

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
Honorable Robert E. Hood, Circuit Court Judge

DOUGLAS J. MAYES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001376

APPENDIX

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South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: All right, okay. So the
3 balance before the Court, then, would be the
4 imposition of sentence with the understanding,
5 unless there's some disagreement, that Indictment
6 Number 2011-GS-32-1304 carries a mandatory minimum
7 of 25 to 30 years and a fine of \$50,000; and the
8 indictment for simple possession of cocaine, third
9 offense, carries zero to 10 years and/or a fine of
10 zero to \$12,500.

11 You agree with that, Mr. Floyd?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: And you agree that the minimum
14 sentence that I can impose is 25 years?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: All right.

17 MR. FLOYD: I disagree with the statute,
18 but I understand what it says.

19 THE COURT: Well, I agree with you, I
20 don't agree with the statute. But that's what the
21 legislature in their wisdom have decided is the
22 appropriate punishment and something that I have no
23 control over.

24 All right, Mr. Ross, I know you've
25 introduced the two enhancement matters. They are in

1 the record and before the Court. Is there anything
2 else on behalf of the State?

3 MR. ROSS: Your Honor, I would like to
4 read his full rap sheet into the record. He's got a
5 '99 DUI second; 2006 failure to comply with a police
6 directive, DUS, reckless driving, habitual traffic
7 offender; 2009 PWID, possession with intent to
8 distribute crack cocaine which is the sentencing
9 sheet I provided to you, sir. He got three years
10 for that.

11 In 2008, he's got another failure to
12 comply with a police directive; 2009, he's got a
13 failure to stop for a blue light. He's got the
14 trafficking crack cocaine conviction from down in
15 Aiken, and he's got a manufacturing marijuana as
16 well, Your Honor. And I believe that was -- I can
17 tell you which county that was in right now. That
18 was Aiken County too, Your Honor, 2008-GS-2-1608,
19 manufacturing marijuana.

20 THE COURT: All right, anything else on
21 behalf of the State?

22 MR. ROSS: Your Honor, the mandatory
23 minimum is 25 years. We think that's appropriate,
24 the appropriate sentencing range 25 to 30, simply
25 because he's a repeat offender. He's been given

1 every opportunity, and he continues to go back and
2 to deal drugs.

3 And he appears to be a repeat drug dealer.
4 He had a large amount in his possession this time,
5 \$7,000, as the record reflects. That's what he
6 does. He's a drug dealer. He's a repeat offender,
7 and he should be punished according to the law, Your
8 Honor.

9 THE COURT: Okay.

10 All right, Mr. Floyd, would you have
11 client come around?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: All right, Mr. Floyd, I'll be
14 glad to hear from you.

15 MR. FLOYD: Thank you. Your Honor, Doug
16 is 25 years of age. He does have a GED. He has a
17 4-year-old son that he had been supporting. He does
18 have an electrical license, so he has done
19 legitimate work also. He has been in jail now for
20 430 days in connection with these incidents. Your
21 Honor, I guess I --

22 THE COURT: Four hundred and how many?

23 MR. ROSS: Four hundred and thirty.

24 THE COURT: Thirty, okay.

25 MR. FLOYD: Your Honor, I guess I can't

1 argue with the statute except that to me it's a
2 harsh statute. It does provide for a minimum of 25
3 years.

4 We, of course, ask you to suspend it, but
5 I know the statute says you can't. So we certainly
6 ask for the minimum, and we would ask for a
7 concurrent sentence on the cocaine.

8 THE COURT: All right, Mr. Floyd, there's
9 something I was going to ask you, but it slipped my
10 mind. It's too late in the day. Maybe I will think
11 of it.

12 MR. FLOYD: Of course, this is, you know,
13 85 percent time.

14 THE COURT: Yes, that's what. Have you
15 advised him?

16 MR. FLOYD: He understands that it's non-
17 parolable. It's 85 percent.

18 THE COURT: Okay.

19 MR. FLOYD: So he's looking at 22 years or
20 something in that range before he can get out.

21 THE COURT: All right, I'll be glad to
22 hear from Mr. Mayes, but I will tell you, and you
23 can talk with him, Mr. Floyd, that if he does not
24 want to say anything, he does not have to, keeping
25 in mind that this matter will likely be appealed,

1 and anything that he could say might affect his
2 appeal.

3 But I will be glad to hear from him if
4 there's anything. But you may want to talk to him
5 before that. I'm not going to hold it against him
6 if he has nothing to say.

7 MR. FLOYD: Your Honor, he chooses not to
8 speak at this time.

9 THE COURT: Okay, thank you.

10 MR. ROSS: Your Honor, if I may add one
11 thing to the record. He's got pending distribution
12 cases, and he's also got a pending intimidation of a
13 witness, Your Honor. That was on the CI who
14 testified earlier.

15 I think some of his family members also
16 have charges regarding intimidating that witness.
17 If Your Honor sees fit, I would ask that you somehow
18 craft a no-contact order with that CI.

19 THE COURT: Okay, I can put that on there.
20 He's going to have a hard time contacting him where
21 he's going to be.

22 MR. FLOYD: I don't know how he would do
23 that where he's going to be, Judge.

24 THE COURT: I can't order somebody that's
25 not a party to this proceeding.

1 MR. ROSS: Yes, Your Honor.

2 THE COURT: Today is the second, is it
3 not?

4 CLERK OF COURT: Correct.

5 MR. FLOYD: Yes, it is.

6 THE COURT: Okay.

7 All right, as I'm sure you have explained
8 to Mr. Mayes in this case, Mr. Floyd, this is
9 something that the Court has very limited discretion
10 in, that it's a mandatory minimum of 25 years when
11 it's a third or subsequent offense.

12 The record is clear that this is a third
13 or subsequent offense, and the punishment is
14 enhanced. And my hands are tied as far as what I
15 can do as far as a minimum sentence is concerned.
16 You know that.

17 SENTENCE OF THE COURT

18 Therefore, on the Indictment Number 2011-
19 GS-32-1304, the sentence of the Court is that the
20 defendant is committed to the State Department of
21 Corrections for a determinate term of 25 years,
22 given credit for the time that he has served, 432
23 years. The bench warrant will be lifted. No
24 contact with the confidential informant.

25 On Indictment Number 2011-GS-32-1303, the

507

1 sentence of the Court is the defendant is committed
2 to the State Department of Corrections for a term of
3 10 years, concurrent with the trafficking in
4 Indictment 1304, again given credit, bench warrant
5 lifted, and no contact with the confidential
6 informant.

7 Good luck to you, sir. I, like Mr. Floyd,
8 may not agree with the law, but that's the law that
9 is written that I have to follow.

10 MR. FLOYD: Your Honor, one other matter.
11 Since he was found not guilty of the weapon, do we
12 also need to lift the bench warrant as to that
13 charge also, because it was one of the charges he
14 got lifted up?

15 THE COURT: I will put it on the record
16 that the bench warrant is lifted on that charge. I
17 don't know what the effect is going to be on the
18 other pending charges that you've got. Was the
19 bench warrant issued on those for not appearing?
20 Was there a bench warrant?

21 MR. FLOYD: No, just on these three
22 charges, Judge.

23 THE COURT: Just on these three, all
24 right. Well, the bench warrant will be lifted on
25 the charges that are before the Court now. And then

1 it will be up to the State to decide what they want
2 to do with the pending charges.

3 MR. ROSS: Yes, sir.

4 THE COURT: Okay.

5 MR. FLOYD: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. ROSS: Thank you, Judge.

8 -- End of Transcript --

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF
THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
ABOVE-CAPTIONED CASE ON OCTOBER 1 AND 2, 2012, IN
LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
TWENTY-FIRST DAY OF NOVEMBER, 2012.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

2015 CP3200389

IN THE COURT OF COMMON PLEAS

Douglas J. MAYES SR. 334386
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 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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Lexington Criminal Court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-32-1304
 - (b) 2011-GS-32-1303

(c) _____

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

- (a) October 7, 2012, Received a 25 year and a 10
- (b) year sentence to run concurrently.

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Jas. Co. C. C. P. & F. C.

Revised 3/2003

2015 CP3200389

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty FOUND GUILTY
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 1/14/15
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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2015 CP3200389

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

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

- (a) Failure to challenge Authenticity of the Searchwarrant & Affidavit
- (b) Failure to Inform me that the Trafficking Charge Sentence
- (c) was day for day.

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? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

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

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POCA
 Lex. Co. C.C.C.P. G.S. & F.C.

2015 CP3200389

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO

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

- (a) which grounds have been presented:

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

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

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

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

- (a) _____
- (b) _____
- (c) _____

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

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2015 CP 3200389

- (a) your arraignment and plea? Yes
- (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? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Wayne Floyd
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Lexington County Court House Trial
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
- new trial or sentence reduction
20. Are you now under sentence from any other court that you have not challenged?
- No

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & H.O.

2015 CP3200389

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , 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.

Douglas Hayes

SWORN to and subscribed before me this 29
day of Jan, 2015.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-24-2015

A TRUE COPY

TAYLOR CO. C.C.R., C.S. & F.C.

2015 CP 3200389

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

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.

Douglas Hughes

Applicant

SWORN or affirmed to and subscribed before me this
29 day of Jan, 2015.

Delma Series

Notary Public

My Commission Expires:

11-4-2015

FILED
2015 FEB -3 A 8:45
DEPT. OF CLERK
CIVIL DIVISION

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & E.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Douglas J. Mayes Jr.	)	C.A. No. 2015-CP-32-0389
S.C.D.C. No. 334386	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed February 3, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the August 2011 term of the Lexington County Grand Jury for possession of cocaine – third offense (2011-GS-32-1303) and trafficking in cocaine – third offense (2011-GS-32-1304). Wayne Floyd, Esq., represented Applicant. On October 1-2, 2012, Applicant proceeded to a trial before the Honorable Howard P. King and a jury. He was found guilty of trafficking cocaine and the lesser included offense of simple possession of cocaine. Judge King sentenced Applicant to a term of imprisonment for twenty-five (25) years for trafficking; and to a term of imprisonment for ten (10) years for simple possession. These sentences were to be served concurrently.

A timely Notice of Appeal was filed and perfected on Applicant's behalf. LaNelle Durant, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed

¹ By Order of February 25, 2015, Aimee Zmroczek has been appointed as Counsel.

Applicant's conviction and sentence. State v. Mayes, Op. No. 2015-UP-018 (S.C. Ct. App. filed January 14, 2015). The Remittitur was issued on February 17, 2015.

II.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:²

1. "Ineffective Assistance of Trial Counsel"
 - a. "Failure to challenge authenticity of the search warrant and affidavit"
 - b. "Failure to inform me that the trafficking charge sentence was day for day"

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

Attached to this return and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), Applicant's appellate records, 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 that Applicant's claim of ineffective assistance of trial counsel is without merit. In a PCR 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 trial 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

² Respondent has been unable to locate said attachment.

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 trial 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 trial counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove trial 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, 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.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel 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 denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

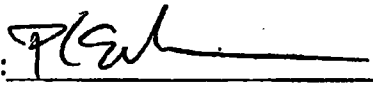
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

~~WALT WHITMIRE~~ *Pat. & Schubert*
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Rec. 7, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

DOUGLAS J. MAYES, JR.,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

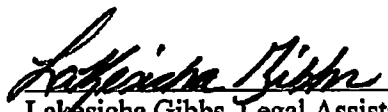
2015-CP-32-0389

AFFIDAVIT OF SERVICE BY MAIL

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

Anna Good, Esquire
 Law Office of Anna Good, LLC
 Post Office Box 7284
 Columbia, SC 29202

DATED this 7th day of December, 2015.


 Lakesicha Gibbs, Legal Assistant
 For Respondent

1	State of South Carolina	)	In the Court
		)	Of Common Pleas
2	County of Lexington	)	Case No.: 2015-CP-32-0389
		)	
3	Douglas J. Mayes, Junior,	)	
		)	
4	Applicant,	)	
	vs.	)	Transcript of Record
5		)	
	State of South Carolina,	)	
6		)	
	Defendant.	)	
7		)	

8

9

April 18, 2017

10

Lexington, South Carolina

11

12 BEFORE:

13

The Honorable Robert Hood, Judge

14

15 APPEARANCES:

16

17

Anna R. Browder, Esquire
Attorney for the Applicant

18

19

Jessica E. Kinard, Assistant Attorney General
Attorney for the State

20 ALSO PRESENT:

21

Douglas J. Mayes, Junior

22

23

24

25

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19	NONE		
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1 Thereupon, the following proceedings were had,

2 THE COURT: All right. We're on the record in
3 2015-CP-32-389. Douglas J. Mayes, Junior against the
4 State of South Carolina. Are you Mr. Mayes?

5 MR. MAYES: Yes, sir.

6 THE COURT: How you doing?

7 MR. MAYES: All right.

8 THE COURT: Where did you come in from?

9 MR. MAYES: Lee County.

10 THE COURT: Lee County. I had two from there.

11 That's a hike to get over here from Lee County. Thank
12 y'all for being on time. I appreciate it. I'm sorry.
13 We ran really late this morning and then I had an extra
14 hearing I had to squeeze in so I sincerely apologize to
15 everybody for the lateness of this hearing starting. The
16 hearing this morning they told me it was gonna take an
17 hour and it went from 10:00 to 12:15, 12:30 and it still
18 wasn't over and I didn't finish it until this afternoon
19 so Mr. Floyd and Ms. Browder and Mr. Mayes and to the
20 correctional officer I apologize for us not starting on
21 time. Thank very much. Is the State ready to go
22 forward?

23 MS. KINARD: Yes, Your Honor.

24 THE COURT: Okay.

25 MS. KINARD: Thank you, Your Honor. Jessica Kinard

1 here on behalf of the State. This is the matter of
2 Douglas J. Mayes, Junior versus the State of South
3 Carolina. It's case number 2015-CP-32-0389. We're
4 before the Court on an application for post conviction
5 relief that was filed February 3rd, 2015. Mr. Mayes is
6 presently confined in the South Carolina Department of
7 Corrections pursuant to orders of commitment from
8 Lexington County Clerk of Court. He was indicted at the
9 August 2011 term of the Lexington County grand jury for
10 possession of cocaine third offense, trafficking in
11 cocaine third offense and possession of a weapon during
12 the commission of a violent crime. He was represented by
13 H. Wayne Floyd, Esquire.

14 On October 1st and 2nd, 2012 they proceeded to a
15 trial before the Honorable Howard P. King and the jury.
16 He was found guilty of trafficking cocaine under a lesser
17 included offense of simple possession of cocaine. I
18 think I should clarify that. He was found guilty of
19 simple possession of cocaine. I'm sorry. That is
20 incorrect. There is a difference between crack and
21 cocaine. He was sentenced to a term of imprisonment of
22 25 years for the trafficking charge and a term of
23 imprisonment for 10 years for simple possession. These
24 are to be served concurrently.

25 A timely notice of appeal was filed and perfected on

1 the applicant's behalf. Bernel Durant represented him on
2 the appeal. The Court of Appeals affirmed his conviction
3 and he was sentenced in an unpublished opinion that was
4 filed January 24th, 2015. Remitter was returned February
5 17th, 2015. The State is present and ready to proceed.
6 Mr. Mayes is present and represented by Anna Browder.

7 THE COURT: All right. Ms. Browder, ready to go?

8 MS. BROWDER: I am. Thank you, Your Honor. At this
9 time we call Douglas Mayes.

10 THE COURT: All right. Mr. Mayes, please come
11 forward and be sworn.

12 Thereupon,

13 DOUGLAS J. MAYES, JUNIOR

14 after having been first duly sworn, testified as follows,

15 DIRECT EXAMINATION

16 BY MS. BROWDER:

17 Q. Mr. Mayes, you were originally arrested on February
18 17th, 2011, correct?

19 A. Yes, ma'am.

20 Q. Okay. And as previously stated, Mr. Wayne Floyd was
21 your attorney. Was he your attorney the entire time during
22 the pendency of this case?

23 A. Yes, ma'am.

24 Q. And was he appointed to you or was he retained?

25 A. Retained.

1 Q. Okay. And when did you or whoever retain
2 Mr. Floyd?

3 A. Seems like -- I'm not sure of the date. Probably
4 April. Something like that.

5 Q. Of 2011?

6 A. Yes, ma'am.

7 Q. And this trial was October 2012, correct?

8 A. Yes, ma'am.

9 Q. Okay. After you were arrested in February of 2011,
10 did you bond out?

11 A. Yes, ma'am.

12 Q. Okay. At what point did you bond out, do you
13 remember?

14 A. I believe it was October. September or October.

15 Q. Of what year?

16 A. 2011.

17 Q. Okay. So between the time you were arrested in
18 February of 2011 and the time that you bonded out
19 approximately how many times did you meet with Mr. Floyd?

20 A. We didn't meet any.

21 Q. Okay. When did you first learn that he had been
22 retained by your family?

23 A. I mean, you said how many times between when I was
24 out on bond?

25 Q. Well, how many times before you got out on bond did

1 you meet with him while you were incarcerated?

2 A. Probably about twice.

3 Q. Okay. Do you remember the first time you met with
4 him?

5 A. Yes, ma'am.

6 Q. Approximately when was that?

7 A. It was when I retained him. He come and let me know
8 that he had been retained.

9 Q. What did y'all discuss at that meeting?

10 A. The charges. Basically just what I was looking at
11 waiting on discovery.

12 Q. About how long did that meeting last?

13 A. I would say maybe 15 minutes at the most.

14 Q. You said at that time y'all were waiting on
15 discovery. Did you eventually get discovery?

16 A. Yes, ma'am.

17 Q. Was it while you were incarcerated or bonded out?

18 A. I was incarcerated still.

19 Q. How did you receive the discovery?

20 A. He brought it to me.

21 Q. When he brought it to you, did you go over the
22 discovery with him?

23 A. We didn't actually go through it. He just gave it
24 to me and that was it.

25 Q. Okay.

1 A. He talked about like the search warrant and all of
2 that stuff but didn't necessarily go through everything that
3 was given to him.

4 Q. And at that time when you had that discussion with
5 him, I guess this was the second time you met with him while
6 you were in jail?

7 A. Yeah.

8 Q. Okay. Did you discuss whether it was going to be a
9 plea or a trial?

10 A. Yeah. We discussed a plea or trial but I tell him
11 trial because he didn't have a plea offer on the table. He
12 came with 18 and I tried to get a better plea.

13 Q. So originally there was a plea offer of 18 years?

14 A. Yes, ma'am.

15 Q. And was that while you were incarcerated or after
16 you bonded out?

17 A. I think that was while I was incarcerated.

18 Q. Okay. At any point -- Okay. You bonded out in
19 September, October 2011 and there was originally another
20 trial, the same trial that started earlier, correct?

21 A. Yes, ma'am.

22 Q. When was that trial set for?

23 A. I believe, I think October the same year.

24 Q. Of 2011?

25 A. Yes, ma'am.

1 Q. So about a year prior to when this trial actually
2 occurred. Okay. And prior to that trial or even after, did
3 you ever try to have Mr. Floyd relieved from your case?

4 A. Yes, ma'am.

5 Q. How many times did you try to have him relieved from
6 your case?

7 A. Twice.

8 Q. The first time, do you remember when that was?

9 A. I don't remember the date for sure.

10 Q. But do you remember approximately when it was?

11 A. I'm trying to remember.

12 Q. Was out before or after that first trial?

13 A. I know we had one before.

14 Q. Okay. The one before, why did you try to have him
15 relieved?

16 A. I was trying to really get a better plea deal. He
17 wasn't really coming at me with, you know, letting me know
18 that he was trying to do anything to get a better plea so
19 that's why I was asking for a trial.

20 Q. All right. And then that one was denied, correct?

21 A. Yes, ma'am.

22 Q. And then you later had a second motion to relieve
23 Mr. Floyd as counsel. Can you explain to the Judge about that
24 one?

25 A. I believe the second time it was a motion for that

1 but I think it went to something else because I had some new
2 evidence that came into play.

3 Q. And what was that new evidence?

4 A. I think it was a letter from the CI. The CI
5 statement.

6 Q. So this whole thing started with a CI and eventually
7 the CI wrote a letter basically recanting, correct?

8 A. Yes, ma'am.

9 Q. And that's part of the transcript. At that time was
10 there a plea offer, a new plea offer given?

11 A. They never said anything about a plea offer at all
12 but he came and asked me what would I take but I didn't know
13 what the number was that they were offering.

14 Q. Would he tell you what their plea offer was?

15 A. No, ma'am.

16 Q. And at that time if there had been a plea offer for
17 less than 18 years, would you have taken it?

18 A. Yes, ma'am.

19 Q. Okay. Now, this trial was October of 2012. From
20 the time that you were bonded out approximately a year before
21 to this trial date, about how many times did you meet with
22 Mr. Floyd?

23 A. None.

24 Q. None. Okay. And when it came time for trial, how
25 did you know that trial was coming up?

1 A. I was incarcerated.

2 Q. So you had gone back in?

3 A. Yes, ma'am.

4 Q. Your bond had been revoked. Okay. How did you find
5 out that the trial had been scheduled?

6 A. Well, I remember, I think this is the third time he
7 came and tell me that we had the trial.

8 Q. At that time how long did that meeting last?

9 A. Probably about ten minutes.

10 Q. Did you discuss with him any preparation for the
11 trial?

12 A. We didn't discuss any kind of preparation.

13 Q. Okay. Did you know what the strategy was going into
14 trial?

15 A. No, ma'am.

16 Q. Had he discussed that at all with you?

17 A. No, ma'am. We discussed I believe it was the drugs
18 had went missing. That's about the only thing that we really
19 were talking about.

20 Q. And just asking you, I want to go back real quick,
21 but when y'all talked about any sort of plea offers or charges
22 or what you were looking at, did Mr. Floyd explain to you the
23 consequences of pleading or trial when it came to trafficking
24 about how the sentence would be done?

25 A. Yes. He did the sentencing guideline thing for

1 me.

2 Q. Okay. So you went into trial. Prior to trial on
3 that day did you speak with Mr. Floyd?

4 A. Yes, ma'am.

5 Q. Where did you speak with him?

6 A. Holding cell. I don't know if it was a holding cell
7 but it's in the back.

8 Q. Okay. But it was somewhere here?

9 A. Yes, ma'am.

10 Q. Okay. And what was your discussion in the holding
11 cell?

12 A. He was basically letting me know how the trial was
13 gonna go step by step and all that and the jury selection and
14 all that.

15 Q. Okay. So kind of like the procedure?

16 A. Yeah. The procedure.

17 Q. Okay. Did he discuss any pre-trial motions or
18 anything with you at that time?

19 A. Yes, ma'am. He said we would have a suppression
20 hearing and then a Jackson versus Denno hearing.

21 Q. Okay. And is this the first time you had heard
22 anything about any types of hearings for the trial or what was
23 gonna happen at the trial?

24 A. Yeah. The first time.

25 Q. And when you discussed the Jackson v. Denno with Mr.

1 Floyd, I guess for purposes of the trial Mr. Floyd argued that
2 any statements potentially could have been made because law
3 enforcement was threatening to take the child that was in the
4 home, correct?

5 A. Yes, ma'am.

6 Q. Did he ever discuss this with you?

7 A. At that time when I went to trial that's when he
8 mentioned it.

9 Q. Okay. And what did you tell him about that?

10 A. I mean, I tell him from the start that I didn't say
11 anything about confessing to any kind of drugs in the house.

12 Q. Okay. And when he told you about the story about
13 the child potentially being taken away, did you respond to
14 that to him in any way?

15 A. I tell him I didn't do it. That never happened.

16 Q. So you told him that that never happened about law
17 enforcement saying anything about taking the child away.
18 Okay. Is that the extent of what he spoke with you about
19 Jackson v. Denno?

20 A. Yes, ma'am.

21 Q. Did he ever discuss with you about potentially
22 testifying during the Jackson v. Denno hearing?

23 A. No, ma'am. I didn't know that until the judge told
24 me that I could.

25 Q. Okay. After you were convicted, did you speak with

1 Mr. Floyd again?

2 A. I believe so.

3 Q. Okay. What was that discussion? Where did that
4 take place?

5 A. When I talked to him, I think it was Broad River. I
6 was at Broad River.

7 Q. So you were already at the prison system.

8 A. Yes.

9 Q. Okay. And what was that discussion about?

10 A. Basically he was just checking up on me. That's
11 basically it.

12 Q. Okay. And then you filed the appeal, correct?

13 A. Yes, ma'am.

14 Q. And you're here today asking the Judge to overturn
15 your trial conviction based on the fact that Mr. Floyd never
16 consulted with you regarding preparing for trial or any
17 pre-trial hearings, correct?

18 A. Yes, ma'am.

19 Q. And in addition to the fact that you believe there
20 was a plea offer the second time around that he did not relay
21 to you, correct?

22 A. Yes, ma'am.

23 Q. And you don't know what that plea offer was. Is
24 there anything else that you think is important that the Judge
25 should know regarding your PCR?

1 A. That's basically it.

2 MS. BROWARD: Okay. Answer any questions the
3 Attorney General has for you.

4 CROSS EXAMINATION

5 BY MS. KINARD:

6 Q. Good afternoon, Mr. Mayes. You talked about wanting
7 to relieve Mr. Floyd because he couldn't provide you with
8 satisfactory plea offers; is that correct?

9 A. Yes, ma'am.

10 Q. Did he explain to you how the process worked and
11 that he was negotiating with Solicitors?

12 A. No, ma'am.

13 Q. Did you understand that that was the process at the
14 time?

15 A. I understood it was the process but the only thing
16 he came at me with was a 18 year plea and that was like a few
17 months after I retained him.

18 Q. Okay. Did you ever discuss actually entering a plea
19 before Judge Manning?

20 A. Yes, ma'am.

21 Q. What happened with that?

22 A. We didn't do a plea. He didn't never tell me a
23 number. Never tell me any type of a number.

24 Q. He didn't give you a range or anything like that?

25 A. No range. Just asked me what would I take.

1 Q. He asked you what would you take?

2 A. Yes, ma'am.

3 Q. What was your answer?

4 A. I tell him I didn't take nothing. I need a number
5 to go from. I didn't know if I would have said a number that
6 I was gonna get it.

7 Q. Okay. Well, you discussed with him what these
8 charges carried; is that correct?

9 A. Yes, ma'am.

10 Q. And you knew that it was a 25 year minimum?

11 A. 25 years. 85 percent time. He explained that to
12 me.

13 Q. 85 percent?

14 A. Yes, ma'am.

15 Q. Okay. And one point of clarification. In your
16 original PCR application didn't you allege that he didn't
17 explain to you that it was a day for day offense?

18 A. Yeah. He did not explain that to me. The whole
19 time it was 85 percent. He explained that I would do an 85
20 percent term of my time.

21 Q. Isn't that what it is, an 85 percent term?

22 A. No, ma'am.

23 Q. Okay. During the pendency of this action, is it
24 true that you left town?

25 A. Yes, ma'am.

1 Q. And then you had to be tracked down by law
2 enforcement?

3 A. Yes, ma'am.

4 Q. After that, how did plea negotiations go?

5 A. Never came with another plea. Just went to trial.

6 Q. Now, it's my understanding that your family was
7 helping pay your retainer; is that correct?

8 A. Yes, ma'am.

9 Q. Do they have any influence or discussions with you
10 regarding your plea?

11 A. No, ma'am. The only plea I had was that 18 year
12 plea with Colleen Dickson. She was the Solicitor then.

13 Q. Now, when we talk about the trial itself, there was
14 an earlier trial that basically only went through pre-trial
15 motions; is that correct?

16 A. Yes, ma'am.

17 Q. And so were you present there for those pre-trial
18 motions?

19 A. No, ma'am.

20 Q. You were not. Okay. But you were present the
21 second time around in 2012?

22 A. Yes, ma'am.

23 Q. And you stated that Mr. Floyd told you roughly how
24 these were gonna go before you went into the courtroom?

25 A. Yes, ma'am.

1 Q. So you understood what the suppression hearing
2 entailed?

3 A. Yes, ma'am.

4 Q. And what the purpose of it was?

5 A. Yes, ma'am.

6 Q. And the same with the Jackson v. Denno?

7 A. Yes, ma'am.

8 Q. And you told him your facts of the case and how you
9 believed things should go?

10 A. (Witness nodding head.)

11 Q. Please answer out loud for the court reporter.

12 A. Yes, ma'am.

13 Q. Thank you. Did you feel like he answered any
14 questions that you may have had?

15 A. He answered some of the questions that I had, but he
16 was just basically gonna do whatever he was gonna do.

17 Q. In terms of preparation, when he would come and meet
18 with you, did you talk about your version of the events?

19 A. Yes, ma'am.

20 Q. And you felt like he understood you?

21 A. I felt like he understood me.

22 Q. Did y'all talk about possible defenses?

23 A. No type of defense.

24 Q. You didn't talk about defenses?

25 A. No. He was really wanting to plea out.

1 Q. Okay. Just to make sure I heard you right when you
2 were testifying for Ms. Good, excuse me, Ms. Browder, did you
3 say that you told Mr. Floyd that you did not make the
4 statement that the drugs were yours?

5 A. Yes, ma'am. I specifically told him that.

6 MS. KINARD: All right. Those are all the questions
7 that I have. Thank you very much.

8 MS. BROWDER: No further questions.

9 THE COURT: You may step down, Mr. Mayes. Thank you
10 very much. Call your next witness.

11 MS. BROWDER: The applicant rests, Your Honor.

12 THE COURT: Ms. Kinard.

13 MS. KINARD: Thank you, Your Honor. The State calls
14 Wayne Floyd.

15 THE COURT: Mr. Floyd, please come forward and be
16 sworn.

17 Thereupon,

18 HOWARD WAYNE FLOYD

19 after having been first duly sworn, testified as follows,

20 THE CLERK: Please have a seat. Once you're seated,
21 state your full name for the record.

22 THE WITNESS: My name is Howard Wayne Floyd.

23 DIRECT EXAMINATION

24 BY MS. KINARD:

25 Q. Thank you for being here, Mr. Floyd. Before we get

1 into the facts of this case, I would like to ask you some
2 background questions about your practice. When were you
3 admitted to the Bar?

4 A. 1974.

5 Q. And since that time roughly what percentage of your
6 practice has been dealing in criminal defense?

7 A. Probably 50, 60 percent.

8 Q. At the time of your representation of Mr. Mayes,
9 were you doing a lot of criminal defense cases and still
10 comfortable with the work?

11 A. Yes.

12 Q. How were you approached by Mr. Mayes or his family?
13 How did you become involved in this case?

14 A. His father first approached me and asked me about if
15 I would take the case. I bought some pine straw from his
16 father and he was out at my house with pine straw and talked
17 to me about taking Dougie's case.

18 Q. And you were retained by him roughly at that
19 point?

20 A. That's correct.

21 Q. Now, you were here to hear Mr. Mayes testify
22 earlier?

23 A. Yes.

24 Q. Did you hear his testimony regarding a number of
25 meetings that you had with him?

1 A. Yes. I couldn't tell you how many we had though. I
2 mean, I don't have any recollection of the total number of
3 meetings.

4 Q. Do you think it would be more than roughly the three
5 that he testified to?

6 A. I think so but I couldn't - I don't have a good
7 memory of the total number of times.

8 Q. During those meetings, did you discuss his
9 indictments and the charges that he faced?

10 A. Yes. We discussed everything.

11 Q. So you discussed the elements of those and what the
12 State would have to prove?

13 A. That's correct.

14 Q. And you discussed the possible sentences that he
15 faced?

16 A. Yes. We did that.

17 Q. Did you discuss the collateral consequences such as
18 parol eligibility and percentage of time he would be required
19 to serve?

20 A. Yeah. We discussed about it would be an 85 percent
21 type of sentence.

22 Q. To your understanding and knowledge is this an 85
23 percent type of sentence?

24 A. Yes.

25 Q. Did you inform him of his constitutional rights such

1 as those to a jury trial, to confront accusers, to remain
2 silent and so forth?

3 A. Yeah. We discussed the whole process. You know,
4 you always want to try to work a deal and we never could get a
5 deal to the extent that Doug wanted to accept so we ended up
6 with a trial.

7 Q. Can you explain that some more regarding the plea
8 negotiations and what we have discussed about that? Restate
9 that for the Court.

10 A. Well, the first time that we came to court was when
11 we had the 18 year plea offer and we were scheduled for trial.
12 We had, Judge Manning was over here at that time and we tried
13 to get a plea deal worked out. We met. Judge Manning
14 indicated that he would go below the 18 if Mr. Mayes pled, but
15 he wouldn't commit to any specific number and Doug didn't want
16 to take that type of a chance so we ended up not doing the
17 plea when Judge Manning was here and I believe that was when
18 Doug left town so we couldn't finish the trial. He was later
19 picked up some months later and then they wouldn't really
20 offer any kind of a deal at that point because he had
21 skipped.

22 Q. Just to make sure I understand, you were prepared
23 for trial and instead of proceeding with trial you attempted
24 to plea in front of Judge Manning?

25 A. We were doing pre-trial stuff.

1 Q. Pre-trial motions with Judge Manning?

2 A. And trying to also work a plea.

3 Q. So between that point and the beginning of trial
4 that's when Mr. Mayes left?

5 A. That's correct.

6 Q. And you said he was gone for a few months?

7 A. Yes. I don't recall the exact amount of time.

8 Q. Less than a year?

9 A. Yeah. I'm pretty sure it was less than a year.

10 Q. And he was picked up again by law enforcement?

11 A. That's correct. Or the bondsman. Somebody got
12 him.

13 Q. And that's why his bond was revoked?

14 A. Yes.

15 Q. Okay. So essentially he didn't want to plead
16 because he couldn't get a solid number?

17 A. Yes. He was literally pleading without knowing what
18 the number would be.

19 Q. And then because his bond was revoked after he
20 skipped town, the Solicitor was hesitant to negotiate
21 further?

22 A. That's correct.

23 Q. Now, let's talk a bit more about trial prep. You
24 filed a discovery motion in this case I assume?

25 A. That's correct.

1 Q. Did you receive discovery from the State?

2 A. Yes.

3 Q. Did you receive everything that you expected to
4 receive?

5 A. Yes. I think I got everything that came up.

6 Q. Was it an ongoing discovery process? Did they turn
7 over multiple batches as things kept coming up?

8 A. Now, that I don't recall exactly on that. I mean,
9 there may have been some things that kind of filtered in but
10 when we got it, I got a copy to Doug for him to go over
11 because Doug is bright and he's a very intelligent young man
12 and he was able to even come up with some things from the
13 discovery that I think was helpful.

14 Q. Can you elaborate on that please?

15 A. There was some discrepancies with the search
16 warrants that Doug discovered and they were helpful. We lost
17 that argument but I thought it was, you know, there was some
18 good arguments to be made in connection with the search
19 warrant and the search itself.

20 Q. Would it be fair to characterize these discrepancies
21 as, the court ruled on them being more or less scrivener's
22 errors?

23 A. That's correct.

24 Q. So issues with date, issues with the name of the
25 actual town, things like that?

1 A. Yeah. There were three or four different errors
2 that were wrong in the warrants but none of it proved to be
3 enough for the judge to throw out the search.

4 Q. So that was one element of your defense. Can you
5 talk to us some more about other facets of your defense in
6 this case?

7 A. Well, there was a CI who actually wrote a letter to
8 Doug where he recanted what he had told the State but he then
9 re-re - then he went back to where he first went at trial.
10 They called him as a witness but he came up with a reason for
11 why he wrote the letter. It wasn't true. That what he said
12 initially was true. So that was -- I don't know if you call
13 that a defense. I thought they were weak on proving ownership
14 of the residence. We tried to make some issue of that. The
15 other issue that we were unsuccessful with is where the drugs
16 actually turned into liquid so when they went to introduce the
17 drugs into evidence, they were actually liquid and not crack
18 cocaine.

19 Q. And was there something regarding a firearm?

20 A. Oh, with the firearm I didn't think they proved that
21 the firearm was workable. It didn't have a firing pin. We
22 proved that and so we made an issue out of that and the jury
23 ended up finding him not guilty on that issue.

24 Q. That's correct.

25 MS. KINARD: And for the Court's reference, the

1 verdict return is on page 479 and 480.

2 BY MS. KINARD:

3 Q. Regarding the verdicts, is it true that they found
4 your client guilty of the lesser included offense on one of
5 the charges?

6 A. On the cocaine. I think it was PWID and they found
7 him guilty of possession of cocaine and then not guilty of the
8 firearm but guilty of trafficking.

9 Q. Now, Mr. Mayes testified, and please correct me if I
10 misheard, but that you discussed the suppression hearing and
11 the Denno hearing with him at the courthouse the day of trial.
12 Is that your recollection?

13 A. I would agree with him on that.

14 Q. And you walked through the procedure. Can you
15 describe how that conversation typically goes in your
16 practice?

17 A. Well, I tell them, you know, we have some pre-trial
18 motions, what those are and usually I have a Jackson v. Denno
19 motion and then in this case I think we went back through the
20 suppression motion, then the jury selection process. The fact
21 that the State goes first. Then I get to cross examine them.
22 Then when they have concluded their case, we can put up our
23 case if we want to put up any witnesses but if we don't put up
24 any witnesses, we get to argue last. Things like that.

25 Q. And do you believe he understood all of those

1 conversations?

2 A. I think he did.

3 Q. And did he - do you believe he felt comfortable
4 weighing in on his options with you?

5 A. Well, I think he did and I think he always was
6 hopeful that I could do a better plea, get him a better plea
7 but it just never did come about. So I don't think he wanted
8 to try the case. He would rather have a good plea, you
9 know.

10 Q. Regarding the Denno hearing and Mr. Mayes'
11 statement, he testified earlier that he told you he didn't
12 make that statement. Is that your memory?

13 A. Yeah. I would agree with him on that.

14 Q. In actuality did it make much of a difference
15 whether he said that or not?

16 A. Well, in actuality I guess it doesn't. You know, it
17 goes to the jury. You have to testify in front of a jury to
18 get that evidence out which we decided not to do, not to put
19 him on the stand.

20 Q. Can you describe that conversation please about
21 whether he should testify or not?

22 A. Well, it's kind of standard. I tell them if we
23 testify, we lose our right to argue last. If you testify,
24 they get to cross examine you. They get to bring out whatever
25 they can bring out from you and we thought that in that case

1 they might be able to flesh out his residence at the place
2 which I thought they were kind of weak on that. And then
3 there were a good many things found at the residence that they
4 could harp on. So yeah. I think we discussed that pretty
5 thoroughly.

6 Q. So in essence y'all agreed that it would be, the
7 potential for harm outweighed the potential for benefit in his
8 testimony?

9 A. Yes. I think so.

10 Q. Do you recall anything unusual or strange happening
11 during the trial whether during regular argument or jury
12 charges? Is there anything that sticks out as unusual in your
13 mind that you would like to discuss?

14 A. No. I can't think of anything unusual. It was a
15 little unfortunate that he had Colleen because I just remember
16 that Colleen had prosecuted Doug some years earlier and had
17 given what she thought was a good deal to him then and
18 therefore she was reluctant to give him a good deal the second
19 time around.

20 Q. Now, you have mentioned her a few times. Didn't
21 Mike Ross actually try the case?

22 A. Yeah. He actually tried the case because I think
23 Colleen had left by then. But she was there for the first
24 trial when we had the 18 year plea deal on the table.

25 Q. There's one motion you made that I would like to

1 discuss in particular between the verdict -- Excuse me. At
2 the conclusion of the State's case, which this was not when
3 you rested, you made a motion to keep out Mr. Mayes' prior
4 record. Do you recall that motion?

5 A. Yeah. Vaguely.

6 Q. And you argued that it would be more prejudicial
7 than probative?

8 A. That's correct.

9 Q. Do you recall how the judge ruled on that?

10 A. I'm assuming he ruled against me.

11 Q. Yes, sir. He did. I just wanted to get that on the
12 record here as something that --

13 A. That went into play, too, as to whether or not to
14 put him on the stand. Yeah.

15 Q. Did you make what most people consider standard
16 motions such as the motion for directed verdict at the close
17 of the State's case?

18 A. I think I did.

19 Q. Would you rely on the record?

20 A. Yes.

21 Q. Okay. Did you make similar motions at the end of
22 the trial itself?

23 A. Yeah. I think I did.

24 MS. KINARD: And I believe the record would reflect
25 that. I can certainly provide citations should the Court

1 require it.

2 BY MS. KINARD:

3 Q. Is there anything else that you would like the Court
4 to know about your representation of Mr. Mayes?

5 A. Not that I can think of.

6 MS. KINARD: I have no further questions at this
7 time. Thank you.

8 THE COURT: Ms. Browder.

9 MS. BROWDER: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MS. BROWDER:

12 Q. Mr. Floyd, you stated that you can't remember how
13 many meetings you had with Mr. Mayes?

14 A. No. He may be correct. I'm not saying he's not
15 correct. I just don't recall.

16 Q. So if he is correct and we're just gonna take that
17 assumption that it was only about three times, during those
18 three meetings did y'all ever discuss strategy for what the
19 trial would be?

20 A. Yeah. We discussed it. I mean, we didn't go into
21 the trial blind. We had a plan, you know, attacking the
22 search warrant and so forth.

23 Q. Okay. And with this search warrant, I guess, we'll
24 talk about that since you have brought it up. The issue with
25 the search warrant from your perspective was it was the wrong

1 residence address or wrong - it said Pelion or something
2 instead of --

3 A. Yeah. There were several, and I don't recall
4 exactly what they were, several errors in the description.

5 Q. And didn't you also have an issue with the search
6 warrant and the affidavit regarding the return that were being
7 sent to the magistrate's office?

8 A. Yeah. There was some issue with that. I don't
9 recall exactly what that was but there was some issue with
10 that one.

11 Q. Do you recall what information you got from the
12 Solicitor's Office when it came to the search warrant and the
13 affidavit in the return? Were there separate affidavits?

14 A. It seemed like there were, Ms. Browder, and I don't
15 remember exactly but I want to say there were two different
16 affidavits in that there were differences in the affidavits.

17 Q. Did you bring out those differences during the
18 search warrant pre-trial motion?

19 A. Yes.

20 Q. Okay.

21 A. It seems like when they put it in, it was different
22 than what we had, what we had been provided in discovery, the
23 affidavit.

24 Q. Okay. So was that the first time that you had seen
25 that new affidavit I guess?

1 A. I think so. Yes.

2 Q. So it's your testimony that wasn't handed over to
3 you during pre-trial normal discovery, correct?

4 A. That's correct. I think it just came about when
5 they were testifying and they put it in and it was different
6 than what we already had.

7 Q. And if you had had that one previously, would your
8 pre-trial motions have been somewhat different potentially if
9 you had both affidavits?

10 A. Well, I certainly could have prepared for it.

11 Q. Okay. I'm going to go to the offers now. The first
12 offer which nobody contests was the 18 year offer, correct?

13 A. Mm-hmm.

14 Q. Which Mr. Mayes said he did not want to take,
15 correct?

16 A. That's correct.

17 Q. Now, you said when y'all were there for the trial
18 with Judge Manning, that's when the discussion became about
19 would he potentially plea. Okay. Did the Assistant Solicitor
20 at that time Mike Ross give you another plea offer at that
21 time while Judge Manning was discussing this plea?

22 A. I'm not sure Mike Ross was there at that time.
23 Whatever Solicitor was present.

24 Q. Okay. Whatever Solicitor was there.

25 A. We had discussions with the judge. He understood

1 what the plea offer was.

2 Q. What exactly was the plea offer at that time?

3 A. I want to say it was the 18.

4 Q. Okay. So it was a flat - everybody agrees on the
5 18. Okay.

6 A. Well, we never agreed to that. That's what they
7 offered.

8 Q. That's what the offer was. Okay.

9 A. And so we were discussing with the judge whether or
10 not this could be disposed of by plea and the judge let us
11 both know that, yes, he would be inclined to, when I say both
12 of us, the prosecutor and myself, that he would be inclined to
13 on a straight up plea to do less than that.

14 Q. Okay.

15 A. And when I went to Doug, but he wouldn't give us a
16 figure.

17 Q. Did the Solicitor at that time give you any idea or
18 any range that he would potentially go to after that
19 discussion with Judge Manning?

20 A. No. I think I might have told Doug that I thought
21 he would go below ten as a possibility.

22 THE COURT: Are you talking about Judge Manning or
23 the Solicitor?

24 BY THE WITNESS:

25 A. Judge Manning.

1 BY MS. BROWDER:

2 Q. And did you discuss with the Solicitor at any time,
3 did the Solicitor give you any indication of any type of new
4 plea deal after your discussion with Judge Manning?

5 A. No. No. It was just -- And Judge Manning never
6 committed to a certain number.

7 Q. Correct. Okay. But I just want to clarify, the
8 Solicitor at that point never gave you anything after that?

9 A. That's correct.

10 Q. Regarding the Jackson v. Denno, I want to ask you
11 about the residency issue. What was the residency issue when
12 it came to this trial? It was whether Mr. Mayes lived there,
13 correct? Because it was his girlfriend's home?

14 A. Yeah.

15 Q. And that was an issue you thought was a big issue in
16 the trial as to whose drugs it could be because he didn't live
17 there?

18 A. Yeah. We tried to make an issue out of that.

19 Q. So when it came to the Jackson v. Denno hearing, the
20 only statement that was essentially being sued against Mr.
21 Mayes was those are my drugs or those are mine, correct?
22 Something along that lines?

23 A. Well, I think so, Ms. Browder. I did not review the
24 whole transcript.

25 Q. But it was literally just a small those are mine.

1 A. (Witness nodding head.)

2 Q. Okay. And you stated that you did discuss with him
3 the Jackson v. Denno down in the holding cell that morning,
4 correct?

5 A. That's correct.

6 Q. Did you tell Mr. Mayes that he could testify during
7 the Jackson v. Denno hearing as to whether his statement could
8 be suppressed and it could not be used against him in a trial
9 if he decided to testify, unless he decided to testify in the
10 trial?

11 A. I assume I did but I don't specifically recall.

12 Q. Okay. And you said you do recall him telling you
13 that he said he didn't make that statement, correct?

14 A. Yes.

15 Q. And if he would have testified at the Jackson v.
16 Denno hearing, his testimony would have been he didn't make
17 that statement, correct?

18 A. That's correct.

19 Q. Where did this story during the Jackson v. Denno
20 hearing where you cross examined the officer about statements
21 that law enforcement made to the girlfriend and/or Mr. Mayes
22 about they're gonna take the child away unless somebody takes
23 responsibility for these drugs, where did that come from?

24 A. I don't recall exactly but it may have come from his
25 girlfriend.

1 Q. Okay. Did you have his girlfriend there to
2 testify?

3 A. No.

4 Q. She wasn't charged with these, correct?

5 A. That's correct.

6 Q. So at the Jackson v. Denno hearing you just cross
7 examined the officer and didn't put up any other testimony
8 whether it was Mr. Mayes or the girlfriend regarding anything
9 that happened from their side, correct?

10 A. That's correct.

11 Q. Okay. And Ms. Kinard asked you that did it make a
12 difference about that statement or not, but if you had this
13 whole issue with the residency and the Jackson v. Denno it was
14 found that this statement was not going to come into evidence,
15 it could have potentially changed the outcome of the trial,
16 correct, because you had the residency issue at that point and
17 no statements from Mr. Mayes?

18 A. Well, yeah. That's potentially. Yeah.

19 MS. BROWDER: No further questions. Your Honor.

20 MS. KINARD: Just a couple, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. KINARD:

23 Q. To your memory, Mr. Floyd, did the State present DMV
24 records showing that Mr. Mayes lived at that residence?

25 A. I believe that's correct but I don't recall that

1 specifically but I remember vaguely that. Does the record
2 show that?

3 Q. The record does on page 295. There is a custodian
4 of records with DMV. And since Ms. Browder talked to you
5 about your strategy during the Denno hearing about not having
6 anyone there on Mr. Mayes' behalf, do you recall your
7 reasoning behind just cross examining the officer?

8 A. The only thing I can say is that I just didn't think
9 we would prevail in the hearing.

10 MS. KINARD: Thank you. I have no further
11 questions.

12 THE COURT: Ms. Browder?

13 MS. BROWDER: Nothing else, Your Honor.

14 THE COURT: What was your understanding of what the
15 girlfriend was gonna say about if he lived there?

16 THE WITNESS: I didn't expect her to help us in that
17 regard.

18 THE COURT: Okay. All right. Any follow-up to
19 that, Ms. Browder?

20 MS. BROWDER: No, sir.

21 THE COURT: Ms. Kinard?

22 MS. KINARD: No, sir.

23 THE COURT: Okay. You may step down. Thank you,
24 Mr. Floyd. Anything further from the State?

25 MS. KINARD: Your Honor, that's it from the State.

1 THE COURT: Ms. Browder?

2 MS. BROWDER: Nothing further, Your Honor.

3 MS. KINARD: We're happy to present a closing, Your
4 Honor.

5 THE COURT: Do you want to be heard?

6 MR. FLOYD: Your Honor, may I be excused?

7 THE COURT: Yes, sir. Thank you very much. I
8 apologize sincerely for the delay this afternoon.

9 MR. FLOYD: No problem.

10 THE COURT: Ms. Browder.

11 MS. BROWDER: Thank you, Your Honor. At this time
12 Mr. Mayes is asking for Your Honor to overturn the
13 convictions at his trial regarding this case based on
14 ineffective assistance of counsel on Mr. Floyd's part
15 particularly, Your Honor, when it comes to preparation
16 for the trial and essentially this Jackson v. Denno
17 hearing also. Mr. Floyd testified that he can't remember
18 how many times he met with Mr. Mayes but it's potentially
19 correct that Mr. Mayes' testimony of three times was
20 right, Your Honor, and by Mr. Mayes' testimony they met
21 shortly the first time right after he was arrested before
22 they even had discovery so there only would have been two
23 more times after that which both of them testified to one
24 of them was in the holding cell that morning of the
25 trial, Your Honor.

1 Regarding the Jackson v. Denno hearing, Mr. Floyd
2 confirmed Mr. Mayes' testimony that Mr. Mayes told him he
3 didn't make that statement. That's what would have been
4 testified to if Mr. Mayes had testified during the
5 Jackson v. Denno hearing yet Mr. Floyd testified he's not
6 sure if he told Mr. Mayes that he had the opportunity to
7 testify in the Jackson v. Denno hearing to put that
8 evidence up and he did testify it could have made a
9 difference, Your Honor, regarding the residency issue
10 that he believed that he did have that residency issue.
11 He did also testify, Your Honor, regarding the search
12 warrant --

13 THE COURT: I don't understand what the residency
14 issue has to do with the Denno. You mean just the
15 compounding of the two?

16 MS. BROWDER: Correct, Your Honor.

17 THE COURT: But how could he argue that the search
18 warrant was to be suppressed if he's gonna take the legal
19 position that Mr. Mayes is not a resident of the --

20 MS. BROWDER: I think he was - 'cause he was --

21 THE COURT: He would lose his right to challenge the
22 search warrant. If he said that his client wasn't a
23 resident there, he would have no standing to challenge
24 the search warrant.

25 MS. BROWDER: Your Honor, he was charged with it and

1 he was in the home when the search warrant --

2 THE COURT: He would still have no standing if it's
3 not his home.

4 MS. BROWDER: I think he was just making all the
5 issues, Your Honor. But he is asking that you overturn
6 it based on the fact he could have testified regarding
7 this Jackson v. Denno hearing. He was not allowed to,
8 and Mr. Floyd's ineffective assistance of counsel for
9 preparing for this trial with him based on the lack of
10 time that they had to meet. And, in addition, Your Honor
11 -- I believe that's it, Your Honor.

12 THE COURT: That dealt with the search warrant?

13 MS. BROWDER: Yes, sir. That's it, Your Honor.

14 THE COURT: Ms. Kinard.

15 MS. KINARD: Thank you, Your Honor. Very briefly.
16 Your Honor is aware the standard for PCR's is Strickland
17 versus Washington with the two prongs. The first being
18 is there deficient performance and the second being did
19 such deficient performance cause prejudice to the client.
20 The State would argue that there was not deficient
21 performance. Mr. Floyd testified capably and confidently
22 that he had meetings with Mr. Mayes; that they had
23 quality discussions; that they discussed the charges Mr.
24 Mayes faced; they discussed his potential sentences.
25 Mr. Floyd described to Mr. Mayes before the trial what he

1 could expect procedurally, what he should understand
2 regarding what he was about to experience.

3 Mr. Floyd also testified reasonably regarding the
4 plea offers and the concerns that Mr. Mayes had about
5 those. He testified saying that part of the issue was
6 brought upon Mr. Mayes himself by leaving town.

7 Therefore, for those reasons the State maintains
8 that there was no deficient performance. Assuming
9 arguendo that deficient performance is found, there
10 certainly is no prejudice. Any of these issues by
11 themselves, none of them cause prejudice to Mr. Mayes.
12 His testimony reflects that these decisions in rulings by
13 the court probably would have resulted in the same
14 outcome had any of these alleged errors not been made.
15 So for those reasons the State respectfully requests that
16 this application be denied with prejudice.

17 THE COURT: All right. Thank you very much. I'll
18 let you all know by the end of the week.

19 WHEREUPON, THE HEARING WAS CONCLUDED.
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 18th day of April, 2017.

11 I FURTHER CERTIFY that the forgoing 41 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 12th day of August, 2017.

17

18

19

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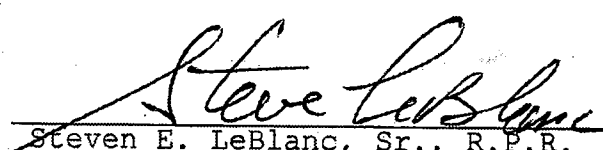
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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

ORIGINALSTATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Douglas J. Mayes, Jr. #334386,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-32-0389

**ORDER OF DISMISSAL
WITH PREJUDICE**FILED
2017 MAY 19 AM 11:25
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

This matter comes before the Court by way of an application for Post-Conviction Relief filed February 3, 2015, and amended March 16, 2017. Respondent made its Return on or about December 7, 2015. An evidentiary hearing into the matter was convened on April 18, 2017 at the Lexington County Courthouse at which time the Applicant was present and represented by Anna Browder, Esquire. The Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, H. Wayne Floyd, Esquire, also testified. This Court had before it a copy of the records of the Lexington County Clerk of Court regarding the Applicant's convictions, the records of his appeal, the transcript from Applicant's trial, the PCR application and amendment, Respondent's Return, and Applicant's records for the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the August 2011 term of the Lexington County Grand Jury for possession of cocaine – third offense (2011-GS-32-1303) and trafficking in cocaine – third offense (2011-GS-32-1304). H. Wayne

Floyd, Esquire represented Applicant. On October 1-2, 2012, Applicant proceeded to a trial before the Honorable Howard P. King and a jury. He was found guilty of trafficking cocaine and the lesser-included offense of simple possession of cocaine. Judge King sentenced Applicant to a term of imprisonment for twenty-five (25) years for trafficking, and to a term of imprisonment for ten (10) years for simple possession. These sentences were to be served concurrently.

A timely Notice of Appeal was filed and perfected on Applicant's behalf. LaNelle Durant, Esquire represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Mayes, Op. No. 2015-UP-018 (S.C. Ct. App. filed January 14, 2015). The Remittitur was issued on February 17, 2015.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Failure to challenge authenticity of the search warrant and affidavit"
 - b. "Failure to inform me that the trafficking charge sentence was day for day"

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 had the opportunity to observe the witnesses presented at the hearing, and to weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

When an applicant alleges ineffective assistance of counsel, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

To receive relief, an Applicant must prove that counsel’s performance was both deficient and prejudicial. Attorneys are held to an objective standard of “reasonably effective assistance” under “prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E. 2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). The presumption will always be that counsel was effective and the applicant must overcome this presumption to receive relief. Id., 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an Applicant must prove that counsel’s deficient performance was so poor that the Applicant prove that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 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 proceeding. Strickland, 466 U.S. at 694.

This Court finds Counsel provided effective assistance in this case. Counsel testified that he was retained by Applicant’s father, and remained Applicant’s counsel despite several attempts by Applicant to relieve him. Counsel further testified that, though they were always preparing for trial, he negotiated with the Solicitor’s office to attempt to get Applicant a satisfactory plea offer. The lowest offer he could obtain was 18 years, which Applicant would not accept. Counsel testified that he spoke with the Honorable L. Casey Manning and the solicitor while at court, and was advised by the judge that he would come significantly down from the offer if Applicant would plead; however, Applicant still refused to enter a plea. Counsel testified that he met with Applicant many times, during which he advised Applicant of all the charges and the potential sentences the charges carried as well as reviewed all of the discovery. Counsel advised

Applicant of all of his Constitutional rights, including his right to a jury trial, to remain silent, to confront accusers, and so forth. Applicant also testified to these facts, though pointed out that he did not receive a hard copy of all of the discovery until he was incarcerated. Counsel contested this issue, and testified that Applicant found several potentially helpful points during his review of the discovery.

Regarding the timeline of the case, Applicant's trial originally began approximately one year before the full trial was completed. At the time the first trial was started, Applicant was not present, as he had bonded out and left town. He was eventually re-arrested, and the trial at issue took place in October of 2012. Mr. Floyd represented Applicant the entire time.

Counsel testified that he had several strategic points that he wanted to emphasize during trial. First, he pushed the issue of whether Applicant could be proven to actually reside in the house where the drugs were found. Second, he wanted to attack the sufficiency and accuracy of the affidavits that led to the search warrant, as well as issues related to the return to the magistrate. Lastly, there were problems with the evidence – some of the drugs had become liquid between the time of the arrest and the time of trial, and the prosecution had failed to prove that the firearm found in the house was operable. Counsel testified that he believed he spoke with Applicant about all of these tactics, as well as about how the pre-trial hearings would work, including the Jackson v. Denno¹ hearing and the factors that surrounded that succeeding or failing. Lastly, counsel testified about Applicant's girlfriend, particularly regarding what she may have said to law enforcement and whether she would have been a helpful witness. Counsel testified that the girlfriend may have made the ultimately unsubstantiated claim that someone would take their child if they did not admit to possession of the drugs. He further testified that, after investigation, he did not believe that her testimony would have helped the Applicant's case.

¹ 378 U.S. 368 (1964).

Therefore, Applicant having failed to prove any deficiency by Counsel as required by Strickland, his application is denied and dismissed with prejudice.

CONCLUSION

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

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. *See* Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

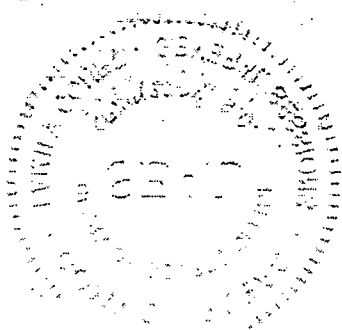
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15 day of May, 2017.

Robert E. Hood
Presiding Judge
Eleventh Judicial Circuit

Columbia, South Carolina

FILED
2017 MAY 19 AM 11:25
LISA H. CONER
CLERK OF COURT
LEXINGTON SC

**WITNESSES**

Lexington County Sheriffs Department

Eric V. Kirkland

Law Enforcement Case #: 11008476

CED

ARREST WARRANT NUMBER

J830871

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 8/8/11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS3201303**The State of South Carolina****County of Lexington****COURT OF GENERAL SESSIONS****AUGUST TERM 2011****THE STATE****vs.****Douglas James Mayes****CDR #: 0185****Indictment for****POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE 3RD OR
SUBSEQUENT OFFENSE****§ 44-53-0370(b)****DONALD V. MYERS, SOLICITOR**

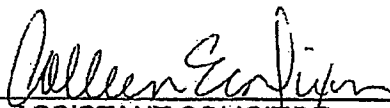
STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF LEXINGTON	)	POSSESSION WITH INTENT TO DISTRIBUTE
	)	COCAINE 3RD OR SUBSEQUENT OFFENSE

§ 44-53-0370(b)

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That **Douglas James Mayes** did in Lexington County, South Carolina, on or about February 17, 2011 knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, possess with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of a control substance, to wit : Cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-370(b)(1), Code of Laws of South Carolina, 1976, as amended. Such being the third or subsequent offense.

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


 ASSISTANT SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.



WITNESSES

Lexington County Sheriffs Department

Eric V. Kirkland

Law Enforcement Case #: 11008476

CED

ARREST WARRANT NUMBER

J830870

ACTION OF GRAND JURY

[Signature]
 Foreperson of Grand Jury
 Date: 8/3/11

VERDICT

 Foreperson of Petit Jury
 Date:
DOCKET NO. 2011GS3201304**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE

vs.

Douglas James Mayes

CDR #: 0349

Indictment for

**TRAFFICKING IN CRACK COCAINE - 28
 GRAMS OR MORE BUT LESS THAN 100
 GRAMS - 3RD OR SUBSEQUENT
 OFFENSE**

§ 44-53-0375(C)

DONALD V. MYERS, SOLICITOR

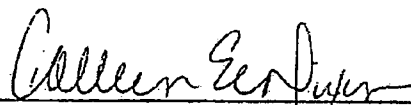
STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	TRAFFICKING IN CRACK COCAINE - 28
COUNTY OF LEXINGTON	)	GRAMS OR MORE BUT LESS THAN 100
	)	GRAMS - 3 RD OR SUBSEQUENT OFFENSE

§ 44-53-0375(C)

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That **Douglas James Mayes** did in Lexington County, South Carolina on or about February 17, 2011, knowingly and intentionally, willfully and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, a controlled substance by definition under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of twenty eight (28) grams or more but less than one hundred (100) grams, in violation of § 44-53-375 (C), Code of Laws of South Carolina, 1976, as amended, such being the third or subsequent offense.

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


 ASSISTANT SOLICITOR

