas which hears Civil Actions and the Court of General Sessions which hears criminal cases..." See Dove v. Gold Kist Inc., 314 SC 235, 442 S.E.2d 598, 600 (SC 1994); see also SC Constitution Article V § 1.

Thus, there is no grant of concurrent jurisdiction, and therefore NO true bill criminal indictments can be lawfully issued through grand jury proceedings held before a Court of Common Pleas.

Therefore if raised by State, there would be no merit to the contention that a judge on his own standing retains authority to impanel a grand jury after the close of Court, because in this case the record shows that no lawful term of General Sessions Court was in progress on September. And as established a judge loses jurisdiction with the adjournment of court. Thus, NO Term of Court, NO lawful judicial authority.

Here the facts and evidence will establish that the Solicitor also conspired with several other State Judicial personnel in order to impanel a grand jury outside the authority of the Court of General Sessions, to complete return of an illegal true bill and to print and publish false indictment information.

GROUND B. The Solicitor failure to comply with Rule 3, SCRCrimP. requiring to take action on a warrant within ninety (90) days subject the Solicitor to contempt of the proceeding.

SUPPORTING FACTS AND ARGUMENT

The Defendant contends it is well establish by Rule 3 (c), SCRCrim.P. that the failure to comply with Rule requiring Solicitor to take action on a warrant in Ninety (90) days after its receipt by him would subject a Solicitor to contempt of the proceedings against the Circuit Court. See State v. Culbreath, 316 S.E.2d 681. Here, one of the Solcitor purpose to corrupt administration for Justice, accompanied by definite overt act on part of contemner, designed to carry purpose into effect, notwithstanding failure of design. As such, it was a four month delay from the time of the Arrest on April 30,2012 and the time of the Solicitor preparing an indictment for presentment to the grand jury on September 6,2012.

South carolina Rules of Criminal Procedure Rule 3 (c) states: **Disposition on arrest warrant, the Solcitor shall take action on the warrant within ninety (90) days by preparing an "indictment" for presentment to the Grand Jury. In turn said indictment(s), is to be passed on to the Trial Court to allow them to invoke and,or enact its powers of Suctject Matter Jurisdiction; Sharp v.Johnson, 107 F.3d 282 (5th Cir. 1997), Santos v.State, 843 S.W.2d 953,956 (Tex App.1992); Studer v.-State, 799 S.W.2d 263 (Tex.App.1990); Williams v. Morris, 320 SC 196, 464 S.E.2d 97 (1995).** The indictment is also a legal document that confirms the Criminal Court's power and,or ability to hear the particular case by stating and documenting the class of case or alleged offense and the statute of the offense charged stating the offense in the language of the statute further validating that the matter(s) resides in the proper Court of Jurisdiction to hear the matter. These undisputable facts make the indictment more than merely a "notice document". It is the vehicle in criminal cases,which invest the Criminal Court the right to do so thereby making them inter-linked, inter-locked and inter-dependant upon the viability of each other. To determine

without indictment(s), it does not affect a Criminal Court's power and, or ability to hear and determine cases of his general class to which the proceedings in question belong is an error of law and is like stating, not having a soul, consciousness or life force do not affect a man's ability and, or power to be a man. Without a soul or life force by laws of reason you will still have a man but the total truth of the matter is that you have a "dead man", whose worth to society is useless; the same way the Criminal Court's power and, or ability to hear this particular class of case is useless without the essentially needed vehicle in the form of the indictment(s). The sufficiency of an indictment is all Jurisdictions prerequisite in cases in which an indictment is needed and, or required, see note, indictment sufficiency, 70 Column L.Rev 876,888 (1970), United States v. Abrams, 539 F.Supp. 378,384 (SDNY 1982),.

- (a) N/A
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (See attach Memorandum of law in Support of Application for Post-Conviction Relief)
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____

- iv. N, A
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N, A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. 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) This is the first PCR Application.
- (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? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
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. Shaun C. Kent, P.A., 19 South Mill Street- Manning S.C. 29102
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. My Plea Hearing and Sentencing
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Motion to Vacate the conviction and sentence as a matter of law
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of FLORENCE)

VERIFICATION

Umar Abdul Clea
I, Umar Abdul Clea, 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.

Umar Abdul Clea

SWORN to and subscribed before me this 13
day of December, 2013.

Virginia Smith (L.S.)
Notary Public

My Commission Expires: 12-12-22

FILED
2013 DEC 23 PM 1:38
CONNIE REE-SHEPHERD
COP & GS
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY
Connie Ree Sheperd
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

Umar Abdul Clea

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 thereof.

Umar Abdul Clea
Applicant

SWORN or affirmed to and subscribed before me this
16 day of December, 2013.

Virginia Stults
Notary Public

My Commission Expires: 12-12-22

FILED
2013 DEC 23 PM 1:38
CONNIE REEL-SHEPARD
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shepard
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
Umar A. Clea, #272806,	)	Case No. 2013-CP-21-3298
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed December 23, 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 Florence County Clerk of Court. In September 2012, the Florence County Grand Jury indicted Applicant for possession of a controlled substance and trafficking twenty-eight (28) or more grams of heroin (2012-GS-21-1156). Shaun C. Kent, Esquire, represented Applicant. On September 4, 2013, Applicant pled guilty to trafficking four (4) to fourteen (14) grams of heroin. In exchange for the plea, the State dismissed the charge for possession of a controlled substance. The Honorable D. Craig Brown sentenced Applicant to confinement for a period of twelve (12) years. Applicant did not appeal his guilty plea or sentence.

II.

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

1. "The Applicant was never advise he had a right to appeal[.]"
2. "Did the Solicitor committed a contempt of the proceedings by unlawfully impaneled its grand jury outside of the statute?"

3. "The Solicitor failure to comply with Rule 3, SCRCrimP, requiring to take action on a warrant within ninety (90) days subject the Solicitor to contempt of the proceedings"

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation he did not knowingly and voluntarily waive his right to a direct appeal is without merit. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). However, a defendant may waive a direct appeal by making a "knowing and intelligent decision not to pursue the appeal." Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010) (quoting Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)). Furthermore, "[a]cts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). In the absence of a waiver by the defendant, counsel must either initiate an appeal or comply with the Anders¹ procedure. White, 263 S.C. at 118, 208 S.E.2d at 39. Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant

¹ Anders v. California, 386 U.S. 738 (1967).

must still petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291, n.1, 342 S.E.2d 60, 60, n.1 (1986) (“Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.”).

Respondent submits Applicant knowingly and voluntarily waived his right to a direct appeal. However, this allegation probably raises questions of fact 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.

Respondent further submits Applicant’s allegation regarding the impanelment of the grand jury is without merit. Subject matter jurisdiction is the power of a court to hear a particular class of cases. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). An applicant may challenge the subject matter jurisdiction of the trial court at any time. Id. However, “subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts[.] Id. at 101, 610 S.E.2d at 499. An indictment is a notice document and any insufficiency in the indictment does not deprive the circuit court of jurisdiction. Id. at 102, 610 S.E.2d at 500. Rather, challenges to the indictment must be raised prior to the swearing of the jury or they are waived. Id. (citing S.C. Code Ann. § 17-19-90). Thus, a PCR applicant may only raise challenges to the sufficiency of an indictment by alleging ineffective assistance of counsel for failing to properly move to quash the indictment in accordance with section 17-19-90.

Regardless, Applicant’s allegation the Grand Jury was improperly impaneled is wholly without merit. A grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§

14-5-910 to -940 (allowing for terms of court not provided for by law). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. See State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) (“[M]erely changing the time for holding the court did not make the grand jury illegal.”). Furthermore, a presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Absent evidence to the contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991). Applicant’s indictment is valid on its face because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. Id. at 75, 472 S.E.2d at 40. Likewise, the indictment is stamped “True Billed” and signed by the foreman. Pringle, 287 S.C. at 410, 339 S.E.2d at 128. Thus, Applicant’s indictment appears to have been lawfully obtained. Therefore, Respondent submits this allegation should be dismissed pursuant to Rule 12(b)(6), SCRCPP.

V.

Respondent submits Applicant’s allegation regarding Rule 3, SCRCrimP, should be dismissed for failure to state a cognizable claim under the Post-Conviction Procedure Act. An applicant may commence a post-conviction relief action based 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(a). Rule 3, SCRCrimP, is administrative and not jurisdictional. See State v. Edwards, 374 S.C. 543, 572, 649 S.E.2d 112, 127 (Ct. App. 2007), rev'd on other grounds, 384 S.C. 504, 682 S.E.2d 820 (2009). Therefore, “failure of the solicitor to act upon a warrant within ninety (90) days [...] does not within itself invalidate a warrant or prevent subsequent prosecution.” State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681 (1984). Because failure to comply with the rule does not entitle Applicant to dismissal of the charges, he has not demonstrated “[t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State[.]” S.C. Code Ann. § 17-27-20(a)(1). Therefore, Respondent submits the allegation should be dismissed pursuant to Rule 12(b)(6), SCRCP.

VI.

Although not alleged in Applicant’s pleadings, Respondent would further submit that any allegations of ineffective assistance of counsel are without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial

process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." 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).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test if he were to allege ineffective assistance of counsel. However, any such allegation would probably raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an

evidentiary hearing to fully resolve this issue if Applicant amends his application to include such allegations. Sharper, 279 S.C. 264, 305 S.E.2d 247.

VII.

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

VIII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on those issues so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

April 23, 2014

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-CP-21-03298
)	
Umar Abdul Clea,)	
)	
Plaintiff,)	
)	
-vs-	)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

August 8, 2016
 Florence, South Carolina

B E F O R E:

The Honorable William H. Seals, Judge

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

Tristan Shaffer, Esquire
 Attorney for the Plaintiff

Jessica Kinard, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

I N D E X

3	WITNESS/DESCRIPTION	PAGE NUMBER
4	Shaun Kent	
5	Direct by Mr. Shaffer.....	6
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Video Disk of Traffic Stop (VIDEO NOT TRANSCRIBED HEREIN)		9

1 AUGUST 8, 2016

2 (WHEREUPON, the proceedings began at 10:17 a.m. The
3 applicant was present with his counsel of record.)

4 THE COURT: Okay.

5 MS. KINARD: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Sure.

8 MS. KINARD: This is the matter of Umar Abdul Clea versus
9 the State of South Carolina, Case Number 2013-CP-21-3298.
10 We're here before the Court on an application for post-
11 conviction relief that was filed December 23rd, 2013.

12 The applicant is presently confined pursuant to orders of
13 the Florence County Clerk of Court. In September 2012, the
14 Florence County Grand Jury indicted him for possession of a
15 controlled substance and trafficking 28 or more grams of
16 heroin. Shaun Kent represented Mr. Clea.

17 On September 4th, 2013, Mr. Clea pled guilty to
18 trafficking 4 to 14 grams of heroin. In exchange for his
19 plea, the State dismissed the charge for possession of a
20 controlled substance. The Honorable D. Craig Brown sentenced
21 him to confinement for a period of 12 years, and the applicant
22 did not appeal his guilty plea or sentence.

23 The allegations before the Court today are that the
24 applicant was never advised he had a right to appeal, the
25 solicitor committed contemptive proceedings by unlawfully

1 empaneling a grand jury outside of the statute, the solicitor
2 failed to comply with Rule 3 requiring to take action on a
3 warrant within 90 days.

4 I believe these might have changed a bit and Mr. Shaffer
5 may have refined those. I'll ask him to present those to the
6 Court at this time. He is currently representing Mr. Clea.

7 THE COURT: All right. Thank you. Mr. Shaffer?

8 MR. SHAFFER: Thank you, Your Honor. The issue we're
9 here to present today relates to the stop. We are saying that
10 counsel actually -- his Sixth Amendment right to counsel was
11 violated when counsel gave him misadvice concerning the
12 likelihood of success in a suppression motion, Your Honor.

13 So I guess there's a Fourth Amendment underlying issue,
14 but he -- and -- and I believe the evidence will show this,
15 Your Honor, is that essentially he -- he had retained Mr. Kent
16 to represent him. Mr. Kent had -- early on had told him about
17 likelihoods of success on a suppression hearing. Later on, I
18 think that he actually filed a motion to suppress and then
19 told Mr. Clea that he didn't think it was going to be
20 successful or thought that there was substantial risk
21 involved, and I'll let the testimony speak for itself.

22 But based off of that, I think Mr. Clea decided to change
23 his -- his plea to guilty and forego the actual suppression
24 hearing. So there's an underlying Fourth Amendment issue, but
25 it's a Sixth Amendment claim, Your Honor.

SHAUN KENT - DIRECT BY MR. SHAFFER

1 THE COURT: All right. If you'll call your first
2 witness.

3 MR. SHAFFER: Thank you. The applicant would call Shaun
4 Kent.

5 THE CLERK: Do you swear or affirm that the testimony you
6 give in this case will be the truth, the whole truth, and
7 nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you.

10 SHAUN KENT, being first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SHAFFER:

14 Q: Mr. Kent, you represented Umar Clea; correct?

15 A: Yes, I did.

16 Q: Tell us a little bit about how you came to represent him?

17 A: I can't remember how he contacted our office originally.
18 If I'm not mistaken, Mr. Clea had three separate charges: one
19 in Columbia, Richland County, one in Sumter County, and one in
20 Florence County. Originally, he retained me to handle the
21 matter in Sumter County first.

22 We were able -- that was also a trafficking heroin
23 matter. They were all drug charges. We were able to have a
24 suppression hearing on the trafficking matter in Sumter County
25 in front of the Honorable Ferrell Cothran. We were able to --

SHAUN KENT - DIRECT BY MR. SHAFFER

1 we were successful. We were able to get that case suppressed.

2 I think we were also successful in Richland County. I'm
3 not quite positive. And then there was the Florence County
4 matter.

5 Q: Okay. And the Florence County matter obviously is the
6 one that he pled guilty to; correct?

7 A: Yes. That is correct.

8 Q: Tell us a little bit about the nature of how he came to
9 be charged in Florence County? It was a traffic stop?

10 A: It was.

11 Q: Correct?

12 A: It was a traffic stop, yes.

13 Q: All right. I think --

14 MR. SHAFFER: Your Honor, Court's indulgence. All right.

15 BY MR. SHAFFER:

16 Q: We were in court on this on June -- on June 2nd; correct?

17 A: June 2nd of this year, yes.

18 Q: June 2nd of this year, we had -- this PCR case was called
19 and you provided me with a copy of a CD; correct?

20 A: From the discovery I had, I gave you a copy of the CD.

21 Q: Okay. If I showed you that CD or at least a copy of that
22 CD, would you be able to authenticate it?

23 A: Yes, I can.

24 Q: Okay.

25 MR. SHAFFER: Your Honor? And what I'm going to do here

SHAUN KENT - DIRECT BY MR. SHAFFER

1 -- this is a copy of the CD that was provided by counsel.

2 What I was planning on doing is admitting it into evidence.

3 However, I was only going to show what I feel to be the

4 relevant part of it.

5 There's two possible cameras you can have. There's two
6 possible microphones that are options on the players. What I
7 was going to do is essentially show from the time that the
8 stop occurred until the time that the dog alerted, and I was
9 going to only show the -- I guess the remote mic and not the
10 internal mic because it's a little hard to hear both of them
11 at the same time, and only show the outward facing camera.
12 Obviously, all the information is on the disk, but I don't
13 think we need to publish it.

14 THE COURT: Any objections?

15 MS. KINARD: I have no objection to the authenticity or
16 the presentation of it. I'm not entirely sure it's a relevant
17 PCR ground, but that's up to the Court's discretion.

18 THE COURT: All right. Thank you.

19 (WHEREUPON, the CD was marked as Plaintiff's Exhibit
20 Number 1.)

21 MR. SHAFFER: The computer is thinking about working.

22 (WHEREUPON, Plaintiff's Exhibit Number 1 was played in
23 part in open court, after which the proceedings resumed
24 as follows. VIDEO NOT TRANSCRIBED HEREIN.)

25 MR. SHAFFER: Your Honor, I believe I'm satisfied.

SHAUN KENT - DIRECT BY MR. SHAFFER

1 BY MR. SHAFFER:

2 Q: Mr. Kent, does that appear to be a true and accurate
3 depiction of the traffic stop video?

4 A: Yes, it is.

5 MR. SHAFFER: We'd move it into evidence, Your Honor.

6 THE COURT: Any objection?

7 MS. KINARD: Without objection, Your Honor.

8 THE COURT: Applicant's Number 1 into evidence without
9 objection.

10 (WHEREUPON, the CD of the traffic stop video was admitted
11 as Plaintiff's Exhibit Number 1.)

12 THE COURT REPORTER: Do you have the --

13 MR. SHAFFER: I don't. I don't have a case, Your Honor.
14 I don't have an envelope for it.

15 THE WITNESS: I think I have the case that it came in.
16 Yeah. I'll give you the envelope there.

17 BY MR. SHAFFER:

18 Q: You received that in discovery; correct?

19 A: That is correct.

20 Q: And you reviewed that tape; correct?

21 A: That is correct.

22 Q: Okay. At approx -- at approximately 9:28:12 as the time
23 that is on that tape, that's when the traffic stop initially
24 occurred?

25 A: I will agree with you.

SHAUN KENT - DIRECT BY MR. SHAFFER

- 1 Q: Okay. Now, it appears to me that he -- that the officer
2 took the license and registration and went back to the car and
3 then starting sometime around 9:31:49 asked him to step out of
4 the car and began to question him; correct?
- 5 A: Correct.
- 6 Q: Okay. He asked him where he was coming from; correct?
- 7 A: Correct.
- 8 Q: He asked him what time he was -- he had left; correct?
- 9 A: That is correct.
- 10 Q: And he asked how long you were there for; right?
- 11 A: Also correct.
- 12 Q: Okay. Did he ask what day did he get there in; correct?
- 13 A: Correct.
- 14 Q: And did he ask everything in the vehicle is yours;
15 correct?
- 16 A: That is also correct.
- 17 Q: Okay. And he asked where do you work; correct?
- 18 A: Also correct.
- 19 Q: And he asked where's your luggage; correct?
- 20 A: Also correct.
- 21 Q: All right. During that time period, at least whenever he
22 initially stepped out, the officer appeared to be writing a
23 warning ticket; correct?
- 24 A: Also correct.
- 25 Q: Okay. After that, he proceeded with approximately 3

SHAUN KENT - DIRECT BY MR. SHAFFER

- 1 minutes -- 3 to 4 minutes of questioning about where he came
2 from and questions related to that; correct?
- 3 A: I would agree with that.
- 4 Q: Okay. Do you think any of those questions were related
5 to the traffic stop for following too closely?
- 6 A: Not at all.
- 7 Q: Okay. And did you discuss this with your client in any
8 way?
- 9 A: Yes, I did.
- 10 Q: Okay. Did you think that -- did you tell him that you
11 were planning on filing a motion to suppress?
- 12 A: Yes, I did.
- 13 Q: And you actually did file a motion to suppress; correct?
- 14 A: Yes, I did.
- 15 Q: Okay. Now, at some point prior to the suppression
16 hearing, you had another conversation with your client?
- 17 A: Correct.
- 18 Q: Okay. In that conversation, did you tell him that there
19 were risks involved in going forward?
- 20 A: Yes, I did.
- 21 Q: Okay. Did you tell him that you may very well lose?
- 22 A: Yes, I did.
- 23 Q: Did you tell him if he lost he would likely get more
24 time?
- 25 A: Yes, I did.

SHAUN KENT - CROSS BY MS. KINARD

1 MR. SHAFFER: No further questions.

2 THE COURT: All right. Cross-examination?

3 MS. KINARD: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. KINARD:

6 Q: Good morning, Mr. Kent.

7 A: Good morning.

8 Q: I'm going to step back a little bit and ask you about
9 some basics on this case. First of all, how long have you
10 been practicing law?

11 A: As of -- 16 years, I guess. I don't know how long ago,
12 but too long.

13 Q: What portion of your practice is criminal law?

14 A: Ninety percent -- 90 to 95 percent.

15 Q: And at the time of this matter, were you still around
16 that range or very comfortable in the practice of criminal
17 law?

18 A: Yes, ma'am.

19 Q: Okay. And you said you were retained by Mr. Clea on this
20 matter, as well as two others?

21 A: Two other, all trafficking heroin charges. Yes, ma'am.

22 Q: Okay. When you were retained, did you file a Rule 5 or
23 Brady motion?

24 A: Yes, ma'am, I did.

25 Q: Did you receive discovery from the solicitor?

SHAUN KENT - CROSS BY MS. KINARD

- 1 A: Yes, ma'am, I did.
- 2 Q: Did you receive everything you expected to receive?
- 3 A: Yes, ma'am, I did.
- 4 Q: Did you review all the discover -- discovery with Mr.
- 5 Clea?
- 6 A: Yes, I did.
- 7 Q: Did he seem to understand everything?
- 8 A: Mr. Clea is a very smart man. Yes, he did.
- 9 Q: Okay. Do you recall approximately how many times you met
- 10 with Mr. Clea?
- 11 A: Numerous.
- 12 Q: Okay.
- 13 A: I can't give you a specific. We met -- we met very, very
- 14 comfortably.
- 15 Q: Okay. Did you explain the elements and potential
- 16 sentences of all the charges that Mr. Clea faced?
- 17 A: Yes, I did.
- 18 Q: Did he understand all of this?
- 19 A: He understood everything we discussed. Yes, ma'am.
- 20 Q: And you explained all of the potential exposure?
- 21 A: Oh, yes, ma'am. The charges he had -- actually, if I'm
- 22 not mistaken, he was looking at 28 grams of heroin and he got
- 23 a reduced charge. We discussed that in full detail. Yes,
- 24 ma'am.
- 25 Q: And he understood the collateral consequences, such as

SHAUN KENT - CROSS BY MS. KINARD

1 classifications or parole eligibility?

2 A: Yes, ma'am. I'm quite positive.

3 Q: Could you summarize the facts of this? I realize we just
4 watched this, but I would like for you to explain to the Court
5 why this charge was different than the others that he faced,
6 particularly why you didn't think a suppression hearing would
7 work in this case when it did in the others.

8 A: And that's -- it's my practice commonly -- and especially
9 with someone like Mr. Clea, who we got along very well and he
10 was very smart. So I can't even sit here and say that I was
11 the one who initiated most of the suppression issues.

12 Mr. Clea was very smart. He understood his suppression
13 issues and so we actually had a very good working
14 relationship. We, together on the case that we had in Sumter,
15 worked together, went through the issues together, and decided
16 that it would be a fruitful suppression motion.

17 Anytime that I'm doing a case with somebody, especially
18 whether it's a plea or a trial, I always -- I think it's a
19 duty of any attorney to tell them the pitfalls if they do lose
20 a suppression motion, and the reason that I told him if he
21 lost a suppression motion he could be looking at potentially
22 more time, is it was my belief that the solicitor would have a
23 right to take the plea offer off the table, give him the
24 increased amount of heroin that he was looking at.

25 I always had problems with the case, but just because a

SHAUN KENT - CROSS BY MS. KINARD

1 defense lawyer has problems with a case doesn't mean that a
2 judge or a solicitor are going to see it the same way. And I
3 discussed that with him. My issue at the -- and I remember
4 specifically, myself and Mr. Clea, my major issue was that the
5 officer had asked him for consent to search his vehicle and
6 Mr. Clea had very clearly said, no, I'm not giving you consent
7 to search my vehicle.

8 I remember having a conversation with him that I had
9 thought our Supreme Court was eroding the consent line of case
10 law and that, you know, asking somebody for consent was going
11 to be a stopping point. I also told him -- and I remember
12 very clearly Mr. Clea was asking me what did I think, what was
13 my position, did I think he was going to win a suppression
14 motion, and I told him the same way I told him from the last
15 one. I can't tell you whether you're going to win or lose.
16 These decisions have to be your decisions and your decisions
17 alone.

18 And we went through a lot of things. I told him he had
19 just won two other suppression motions and if he wanted to
20 roll the dice, that was up to him to roll the dice. I didn't
21 like the officer who pulled him over, an officer by the name
22 of Tisown [phonetic]. We had talked about that. We had
23 talked about all these agencies had talked to each other.

24 We talked very realistically that courts understand that
25 you have had two other suppression motions thrown out and, if

SHAUN KENT - CROSS BY MS. KINARD

1 you were to lose this one, there was a very real possibility
2 you would be looking at 25 years. So we had a very detailed
3 discussion. I think that answered your question and maybe
4 then some.

5 Q: Absolutely. Thank you. So other than suppression, did
6 you have any defenses lined up if you had gone to trial or did
7 you even talk to that point?

8 A: Well, we talked about that. Had he lost the suppression
9 motion, he -- I mean I told him there was zero chance of him
10 winning a trial. I told him his suppression motion was his
11 entire avenue of success and, if he lost the suppression, then
12 I didn't see any -- and then, of course, the plea offer would
13 be off the table. He would be looking at the mandatory
14 minimum time. I told him if that was a risk he was going to
15 take and if we did not -- we discussed the three judges that
16 were in the circuit and if we had got a judge who was not
17 favorable to drug suppression, knowing his prior record and
18 what was going on, he would be in trouble.

19 Q: And despite that, he made an informed, intelligent
20 decision to not go forward with the suppression hearing and to
21 plead?

22 A: I felt he did. Yes, ma'am.

23 Q: And he understood that he was waiving the right to
24 challenge any evidence against him by pleading?

25 A: I felt he did. Yes, ma'am.

SHAUN KENT - CROSS BY MS. KINARD

1 Q: And you felt that he understood all of his other
2 constitutional rights, such as right to a jury trial, to
3 challenge his accusers, and all of that?

4 A: Before we -- and whether this is for Mr. Clea or any plea
5 whatsoever, I'll sit down and I go through the exact colloquy
6 that a judge will go through with the client. And after 16
7 years, unfortunately, you have it memorized. And so I went
8 through the exact colloquy with him and made sure if he had
9 any questions, what would happen before his plea and I felt he
10 understood from appellate rights to everything that would
11 happen through the course of his appeal -- I mean through the
12 course of his plea.

13 Q: Did you ever talk to him --

14 MS. KINARD: Well, never mind. Strike that, please. I
15 have no further questions unless there's anything else you'd
16 like the Court to know about your representation of Mr. Clea.

17 THE WITNESS: No, ma'am.

18 MS. KINARD: Thank you.

19 THE COURT: All right. Any redirect?

20 MR. SHAFFER: None, Your Honor.

21 THE COURT: All right. You may step down. Thank you.

22 THE WITNESS: Thank you, Judge. Good to see you, sir.

23 THE COURT: All right. Call your next witness.

24 MR. SHAFFER: The applicant would call Umar Clea.

25 THE CLERK: Mr. Clea, raise your right hand as much as

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 you can. Do you swear or affirm that the testimony you give
2 in this case will be the truth, the whole truth, and nothing
3 but the truth, so help you God?

4 THE APPLICANT: Yes, I do.

5 THE CLERK: Thank you.

6 UMAR ABDUL CLEA, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SHAFFER:

10 Q: Mr. Clea?

11 A: Yes.

12 Q: Tell us a little bit about how you came to be -- be
13 represented by Mr. Kent?

14 A: I was in the Sumter County Detention Center and I was on
15 the phone talking to my wife about the attorney that was
16 currently supposed to be representing me. And I wasn't
17 comfortable with that attorney and another inmate overheard my
18 conversation and, when I got off the phone, he said that he
19 thought that I was in need of a good legal representation and
20 he introduced me to Shaun Kent.

21 Shaun Kent came to see me in Sumter County and we
22 discussed my case. There was two cases, one in Florence and
23 one in Sumter, and he told me he wanted \$7,500 and I had
24 pretty much -- like he said, I did pretty much the leg work.

25 Q: Okay.

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 A: I had the motion and everything already drawn up and I
2 just needed him to put a little seasoning on it for me. And I
3 gave him 4,000 up front and I had a balance of \$3,500.

4 After he came and went over everything that I had and we
5 went over the warrant -- because I thought the warrant was --
6 it was not a good warrant and he came back and he told me that
7 he would be taking me to court and I thought real soon. He
8 was like, yeah, real soon. So we went to court and he did a
9 very outstanding job. I was impressed and that next day we
10 went to --

11 Q: Just for clarification, are you talking about in Sumter?

12 A: In Sumter.

13 Q: Okay.

14 A: In Sumter. The next day, we was before Judge Ferrell
15 Cothran, Jr. The motion was suppressed. The evidence was
16 suppressed and we went to Florence the next day.

17 It was January the 10th, if I'm not mistaken, of 2013. He
18 came to visit me in the Florence County Detention Center and
19 he told me -- he made hisself explicitly clear that we had a
20 good case and that he -- he was waiting for the audio/video.

21 And my son -- my oldest son was supposed to have been
22 getting with Shaun to get him the \$3,500 and somehow or
23 another on my -- the error was on my son's part that he missed
24 I guess he and Shaun appointment and didn't give Shaun the
25 3,500. And after that point, the contact with Shaun -- I

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 didn't see him anymore.

2 I went to court the 22nd of July. I didn't see anyone and
3 Shaun -- he wasn't there. I went back September the 4th. At
4 this particular time, he was there. He brought me out the
5 bullpen and I never seen the audio/video. This is the first
6 time I heard it. I still didn't see it this time.

7 And he said because of that audio/video, it shows clearly
8 that it would rule in my favor. However, when I came back
9 September the 4th here for court thinking that we was going for
10 a motion to suppress, we talked about the opposition that the
11 State had and not so much of my defense in this case. And it
12 was more conversation on my age being in my 50s and if I was
13 to lose that I would get this mandatory 25 to 40.

14 I didn't even think about the audio/video until I was in
15 R&E when I put the legal paper together to apply for my PCR
16 because September the 4th when the conversation was strictly on
17 my opposition and how I would lose, not how any strategy and
18 we trying to win the case, it was totally about we losing and
19 what would happen.

20 And I asked him -- I said is this about the \$3,500 that I
21 owe you and he said it's never about the money. And my
22 response to it was it's always about the money.

23 MS. KINARD: Your Honor, I just object to hearsay.
24 That's the third time he's --

25 THE COURT: Sustained.

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 MS. KINARD: -- said something someone --

2 BY MR. SHAFFER:

3 A: And here's letters that I wrote to Shaun with never any
4 response back, me coming to court and he's not there and me
5 trying to contact him concerning the \$3,500. It was just an
6 error on my son's part. I guess he was -- they had a time
7 that they were supposed to have gotten together and he wasn't
8 there; so him and Shaun never got together.

9 Q: Okay.

10 A: The audio/video -- I asked for it. I never -- he said
11 that I went -- he went over all that with me. I never seen
12 that audio/video. And this is a copy of the letter, the
13 actual correspondence for requesting that audio and video of
14 my arrest, and this was dated November the 8th, 2013.

15 You know, this correspondence in reference to an
16 audio/video of my arrest dated April the 30th, 2012. I
17 received a copy of the Rule 5 motion of discovery. However,
18 you informed me that you was in possession of the audio/video,
19 but I never seen or received such copies. As the defendant, I
20 request that you forward to my custody or control copies of
21 the audio/video of my arrest dated April the 30th, 2012, to the
22 address listed below by US mail. Thank you in advance for
23 your courteous assistance in this matter. Respectfully
24 submitted, Umar Abdul Clea.

25 And I never received any.

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 Q: So you -- you have made requests to see the audio/video?
2 A: Yes.
3 Q: Okay. Now, whenever it came time for the actual
4 suppression hearing when you went back the second time -- and
5 let me recap. You -- you had said that previously he said the
6 Florence case was a good case and you were going to win?
7 A: He said -- he said he felt good about that case and --
8 MS. KINARD: Objection to hearsay, Your Honor.
9 THE COURT: Sustained.
10 BY MR. SHAFFER:
11 A: And -- and -- and --
12 Q: And I'll say this. Your belief at that time after your
13 first meeting with Mr. Kent --
14 A: Uh-huh.
15 Q: -- concerning the Florence case --
16 A: Yes.
17 Q: Your belief is that after discussing it with him that you
18 would be successful in that motion?
19 A: I had no --
20 Q: Is that correct?
21 A: Right. And -- and -- and -- and at that time right
22 there, there was no entertainment of taking a plea. That was
23 never an option.
24 Q: Okay. And later on, you -- you got a different feeling
25 from Mr. Kent?

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 A: Yes. September the 4th when I came, he was not -- the --
2 the -- the lawyer that represented me January the 9th in
3 Sumter. You know, it was like I was talking to someone
4 different because he was not sure. He was -- there was no
5 direct --

6 Q: What -- what did Mr. -- Mr. Kent tell you that made you
7 think that you were not going to be successful the second
8 time?

9 A: Because he kept talking about making reference to the
10 opposition that the State had, which he gave me a copy of it,
11 and that was the first time I seen it was that day that I came
12 to court, September the 4th, and there was -- there was never a
13 conversation about our defense. It was always what the State
14 had and what would happen if we lost.

15 Q: Did he ever tell you that he thought you were going to
16 lose?

17 A: He made reference to that. That was all we talked about
18 that, you know, our chances wasn't great and that was the
19 first time I heard them spoke like that.

20 Q: Okay. Did that have bearing on why you decided to plead
21 guilty?

22 A: Yes. Because as he said, I'm in my 50s at that time and
23 if we lost the suppression, the motion to suppress hearing,
24 that it was a mandatory 20 -- 25 to 40. And the State didn't
25 recommend no plea and he said that he would go and ask the

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 judge for a recommendation. The judge said he would not
2 exceed 13 and he said he felt comfortable that the judge would
3 keep it under 10, and I still didn't want to take a plea.

4 So he set me in another room with about 15 other
5 detainees and I stayed in there a couple hours and he come and
6 he said have you made your mind up yet, and I was, like, man,
7 I'm not prepared for this. So later that day, I went on and I
8 went along with the -- with the plea.

9 Q: Okay. Specifically, what did Mr. Kent say about your
10 likelihood of success at a suppression hearing?

11 MS. KINARD: Your Honor, this question calls for a
12 hearsay response.

13 MR. SHAFFER: Your Honor, if I may, it -- it would be a
14 prior inconsistent statement by a witness who has already
15 testified. It's also not really even offered for the truth of
16 the matter asserted. What it's offered for is to give him --
17 to basically say why he decided to plead guilty.

18 THE COURT: Any reply to that?

19 MS. KINARD: I believe it is going to the truth of the
20 matter asserted, as we are discussing why he pled guilty.

21 MR. SHAFFER: It would still be subject --

22 THE COURT: What was the question again?

23 MR. SHAFFER: What did Mr. -- what did -- what
24 specifically did Mr. Kent say that made you -- excuse me.
25 What specifically did Mr. Kent say about the likelihood of

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 success on the suppression hearing?

2 He's testified that the reason he's -- he decided to
3 plead guilty was that Mr. Kent had stated that the suppression
4 hearing -- he did not think that it was likely he would win,
5 but he didn't say specifically what about his statement would
6 qualify.

7 Essentially, he's saying that the reason that he -- he
8 pled guilty is that he's taking advice of counsel. That
9 advice I don't think is subject to hearsay in a PCR hearing
10 because I think it would be the advice that's the basis of him
11 choosing whether or not to do something.

12 I also think that it might be an inconsistent statement
13 of Mr. Kent if -- now, the State is saying that Mr. Kent
14 testified that -- that he advised him that he would likely
15 lose a suppression hearing, in which case it wouldn't be
16 inconsistent and I might be wrong, but I didn't hear him
17 actually say that.

18 THE COURT: Tell you what. I'm going to overrule the
19 objection and hear it.

20 MR. SHAFFER: Thank you.

21 THE COURT: Go ahead.

22 MS. KINARD: Thank you, Your Honor.

23 BY MR. SHAFFER:

24 Q: What specifically did Mr. Kent say about your likelihood
25 of success at the suppression hearing?

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 A: He said that he didn't think I would -- that I would win.
2 He said -- and he kept making reference to my age and the
3 likelihood of me getting the mandatory 25 to 40 years. There
4 was no discussion on our defense.

5 You know, when he first visited me in Florence County, he
6 talked about the defense, you know, and how he was going to
7 get possession of the audio/video and that the audio/video
8 would show that I was -- that I would be exonerated. That was
9 never discussed anymore. When I came here September the 4th,
10 we didn't talk about none of our defense. It was just the
11 opposition of the Court and that was it.

12 Q: Okay. Did him telling you that you would likely -- that
13 you would likely not be successful -- did that have something
14 to do with you pleading guilty?

15 A: Exactly.

16 Q: Okay. Would you have pled guilty if he had said
17 something else, if he had said he thought you would win?

18 A: He didn't have to say that I would win, if he would have
19 been -- had the courage that he possessed when we went to
20 court January the 9th. He just -- it was just -- he didn't
21 care about it. You know, he didn't show that he had my best
22 interest, and that --

23 Q: But -- but I guess my question would be specifically if
24 he had said he thought you would win, would you have gone to
25 trial or would you have pled guilty?

UMAR ABDUL CLEA - DIRECT BY MR. SHAFFER

1 A: No. I would've went all the way with it because --

2 Q: Okay.

3 A: -- we had no intentions of taking a plea. That was the
4 first time we talked about a plea.

5 MR. SHAFFER: No further questions.

6 THE COURT: All right. Yes, ma'am?

7 MS. KINARD: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. KINARD:

10 Q: Good morning, Mr. Clea.

11 A: Good morning.

12 Q: Now, you stated you had one other charge in Richland --
13 or one in Florence. Sorry. I forgot where we are. We are in
14 Florence. You had a charge here and you had one in Sumter?

15 A: Yes, ma'am.

16 Q: Did you have one in Richland as well?

17 A: He didn't -- Seth Rose represented me. He didn't
18 represent me in Columbia.

19 Q: Ever?

20 A: No.

21 Q: Okay. Now, you stated -- let me go back a little bit
22 about discovery. You viewed all the discovery you're alleging
23 except for that video?

24 A: Except for the video.

25 Q: Okay. And did you request a copy of that video before or

UMAR ABDUL CLEA - CROSS BY MS. KINARD

1 after your plea?

2 A: After my plea because he was supposed to have came back
3 to the Florence County and we view the audio, but I never was
4 able to get back in touch with him after my son did not get
5 with him concerning the \$3,500 balance. I was able to make --
6 I was unable to make contact with him. I had my wife and my
7 brother try to contact him and here's a copy of that letter on
8 file that I wrote him concerning that.

9 This correspondence is in regard to failed attempts to
10 make contact with you concerning my \$3,500 balance in my legal
11 defense. I have several family members, including my wife,
12 Mrs. Alisha Clea, her phone number, most recently Tyrone
13 Caesar, his phone number, to contact concerning payment. I
14 was in court the 22nd of July. However, I did not see or spoke
15 with anyone. It would relieve me immensely to speak with you
16 concerning my legal situation. Please allow me to hear from
17 you concerning this matter.

18 And I ain't heard anything.

19 Q: Thank you, sir. Now, Mr. Kent said earlier that he
20 believed you were a smart man and you seem very well spoken.
21 Did you have -- you said you had your motion written by the
22 time you met with Mr. Kent?

23 A: Here's a copy of it here.

24 Q: Okay. So did you feel like you would be successful?

25 A: Yes.

UMAR ABDUL CLEA - CROSS BY MS. KINARD

1 Q: Okay. And what was that based on?

2 A: It was based on the law. With the audio/video, I was
3 allegedly stopped for following too close, a traffic citation.
4 It went beyond that and, like I said, I didn't go to school
5 for this. So the little that I did, I needed his -- his legal
6 expertise, you know, to season it up for me and do what he do
7 with it.

8 And when I showed it to him, he was impressed and he said
9 that he could -- he could make it go away and I believed that
10 he could because I seen him. And I don't know Mr. Shaun Kent.
11 I seen him in action January the 9th and I was impressed.

12 Q: Okay. And between January the 9th while getting ready for
13 Florence for this Florence charge, did you discuss trial
14 strategy at all?

15 A: Yes. We -- we talked. He came and visited me in
16 Florence County and we talked and he told me -- he said that
17 he'd have me. He said I have your best interest. However,
18 when my son did not make contact with him as I'm assuming he
19 and Shaun planned, that's when our communication -- there
20 wasn't any anymore.

21 Q: However, you stated that you asked him if this was about
22 the money and he --

23 A: And he said -- he said no.

24 Q: It's never about the money?

25 A: He said -- he said it's never about it. He said -- he

UMAR ABDUL CLEA - CROSS BY MS. KINARD

1 said it wasn't about the money and I said it was always about
2 the money.

3 Q: So he represented to you that nothing had changed about
4 his representation simply because he hadn't received the
5 money?

6 A: That's what he said, but -- but -- but his actions didn't
7 show that to me and I wasn't impressed with those words. I
8 really wasn't.

9 Q: Okay. Well, moving on, you spoke to him and asked for
10 his advice as your attorney about what you should do in regard
11 to the suppression hearing; is that correct?

12 A: Say that -- what?

13 Q: You asked his advice as your attorney --

14 A: Uh-huh.

15 Q: -- about how to handle the suppression hearing; is that
16 correct?

17 A: I had already written it up and I -- and I asked him to
18 -- to season it up and make it do what he do.

19 Q: I mean going forward with the suppression hearing.

20 A: Okay.

21 Q: Did you trust his advice to not go forward with the
22 suppression hearing?

23 A: Only because he showed lack of representation.

24 Q: Okay. You still trusted his advice to take that plea
25 though?

UMAR ABDUL CLEA - CROSS BY MS. KINARD

1 A: Versus me going in and not making good because I didn't
2 think he was going to represent me to his full capacity. I
3 didn't think that he would show up. So he said that it would
4 be in my best interest to take the plea and I assumed that it
5 would because he wasn't putting his full capacity. He wasn't
6 representing me to his fullest capacity.

7 Q: So you understood the rights you were giving up by going
8 to a plea rather than a jury trial? I mean that you wouldn't
9 have a trial by jury? You wouldn't be able to confront your
10 accuser?

11 A: The only thing that I really understood at that time that
12 had I gone through with it and not be successful that I would
13 get a mandatory 25 to 40, and that just took over everything.

14 Q: Okay. So you understood that by taking a plea, you would
15 get a shorter sentence than if you went to trial and lost the
16 suppression hearing? In other words, you decided not to roll
17 the dice and to go with a sure thing shorter sentence?

18 A: Yeah. Because of what I had to work with at the time
19 that I didn't have any options.

20 Q: Okay. But you understood that's what would happen when
21 you entered your plea?

22 A: Yes. If I went and rolled the dice, I would get a
23 mandatory 25 to 40. Had I not rolled the dice, I would get a
24 less sentence.

25 Q: Okay.

UMAR ABDUL CLEA - REDIRECT BY MR. SHAFFER

1 MS. KINARD: No further questions. Thank you.

2 THE COURT: All right.

3 MR. SHAFFER: Just briefly.

4 REDIRECT EXAMINATION

5 BY MR. SHAFFER:

6 Q: You had said that you -- you took the plea because you
7 didn't think you had any option given what you had to work
8 with?

9 A: Exactly.

10 Q: Okay. I want you to explain that and I want you to
11 explain what you mean you didn't have anything to work with?

12 Was that --

13 A: Again, Shaun represented me in Sumter. I seen him in
14 action. I can't take nothing away from him. He impressed me.
15 He did not impress me September the 4th.

16 Q: Okay.

17 A: He was not the same lawyer.

18 Q: Okay. Even if he didn't impress you, even if he sounded
19 like he didn't want to fight for you, if he would have told
20 you that you would have won your suppression hearing, would
21 you still have pled guilty or would you have gone through
22 trial?

23 A: I would have went through with it.

24 Q: Okay. You would've went through with what?

25 A: I would have went to trial.

UMAR ABDUL CLEA - REDIRECT BY MR. SHAFFER

- 1 Q: Okay.
- 2 A: Went to my motion to suppress hearing.
- 3 Q: So even if he had sounded like he didn't really care but
4 said you're going to win your suppression hearing anyway, you
5 would have gone to trial?
- 6 A: Well, again, his words didn't convince me that he was
7 willing to fight for me.
- 8 Q: Yeah. And I understand that, but his words you said --
9 he said you were going to lose too; right?
- 10 A: Yeah.
- 11 Q: Okay. Did that have more to do than his tone or -- I'm
12 wondering this. Was it his tone that kept you from -- that
13 got you to plead guilty or was it his advice?
- 14 A: All of it. You know, the way that he presented himself
15 to me.
- 16 Q: So it was both issues?
- 17 A: Yeah. The way that he presented himself to me and there
18 was no confidence in him and he's a very confident man. There
19 -- there wasn't any.
- 20 Q: He wasn't confident --
- 21 A: No.
- 22 Q: -- he was going to win?
- 23 A: No.
- 24 Q: Okay.
- 25 A: No.

1 MR. SHAFFER: No further questions.

2 THE COURT: Any recross?

3 MS. KINARD: Nothing on recross.

4 THE COURT: All right. You may step down.

5 THE APPLICANT: Thank you, sir.

6 THE COURT: Any other witnesses?

7 MR. SHAFFER: No, Your Honor.

8 THE COURT: All right. Anything from the State?

9 MS. KINARD: Nothing from the State, Your Honor.

10 THE COURT: All right. I'll take the matter under
11 advisement and let you know something by the end of the week.

12 MR. SHAFFER: Thank you, Your Honor. May I pass up one
13 case for the Court to consider?

14 THE COURT: You may.

15 MR. SHAFFER: It's *United States v. Giovanni*. It's a
16 Fourth Circuit case. I'm sure that she's already seen a copy.

17 THE COURT: Thank you.

18 (WHEREUPON, the proceedings ended at 11:07 a.m.)

19

20 --- END REQUESTED TRANSCRIPT ---

21

22

23

24

25

1 State of South Carolina)
 2) Certificate
 3 County of Florence)
 4

5 I, the undersigned, Krystal J. Smith, Notary Public and
 6 Official Court Reporter for the Twelfth Judicial Circuit of
 7 the State of South Carolina, do hereby certify that the
 8 foregoing pages, numbered 1 through 34, constitute a true,
 9 accurate, and complete Transcript of Record of all the
 10 proceedings had and evidence introduced in the hearing of the
 11 above captioned case, relative to appeal, in the Court of
 12 Common Pleas for Florence County, South Carolina, on the 8th
 13 day of August, 2016.

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

16
 17 Krystal J. Smith

18 Court Reporter

19
 20 Florence, South Carolina

21 June 12, 2017
 22
 23
 24
 25

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 Umar Abdul Clea, #272806,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

2013-CP-21-3298

ORDER OF DISMISSAL

FILED
 2017 MAR -9 PM 3:31
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 23, 2013. Respondent made its Return on April 23, 2014. An evidentiary hearing into the matter was convened on August 8, 2016 at the Florence County Courthouse. Tristan Shaffer, Esquire, represented Applicant. Jessica E. Kinard, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Shaun C. Kent, Esquire, also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

CERTIFIED: A TRUE COPY
 Clerk of Court C.P. & G.S.
 FLORENCE COUNTY, S.C.
Shaun C. Kent

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In September 2012, the Florence County Grand Jury indicted Applicant for possession of a controlled substance and trafficking twenty-eight or more grams of heroin (2012-GS-21-1156). Shaun C. Kent, Esquire, represented Applicant. On September 4, 2013, Applicant pleaded guilty to trafficking four to fourteen grams of

heroin. In exchange for the plea, the State dismissed the charge for possession of a controlled substance. The Honorable D. Craig Brown sentenced Applicant to confinement for a period of twelve years. Applicant did not appeal his guilty plea or sentence.

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

1. "The Applicant was never advise he had a right to appeal[.]" [sic]
2. "Did the Solicitor committed a contempt of the proceedings by unlawfully impaneled its grand jury outside of the statute?" [sic]
3. "The Solicitor failure to comply with Rule 3, SCRCrimP, requiring to take action on a warrant within ninety (90) days subject the Solicitor to contempt of the proceedings" [sic]

At the hearing, Applicant proceeded only on a claim of ineffective assistance of counsel for misadvice concerning his guilty plea and the chance of success at the suppression hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 443, 334 S.E.2d at 814. 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 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649,

657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

A. Ineffective Assistance of Counsel

At the evidentiary hearing, Applicant called Counsel to the stand, and Counsel began by testifying to the basis of his relationship with Applicant. Counsel stated that Applicant had retained him on two other sets of similar charges, one in Sumter County and one in Richland County, before this charge arose in from a traffic stop in Florence County. Counsel authenticated the video of the Florence County traffic stop, which Applicant's PCR attorney played for the Court. Counsel testified that he was successful in suppressing the evidence obtained in Applicant's case in Sumter County, and he filed a similar motion to suppress in this case. Counsel stated that the basis of the motion was that the officer asked for Applicant's consent to search the vehicle, but it was not granted, and the search was conducted anyway. Counsel testified that in his opinion, there was nothing wrong with the traffic stop and the search was valid.

He stated that he and Applicant had a good working relationship, and Counsel found Applicant to be a smart man who thoroughly understood the legal issues in his case. Counsel further testified that he discussed the basis of this motion to suppress with Applicant, including that Counsel felt there was a significant risk he would lose the motion. Counsel stated that he felt Applicant made an intelligent and informed decision to plead guilty after weighing various factors including the assigned judge, Counsel's assessment that trend in this area of law was against Applicant, the strength of the evidence should it not be suppressed, and the possibility that Applicant could receive

the maximum penalty at trial if he lost the motion. Counsel stated it was his opinion that Applicant had no chance of winning at trial if the motion to suppress was not granted.

Applicant testified that he met Counsel through another inmate, and Applicant hired him first for the Sumter County case. Applicant testified that he never saw the video of the stop in this case, but he did agree that Counsel discussed defenses, trial strategy, and the State's evidence with him. Applicant stated that he felt Counsel did an "outstanding" job in Sumter County, and Counsel told him he had a "good case" in Florence County, which was scheduled to be heard the next day. Applicant testified that he originally retained Counsel for \$17,500, of which Applicant actually paid \$14,000. Applicant stated that he felt the relationship between him and Counsel eroded when Applicant did not pay the remaining \$3,500, even though Counsel assured him that the money was not the issue. Applicant stated that on the day of the suppression hearing in Florence, Counsel told him that the chances of success "weren't great," and Counsel did not think he would win. Applicant testified that Counsel's assessment of the low likelihood of success at the suppression hearing had a bearing on his decision to plead guilty. Applicant stated that he did not feel he had an option because he did not have a defense to work with. Applicant testified that he chose to plead because he wanted to go with the "sure thing" given his age and the potential maximum sentence he was facing, and he thought the judge would keep the sentence under ten years.

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both.")). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements

made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))).

The record reflects that Applicant’s plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charge to Applicant and informed Applicant he could be sentenced to up to twenty-five years. The plea judge also went through Applicant’s constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant told the plea court that he was satisfied with his attorney and that Counsel had done everything that Applicant had asked of him. Applicant admitted he was guilty of this offense and agreed with the facts presented by the State at the plea. This Court finds that Applicant understood the terms of the plea and the possible sentence.

This Court finds Applicant’s testimony regarding Counsel’s ineffectiveness is not credible, while also finding Counsel’s testimony is credible. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, Applicant’s constitutional rights, the State’s evidence, and possible defenses. Furthermore, this Court finds credible Counsel’s testimony that this was a decision made by Applicant after a lengthy discussion of the risks and consequences of losing the motion.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to

prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. Applicant stated that he chose to plead guilty after thoroughly discussing the risks of proceeding to trial with Counsel and because of his hope that he would receive a shorter sentence given his age. Applicant’s discontent regarding his sentence is not grounds for collateral attack on his sentence. “Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.” Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

For these reasons this Court finds Applicant has failed to satisfy his burden of proving ineffective assistance. Accordingly, this allegation is denied and dismissed.

B. 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, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

III. CONCLUSION


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel’s representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds, as to all other allegations, that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

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), SCRCR, 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:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED.



 THE HONORABLE WILLIAM H. SEALS
 Presiding Circuit Court Judge
 Twelfth Judicial Circuit

_____ 3/2 _____, 2017
 _____ Mavin _____, South Carolina

CERTIFIED: A TRUE COPY
W. H. Seals
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

FILED
 2017 MAR -9 PM 3:34
 COURT CLERK JESS O'HARA
 C.P. & G.S.
 FLORENCE COUNTY, SC

88

WITNESSES

Curt Summerford Florence County Sheriff

DOCKET NO. 2012-GS-21-01156

The State of South Carolina

County of

FLORENCE

NOTED: A TRUE COPY
MADE BY SHARON
MAYHEW
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2012

THE STATE

vs.

UMAR ABDUL CLEA

Matthew R Ozment

ARREST WARRANT NUMBER

M295435 M295436

Indictment for

**POSSESSION OF A CONTROLLED
SUBSTANCE,
TRAFFICKING HEROIN**

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

Kenneth Benitez
9-6-12

VERDICT

Foreperson of Petit Jury

Date:

2012 SEP -6 AM 11:30
CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, S.C.

FILED

Note Prose
Court 1.
Plead to Court 2
[Signature]
9/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
POSSESSION OF A CONTROLLED SUBSTANCE,
TRAFFICKING HEROIN

At a Court of General Sessions, convened on SEPTEMBER 6, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- POSSESSION OF A CONTROLLED SUBSTANCE

That UMAR ABDUL CLEA did in Florence County on or about April 30, 2012, knowingly and intentionally possess a quantity of Methadone, a Schedule II Narcotic under provisions of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(d), S. C. Code of Laws, 1976, as amended.

COUNT TWO- TRAFFICKING HEROIN

That UMAR ABDUL CLEA did in Florence County on or about April 30, 2012, sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of twenty-eight grams or more, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

7-25

COUNTY OF Florence
 STATE VS.
Umar Abdul Clea
 AKA: _____
 Race: B Sex: M Age: 52
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2012-GS-21-01156
 A/W#: M295436
 Date of Offense: 4/30/2012
 S.C. Code § : 44-53-0370(e)(3)(c)
 CDR Code #: 0149

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Drugs / Trafficking in Heroin, morph., etc., 4 g or more, but less than 14 g - 1st offense

in violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2361
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation Negotiated Sentence, Recommendation by the State.
 ATTEST: [Signature] [Signature] [Signature]
 Ozment, Matthew R SC Bar# 80072 Umar A Clea Defendant Attorney for Defendant SC Bar# 685765

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 12 days/months years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 435 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Recipient: _____
 *Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>225.00</u>

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund.
 Other: _____
 Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

CERTIFIED: A TRUE COPY
 Clerk of Court
 FLORENCE COUNTY, S.C.

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

Presiding Judge: [Signature]
 Judge Code: 2160
 Sentence Date: 7-9-13

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 05/01/14

C0511

CLEA, JAMES OMAR FBI # 252393W9 SID# SC00756274 SCDC # 272806

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: ALLENDALE CORR INST

SECURITY/CUST.: 2 MINIMUM IN

CURR INCARC SENT...: 12 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES SEPREQ

SOCIAL SECURITY #....: -----

DORM.....: BWA0034A

RACE....: B SEX...: M

PROJ MAXOUT DATE: 09/04/2022

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: BARBER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: TIER MAN

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 53 DATE OF BIRTH...: -----

PREVIOUS NUMBERS:

- 00237145
- 00172820
- 00263831

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	V/NV	CATEGORY
TRAFFICKING IN ILL.DRUGS	12	0	0	FLORENCE	6/26/2012	V	4
SHOPLIFTING	0	30	0	RICHLAND	11/29/1999	N	2
ASSL&BATTERY-HIGH&AGG.NA	0	30	0	RICHLAND	11/29/1999	N	3

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	V/NV	CATEGORY
SHOPLIFTING	0	30	0	RICHLAND	2/ 1/20	5 N	2
ASSL&BATTERY-HIGH&AGG.NA	0	30	0	RICHLAND	2/ 1/20	5 N	3

PRIOR COMMITMENTS OVER 90 DAYS:

6/26/12	*ASSAULT & BATTERY 2ND	0 YRS	5 MOS	0 DYS
10/17/ 2	*NARC DISTRIBUTION	3 YRS	0 MOS	0 DYS
11/18/98	DRIVING UNDER SUSPENSION	0 YRS	6 MOS	0 DYS
11/18/98	*FAIL TO STOP FOR OFFICER	1 YRS	0 MOS	0 DYS
11/18/97	*LARCENY	2 YRS	11 MOS	0 DYS
5/17/96	*FRAUD INSUFF FUNDS CHECK	0 YRS	0 MOS	120 DYS
8/19/90	*ASSL&BATTERY-HIGH&AGG.NAT	8 YRS	0 MOS	0 DYS
12/24/87	POSSESSION OF WEAPON	1 YRS	6 MOS	0 DYS
1/28/87	*LARCENY	1 YRS	6 MOS	0 DYS
11/25/83	ARMED ROBBERY	2 YRS	0 MOS	0 DYS
10/10/83	*ARMED ROBBERY	2 YRS	0 MOS	0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

TRAFFICKING IN ILL.DRUGS	WANTED	PRESIDING JUDGE	CATEG: 4
HEROIN DISTRIBUTION	WANTED	PRESIDING JUDGE	CATEG: 2
NO DETAINERS			

ESCAPES:

11/19/97	OTHER ESCAPE RELATED	CODE NOT IN TABLE
11/ 1/82	ESCAPE	CLASS I

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

12/ 4/91 FIGHTING WITHOUT A WEAPO CONVICTED MAJOR 00172820

NON-ASSAULTIVE DISCIPLINARIES:

11/ 1/ 5	OUT OF PLACE	OTHER	
9/24/92	ABUSE OF PRIVILEGES	CONVICTED	MINOR 00172820
1/ 7/92	INCITING/CREATING A DIST	CONVICTED	MINOR 00172820
4/26/91	POSSESSION OF CONTRABAND	CONVICTED	MAJOR 00172820
3/29/ 0	REFUSING TO WORK	DROPPED	CHARG 00263831

HISTORY OF MOVEMENTS:

10/31/13	ALLENDALE	INCARCERATED	ADMINISTRATIVE
9/ 5/13	KIRKLAND	INCARCERATED	NEW ADMISSION
5/ 1/ 6	UNK	RELEASE	EXPIRATION OF SENTENCE

4/19/ 5 KERSHAW

INCARCERATED

ADMINISTRATIVE

CLEA, JAMES OMAR FBI # 252393W9 SID# SC00756274 SCDC # 272806 (CONTINUED)
 3/22/ 5 KIRKLAND INCARCERATED PROBATION VIOLATOR
 5/29/ 1 RICHLAND CO PROBATION RELEASED TO PROBATION
 3/19/ 1 LIEBER INCARCERATED ADMINISTRATIVE
 2/15/ 1 KIRKLAND INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
BARBER	12/12/13	0/ 0/ 0		2F5
CUSTODIAL WORKER	11/05/13	12/11/13	INMATE REQUEST	2F5
WARDKEEPER	01/06/06	5/ 1/ 6	RELEASED/PAROLED	2F5
COOK	06/15/05	1/ 5/ 6	INMATE REQUEST	2F7
FOOD SERVICE AIDE	04/21/05	6/14/ 5	LATERAL TRANSFER	2F5
WARDKEEPER ASSISTANT	03/23/01	5/29/ 1	RELEASED/PAROLED	2F5
WARDKEEPER ASSISTANT	03/21/01	3/22/ 1	MI ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
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NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 05/01/14
 OMCOMITA RELEASE DATE SCREEN C051132
 SCDC# > 272806 LOC: ALLENDALE
 CLEA, JAMES OMAR SCDC CLASSIFICATION..: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY..: N
 SEXUAL PREDATOR..: NOT APP
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT..: N
 PREA DECISION....:

CURRENT SENTENCE: 012-00-000 CONSECUTIVE SENTENCE ..: N
 012-00-000 CURRENT SENT START DATE: 06/26/2012

PROJECTED COMPLETION DATES
 MAXOUT DATE: 09/04/2022 CURRENT EWC ..: 2 F 5
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ..: 000237 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE..: 00/00/00
 TOTAL SERVICE TIME EARNED ..: 000665 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 SCDC1579 3/11

COUNTY OF Florence
STATE VS. Umar Abdul Clea

INDICTMENT/CASE#: 2012-GS-21-01156
A/W#: M295436
Date of Offense: 4/30/2012
S.C. Code § : 44-53-0370(e)(3)(c)
CDR Code #: 0149

SENTENCE SHEET

AKA:
Race: B
DOB:
SID#:
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Drugs / Trafficking in Heroin, morph., etc., 4 g or more, but less than 14 g - 1st offense

in violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2361
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Ozment, Matthew R SC Bar# Defendant Attorney for Defendant SC Bar#

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

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SPECIAL CONDITIONS:

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Total: \$ plus 20% fee: \$
Payment Terms:
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PTUP
days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.

May serve W/E beginning
Substance Abuse Counseling

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

\$ paid to Public Defender Fund
Other:

CLERK OF COURT C.P. & G.S. FLORENCE COUNTY, S.C.

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

Table with columns for Recipient, *Fine, and various assessment codes (e.g., § 14-1-206, § 14-1-211(A)(1), etc.) with corresponding dollar amounts.

Clerk of Court/ Deputy Clerk: M. Seeha
Court Reporter: K. Smith
SCCA/217 (03/2011)

Presiding Judge: P. [Signature]
Judge Code: 2160
Sentence Date: 9-9-13