

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Georgetown County

Honorable Michael G. Nettles, Circuit Court Judge

\_\_\_\_\_  
ELIJAH A. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000666

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF GEORGETOWN ) CASE NO: 2014-GS-22-347, 652

-----  
B E F O R E: The Honorable George C. James  
March 31, 2015  
-----

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

ELIJAH A. BROWN,

Defendant.

**ORIGINAL**

-----  
APPEARANCES:

Ricky Todd, Esq.  
For the State.

Charles Barr, Esq.  
For the Defendant.

Court Reporter:

Natalie Dahl, RPR



1 P-R-O-C-E-E-D-I-N-G-S

2 MR. BARR: May I approach the bench?

3 THE COURT: Yes, sir.

4 (Whereupon, a bench conference was had.)

5 THE COURT: Mr. Barr.

6 MR. BARR: After much deliberation and  
7 consideration, we had discussions with the Defendant,  
8 and he at this time has elected and decided to change  
9 his plea and offer a plea of guilty for the charges  
10 that are before the Court at this time.

11 THE COURT: Please stand, Mr. Brown. Raise your  
12 right hand.

13 (ELIJAH BROWN, having been duly sworn,  
14 testified as follows:)

15 THE COURT: Mr. Barr, obviously you do represent  
16 the Defendant in this case; is that correct?

17 MR. BARR: Yes, sir.

18 THE COURT: Based on your knowledge of the facts  
19 and taking into account the legal issues, factual  
20 issues and so forth, including the rulings I have made  
21 to this point, do you think that Mr. Brown could well  
22 be convicted if he proceeded with this jury trial?

23 MR. BARR: I think there is a substantial  
24 likelihood that he will be convicted.

25 THE COURT: Do you believe that he understands

1 exactly what the State has to prove, all of his rights  
2 and the punishment that he faces?

3 MR. BARR: Your Honor, we have gone over it a  
4 number of times, and I think he fully understands.

5 THE COURT: Mr. Todd, the PWID heroin is zero to  
6 30?

7 MR. TODD: Yes, sir.

8 THE COURT: The marijuana, what was the weight?

9 MR. TODD: Under an ounce, so I believe up to one  
10 year.

11 THE COURT: All right. He understands those  
12 offenses?

13 MR. BARR: Yes, sir.

14 THE COURT: Mr. Barr, does he understand that the  
15 enhancement, especially pertinent to the heroin  
16 charge, could be adverse to him as it goes down the  
17 road as far as future convictions are concerned?

18 MR. BARR: Your Honor, with respect to future  
19 convictions, and just for the record and his own  
20 understanding, he was -- had some concerns about  
21 whether or not this was actually a third, however, he  
22 was not considering possession of cocaine, which I  
23 tried to explain that to him. I think he now  
24 understands that for purposes of enhancement, this  
25 would be a third offense.

1 THE COURT: I don't know the nature of the  
2 pending charges, but does he understand this plea  
3 today, especially as to heroin, could result in  
4 additional or mandatory or heightened prison time if  
5 he was convicted of the pending charges?

6 MR. BARR: Yes, sir.

7 THE COURT: Mr. Brown, how old are you, sir?

8 MR. BROWN: 30.

9 THE COURT: I'll be asking you questions to make  
10 sure you enter your plea properly. There is no magic  
11 to this, all I need is truthful answers. If you  
12 change your mind about what you want to do, all you  
13 need to do is let Mr. Barr know or me know; do you  
14 understand that?

15 MR. BROWN: Yes, sir.

16 THE COURT: If someone says something you don't  
17 understand or agree, let me know.

18 MR. BROWN: Yes, sir.

19 THE COURT: If you need to stop and talk to Mr.  
20 Barr about anything involving this case, please let me  
21 know.

22 MR. BROWN: Yes, sir.

23 THE COURT: All right, sir. You have -- excuse  
24 me. Do you take any medication?

25 MR. BROWN: No, sir.

1 THE COURT: Are you supposed to?

2 MR. BROWN: No, sir.

3 THE COURT: Have you been diagnosed with any  
4 mental problems?

5 MR. BROWN: No, sir.

6 THE COURT: Do you have any drugs or alcohol in  
7 your system now?

8 MR. BROWN: No, sir.

9 THE COURT: Do you have a high school diploma?

10 MR. BROWN: GED.

11 THE COURT: What kind of work have you done?

12 MR. BROWN: Landscaping. I just started like  
13 trying to open my own business selling hair care  
14 products.

15 THE COURT: Do you understand that you're charged  
16 with possession of less than 1 ounce of marijuana?

17 MR. BROWN: Yes, sir.

18 THE COURT: And you said, Mr. Todd, that category  
19 carries up to a year?

20 MR. TODD: Yes, sir.

21 THE COURT: You understand that?

22 MS. BROWN: Yes, sir.

23 THE COURT: The possession -- and that  
24 indictment, as you heard yesterday, alleges that you  
25 illegally possessed that substance on April 16, 2014;

1 you understand that?

2 MR. BROWN: Yes, sir.

3 THE COURT: The other indictment alleges that on  
4 or about the same date you possessed a quantity of  
5 heroin with the intent to distribute it, or that you  
6 otherwise conspired to distribute that substance; do  
7 you understand that?

8 MR. BROWN: Yes, sir.

9 THE COURT: Because of your prior drug record --  
10 he has two possessions of cocaine?

11 MR. TODD: Yes, sir.

12 THE COURT: Because of those convictions, you are  
13 facing up to from zero to 30 years in prison; do you  
14 understand that?

15 MR. BROWN: Yes, sir.

16 THE COURT: As you go down this drug conviction  
17 road, depending upon the nature of the drug, do you  
18 understand that at various points in the future, if  
19 you are convicted, you are facing more time than at  
20 some point perhaps some mandatory minimum time?

21 MR. BROWN: Yes, sir.

22 THE COURT: Are you on probation or parole now?

23 MR. BROWN: No, sir.

24 THE COURT: When you enter these pleas, you give  
25 up rights that you have under the Constitution. First

1 is your right to remain silent; do you understand  
2 that?

3 MS. BROWN: Yes, sir.

4 THE COURT: Secondly, you give up the right to  
5 have a jury trial. Now, you participated with your  
6 lawyer in the selection of this jury, and that jury is  
7 here and ready to go forward with the trial if you  
8 want to go forward; do you understand that?

9 MR. BROWN: Yes, sir.

10 THE COURT: During the trial, as I mentioned to  
11 the jury yesterday, they are -- the jury is told you  
12 are presumed innocent, you don't have to prove  
13 anything. The jury also is told that it cannot find  
14 you guilty unless all 12 of them agree that you are  
15 guilty beyond a reasonable doubt; do you understand  
16 that?

17 MR. BROWN: Yes, sir.

18 THE COURT: Now, do you want a jury trial?

19 MR. BROWN: Hold on.

20 (Whereupon, Mr. Barr and Mr. Brown confer.)

21 MR. BROWN: No, sir.

22 THE COURT: Do you understand we can go forward  
23 with the trial right now if that is what you want to  
24 do?

25 MR. BROWN: Yes, sir.

1 THE COURT: Also, if you plead guilty, you give  
2 up the right to look at, listen to and through your  
3 attorney question all witnesses. You have a small  
4 snapshot of that yesterday during that hearing where  
5 you were allowed to be present, which is your right,  
6 to look at them, listen to them and then have Mr. Barr  
7 question them; do you understand that?

8 MR. BROWN: Yes, sir.

9 THE COURT: That would apply again to this trial  
10 with these witnesses and any other witnesses that  
11 might be called, including your own; is that clear?

12 MR. BROWN: Yes, sir.

13 THE COURT: Have you understood everything I  
14 explained to you?

15 MS. BROWN: Yes, sir.

16 THE COURT: Do you understand if you plead  
17 guilty, you are giving up all of your defenses?

18 MR. BROWN: Yes, sir.

19 THE COURT: You also are giving up the right to  
20 challenge the legality of the evidence, like was done  
21 yesterday, and the overall admissibility of all  
22 evidence; do you understand that?

23 MR. BROWN: Yes, sir.

24 THE COURT: Understanding all of this, Mr. Brown,  
25 are you guilty or not guilty of possession of less

1 than 1 ounce of marijuana?

2 MR. BROWN: Guilty.

3 THE COURT: Are you guilty or not guilty of  
4 possession with intent to distribute heroin?

5 MR. BROWN: Guilty.

6 THE COURT: You saw the video yesterday, and  
7 apparently and obviously you were there at the time of  
8 the incident. You did have that heroin in your  
9 possession?

10 MR. BROWN: You are asking me that, sir?

11 THE COURT: Yes, sir.

12 MR. BROWN: Yes, sir.

13 THE COURT: And you had the marijuana in your  
14 possession?

15 MR. BROWN: Yes, sir.

16 THE COURT: Has anyone promised you anything to  
17 get you to plead guilty?

18 MR. BROWN: No, sir.

19 THE COURT: Is Mr. Barr or anyone else using any  
20 pressure, threat, force or intimidation to get you to  
21 plead guilty?

22 MR. BROWN: No, sir.

23 THE COURT: Have you had enough time to make up  
24 your mind?

25 MR. BROWN: Yes, sir.

1 THE COURT: Now, Mr. Barr is your attorney. Have  
2 you had sufficient time to discuss this case with him?

3 MR. BROWN: Yes, sir.

4 THE COURT: Do you need any more time to talk to  
5 him now?

6 MR. BROWN: Can I get a few minutes, sir?

7 THE COURT: Yes, sir. Move the microphone away  
8 so there is no chance of us hearing you.

9 (A brief recess was taken while Mr. Barr and Mr.  
10 Brown confer.)

11 MR. BARR: For the record, with respect to the  
12 question that the Defendant has posed, he inquired  
13 about whether or not your explanation regarding his  
14 rights, does that mean he's waiving his rights to  
15 post-conviction relief application, and I have  
16 instructed him or indicated to him that this has no  
17 bearing on post-conviction relief.

18 THE COURT: That is correct, Mr. Brown. You  
19 would still have those rights. I'm just asking you up  
20 front whether or not you have had a chance to consult  
21 with Mr. Barr adequately before entering into this  
22 plea?

23 MR. BROWN: Yes, sir.

24 THE COURT: Do you think -- based on what you  
25 know at this time, has Mr. Barr answered all of your

1 questions to your satisfaction?

2 MR. BROWN: Yes, sir.

3 THE COURT: And to your knowledge, has he done  
4 what he could do to represent you properly?

5 MR. BROWN: Yes, sir.

6 THE COURT: Do you understand you have 10 days to  
7 appeal these guilty pleas and the sentences; you  
8 understand that?

9 MR. BROWN: Yes, sir.

10 THE COURT: That 10-day deadline does not have  
11 anything to do with post-conviction relief; you  
12 understand that?

13 MR. BROWN: Yes, sir.

14 THE COURT: All right. Okay. Mr. Todd, I have  
15 watched the video and I have a good handle on what the  
16 general facts are, so is there anything else you would  
17 like to put on the record?

18 MR. TODD: If you want me to put the summary of  
19 what we did for the guilty plea, is that sufficient?

20 THE COURT: That's fine.

21 MR. TODD: Your Honor, just for the record, on  
22 April 16, 2014 agents with the 15<sup>th</sup> Circuit Drug  
23 Enforcement Unit utilized a confidential informant to  
24 arrange a buy with Mr. Brown. On that day they  
25 arranged a buy of heroin that was to be bought at the

1 Kangaroo station in Murrell's Inlet. The Defendant  
2 arrived on scene, and the agents did meet up with  
3 Mr. Brown, found heroin on the ground next to him and  
4 a quantity of marijuana on his person. All of this  
5 was tested, came back to be heroin from SLED, as well  
6 as marijuana. It was, in fact, marijuana. It was  
7 tested.

8 THE COURT: Is there anything that law  
9 enforcement wants to relay to the Court, Mr. Todd?

10 MR. TODD: Court's indulgence, Your Honor.

11 (A brief pause in the proceedings.)

12 MR. TODD: I think we're good, Your Honor.

13 THE COURT: All right. Now, what is his record  
14 of convictions? Pending charges, I guess everyone in  
15 the courtroom understands, laymen sometimes don't, but  
16 I don't want to know anything about pending charges  
17 because that cannot be used to bolster any request for  
18 a particular sentence or sentence range. What are his  
19 convictions?

20 MR. TODD: His convictions from 2004 there was a  
21 grand larceny, B&E auto, possession of marijuana and  
22 possession of cocaine, and that is where he  
23 received --

24 THE COURT: Slow down.

25 MR. TODD: Possession of marijuana, possession of

1 cocaine, and that was where he received a two-year  
2 sentence.

3 2008, another B&E auto.

4 2009, possession of cocaine and possession of  
5 MDMA, a failure to stop for blue light and a  
6 possession of a stolen vehicle. That is his  
7 convictions as of today.

8 THE COURT: Does that sound correct, Mr. Brown?

9 MR. BROWN: Can you repeat that?

10 THE COURT: Two breaking and entering  
11 automobiles, possession of MDMA, which is ecstasy,  
12 possession of marijuana and two possessions of  
13 cocaine.

14 MR. TODD: And a failure to stop and possession  
15 of a stolen vehicle.

16 MR. BARR: Your Honor, Court's indulgence for a  
17 second. What is the date of the convictions?

18 MR. TODD: 2009 -- the MDMA is --

19 MR. BARR: Is that June?

20 THE COURT: Is Ms. Richardson here?

21 MR. TODD: She's downstairs. 5/28/2009.

22 (A brief pause in the proceedings.)

23 THE COURT: What are you discussing?

24 MR. TODD: Prior convictions with --

25 THE COURT: How many cocaines does he have?

1 MR. TODD: Two possessions of cocaine.

2 THE COURT: At different times?

3 MR. TODD: Yes.

4 THE COURT: I'll discount the MDMA then.

5 MR. BARR: What happened is the cocaine  
6 possession occurred at different times, but he's  
7 saying that it was all ran together under a YOA  
8 probation.

9 THE COURT: Okay. Well, see, I don't know  
10 because I didn't know the dates he pled guilty. He  
11 just --

12 MR. TODD: The first one was 2004, the second one  
13 was in 2009.

14 THE COURT: How old is he now, Mr. Barr?

15 MR. BROWN: 30.

16 THE COURT: So he pled guilty in 2004 and 2009  
17 possession of cocaine, so that is two separate cocaine  
18 convictions?

19 MR. TODD: Yes, sir.

20 MR. BARR: I calculate it to be two different....

21 THE COURT: Okay. I'll accept his pleas as  
22 entered freely and voluntarily, knowingly,  
23 intelligently. There is certainly a substantial basis  
24 for the pleas, substantial factual basis. Mr. Brown  
25 has indicated that he's satisfied with counsel at this

1 point.

2 Anything you all would like to tell me, Mr. Barr?

3 MR. BARR: Court's indulgence.

4 (A brief pause in the proceedings.)

5 MR. BARR: You had the benefit of being involved  
6 in this case from yesterday when it was initially  
7 presented to you today. I think you've seen the  
8 videos, heard the arguments, heard testimony. We  
9 certainly, as I indicated -- and I understand that in  
10 terms of sentencing that the Court will not take into  
11 consideration anything that is -- any pending charges,  
12 of course. I do believe that with respect to the  
13 State's approach to this case, I find it to be  
14 somewhat unusual.

15 I've been practicing law for quite some time now,  
16 and you seldom see a situation where a defendant is  
17 confronted with a situation where either he turns  
18 State's evidence, or he suffers from the State's  
19 exercise of discretion whereby he's treated or fed out  
20 of a different spoon. Be that as it may, we ask the  
21 Court to take into consideration -- I sat down and  
22 I've talked with Mr. Brown and, Judge, here is my take  
23 on Mr. Brown. I understand that he is pleading guilty  
24 for -- to the PWID with heroin and the marijuana, and  
25 when you look at his record, he's -- he's -- this is

1 not his first rodeo, but Mr. Brown just simply, in my  
2 opinion, is not the brightest apple in the bunch in  
3 terms of understanding the necessity of making certain  
4 that his conduct adheres to some community standards.  
5 I think that -- I think this thing has taught him -- I  
6 don't know what has happened before, but I've been  
7 involved with him, and I do believe that -- especially  
8 with talking with some of his friends -- I think the  
9 light finally came on with Mr. Brown.

10 Your Honor, I would simply ask that the Court  
11 take into consideration -- I ask myself all the time  
12 why would a man sell any kind of drugs, and of course  
13 we know that that issue in and of itself is something  
14 that is most prevalent in our society today, and if we  
15 could do something about it -- we continually try to  
16 do something about it, but it seems to continue  
17 because of different political considerations,  
18 economic considerations. Be that as it may, the  
19 reality of where we are, we're still dealing with this  
20 and still have young men getting involved in the drug  
21 trade.

22 I would ask the Court to take into consideration  
23 the remarks that I've made, and I'm convinced that  
24 Mr. Brown is now at a point where he's beginning to  
25 see some daylight as it relates to how important it is

1 for him not to ever get back involved in this trade.

2 THE COURT: Mr. Brown, anything you would like to  
3 tell me?

4 MR. BROWN: No, sir.

5 THE COURT: Mr. Todd, what is the State's  
6 position, if anything, on sentencing?

7 MR. TODD: Your Honor, just from what you have  
8 seen in this case, this is the dealer's dealer. This  
9 guy is who the local dealers went to to buy their  
10 heroin. You heard a little bit of the testimony, but  
11 you didn't get to actually hear the informant that was  
12 arrested that day and said I'll give you the guy who  
13 supplied me. He supplied him with about what would be  
14 broken down into 38 different dosage units of heroin,  
15 which Mr. Johnson would be distributing out to the  
16 public.

17 Your Honor, we ask that you give a sentence that  
18 would punish him for what he's done.

19 THE COURT: Okay. I guess perhaps to amplify  
20 Mr. Barr's comments, what this boils down to is what  
21 has been around since the beginning of time, supply  
22 and demand. There is a demand for drugs, there are  
23 people willing to supply it, and as long as the price  
24 is right, the drug trade will continue.

25 Heroin, from what I understand, is a evil

1 substance. Law enforcement has a tough job trying to  
2 root it out, and sometimes it just ain't pretty; the  
3 video shows that. In this case, the tactics of the  
4 police can't be called into question, even though, Mr.  
5 Barr, you stated your Fourth Amendment arguments, it  
6 is always interesting to see how something that is 220  
7 years old -- 230 years old pans out in a courtroom.  
8 The Fourth Amendment has been around that long.

9 Mr. Brown, the sentence I'm going to hand down is  
10 not going to be based on any pending charges, because  
11 I purposefully don't want to know what they are  
12 because it is not appropriate for me to sentence you  
13 based on what you might have done that has not been to  
14 court yet. If you are ever found guilty or plead  
15 guilty to any pending charges, the rubber will hit the  
16 road then on those charges. I don't have any  
17 sentencing sheets, so --

18 MR. TODD: Here you go, Judge.

19 THE COURT: The sentences will be concurrent,  
20 which means you'll serve both of those together. On  
21 the possession of less than an ounce of marijuana, you  
22 are committed to the Department of Corrections for a  
23 period of one year. You will get credit for time you  
24 have done. Has he been in jail since his arrest?

25 MR. TODD: Not this arrest, but another one.

1           THE COURT: You'll get credit for any time you  
2 have done on this charge on marijuana. On the  
3 possession of heroin, you know it is a zero to 30, so  
4 it is totally up to me to sentence you within that  
5 range. Based on what I've observed and based on the  
6 comments of your attorney and the comments made by the  
7 prosecutor, I'm going to sentence you to the State  
8 Department of Corrections for a period of 12 years.  
9 That, hopefully, will be some incentive for those out  
10 there doing this to find something else to do. It  
11 also will, hopefully, be a deterrent whenever you get  
12 out to stop what you are doing. Drugs are illegal for  
13 a reason, and those who do supply, suppliers need to  
14 pay for it. I don't know whether law enforcement  
15 thinks this is an appropriate sentence or not, I don't  
16 know whether you do, but this is what I think is  
17 appropriate based on what I observed.

18           You'll get credit for time served, and the  
19 sentences are concurrent. Thank you.

20           (Whereupon, the proceedings concluded.)  
21  
22  
23  
24  
25

1 CERTIFICATE OF REPORTER  
2

3 State of South Carolina)

4 County of Georgetown )  
5

6 I, Natalie Dahl, Official Court Reporter for the  
7 State of South Carolina, do hereby certify that the  
8 foregoing is a true, accurate and complete Transcript  
9 of Record of the proceedings had and evidence  
10 introduced in the matter of the captioned case,  
11 relative to appeal, in the Court of General Sessions  
12 for Georgetown County, South Carolina, on the 31st day  
13 of March, 2015.

14 I do further certify that I am neither of kin,  
15 counsel, nor interest to any party hereto.  
16

17 August 23, 2015  
18

19   
20

21 Natalie Dahl, RPR

22 Court Reporter  
23  
24  
25

1  
2 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD  
3 COUNTY OF GEORGETOWN ) CASE NO: 2014-GS-22-347  
4

5 -----  
6 B E F O R E: The Honorable Paul Burch  
7 May 12, 2015  
8 -----

8 STATE OF SOUTH CAROLINA,  
9 Plaintiff,

10 vs.

 ORIGINAL

11 ELIJAH A. BROWN,  
12 Defendant.  
13 -----

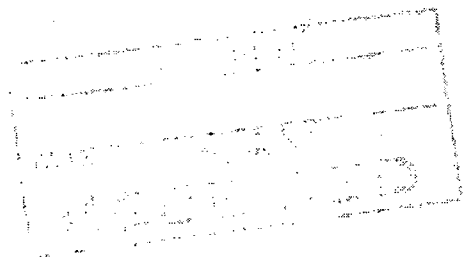
14 APPEARANCES:

15 Ricky Todd, Esq.  
16 For the State.  
17

18 Charles Barr, Esq.  
19 For the Defendant.  
20  
21

22 Court Reporter:

23 Natalie Dahl, RPR  
24  
25



1 P-R-O-C-E-E-D-I-N-G-S

2 MR. TODD: We're on the record with State versus  
3 Elijah Antonio Brown, 2014-GS-22-00347. Your Honor,  
4 he was charged with trafficking heroin second offense.  
5 The State will allow him to plea to the lesser  
6 included, trafficking heroin first offense, with no  
7 recommendation.

8 (ELIJAH ANTONIO BROWN, having been duly sworn,  
9 testified as follows:)

10 THE COURT: Mr. Brown, you are 30 years of age?

11 MR. BROWN: Yes, sir, Your Honor.

12 THE COURT: From Georgetown?

13 MR. BROWN: Pawley's Island, Your Honor.

14 THE COURT: And what is your education?

15 MR. BROWN: I have a GED.

16 THE COURT: Where did you last work?

17 MR. BROWN: Lowcountry Flooring in Pawley's  
18 Island.

19 THE COURT: Now, have you discussed this matter  
20 with Mr. Barr?

21 MR. BROWN: Yes, Your Honor.

22 THE COURT: Are you satisfied with his help?

23 MR. BROWN: Yes, sir, Your Honor.

24 THE COURT: Has he answered all of your  
25 questions?

1 MR. BROWN: Yes, Your Honor.

2 THE COURT: And you want to go forward with a  
3 plea?

4 MR. BROWN: Yes, Your Honor.

5 THE COURT: And, Mr. Barr, in your opinion, does  
6 he understand your advice?

7 MR. BARR: In my opinion, he does, Judge.

8 THE COURT: All right. Mr. Brown, on the  
9 sentencing sheet it indicates that you are going to  
10 enter a plea to trafficking in heroin first offense, 4  
11 to 14 grams, and correct me if I'm wrong, that carries  
12 up to a maximum of 25 years and a \$50,000 fine.

13 MR. TODD: That's correct.

14 THE COURT: You understand that?

15 MR. BROWN: Yes, Your Honor.

16 THE COURT: How do you plea to that?

17 MR. BROWN: Guilty.

18 THE COURT: I forgot to tell you, that was  
19 between June 12, 2014 and June 18, 2014 here in  
20 Georgetown County?

21 MR. BROWN: Yes, Your Honor.

22 THE COURT: You know by entering this plea you  
23 are waving your jury trial rights?

24 MR. BROWN: Yes, Your Honor.

25 THE COURT: If you were to have a trial, the

1 State would have to prove your guilt beyond a  
2 reasonable doubt and convince 12 jurors unanimously of  
3 your guilt. Through your attorney, you could  
4 cross-examine State's witnesses and put up your own  
5 defense and witnesses. You could testify at your own  
6 defense, but also would have a right to remain silent,  
7 that is a Constitutional right under the Fifth  
8 Amendment of the Constitution. If you elected not to  
9 testify, it couldn't be held against you, and I would  
10 tell the jury that; you understand that?

11 MR. BROWN: Yes, Your Honor.

12 THE COURT: You understand that you are presumed  
13 innocent, and that presumption of innocence would stay  
14 with you throughout a trial and only end if a jury  
15 convicted you?

16 MR. BROWN: Yes, Your Honor.

17 THE COURT: You would have a right to appeal,  
18 just as you can appeal a guilty plea, as long as you  
19 file a Notice of Appeal within 10 days of sentencing.  
20 Those are your basic rights. Any questions?

21 MR. BROWN: No, sir.

22 THE COURT: You understand them?

23 MR. BROWN: Yes, Your Honor.

24 THE COURT: You don't want a trial?

25 MR. BROWN: No, sir.

1 THE COURT: Anyone promise you anything, held out  
2 any hope of reward or threatened you in any way in  
3 order to get you to plead?

4 MR. BROWN: No, Your Honor.

5 THE COURT: Are you under the influence of any  
6 alcohol or drugs or medication today?

7 MR. BROWN: No, sir.

8 THE COURT: Do you suffer from any condition,  
9 mental or physical or a combination of both, that  
10 could be affecting your understanding?

11 MR. BROWN: No, sir.

12 THE COURT: You, indeed, understand what you are  
13 doing?

14 MR. BROWN: Yes, sir.

15 THE COURT: Are you entering this plea of your  
16 own freewill and accord?

17 MR. BROWN: Yes, sir.

18 THE COURT: No one is making you do this?

19 MR. BROWN: No, sir.

20 THE COURT: I find this plea is freely,  
21 voluntarily, intelligently entered into -- before I  
22 accept it now, I failed to point out something. You  
23 understand that the classification of this offense is  
24 violent and serious?

25 MR. BROWN: Yes, sir.

1           THE COURT: Okay. I find this plea is freely,  
2 voluntarily and intelligently entered into, and he's  
3 had the services of a competent attorney with whom he  
4 says he's satisfied. The plea is accepted.  
5 Solicitor.

6           MR. TODD: Thank you, Your Honor. Regarding this  
7 buy, Your Honor, on June 17, 2014, about a year ago,  
8 agents with the 15<sup>th</sup> Drug Enforcement Unit utilized  
9 a confidential informant to go to Mr. Brown's  
10 residence in Pawley's Island section of Georgetown  
11 County. In that series, they arranged to buy \$900  
12 worth of heroin, and \$50 worth of crack cocaine. That  
13 was audio and video recorded, and that was -- to kind  
14 of go further in what we're claiming today, that was  
15 part of a sting where Mr. Brown was actually -- he was  
16 a target of the sting. We knew he was bringing heroin  
17 in and supplying Georgetown and Pawley's Island with  
18 heroin. He was the target for the entire sting that  
19 took place about a year ago next month.

20           From this we'll dispose of the other warrants  
21 pending. He currently has distribution of cocaine  
22 third, and then two other distribution of heroins,  
23 which is third offenses as well. Last term of court  
24 he pled to a possession with intent to distribute  
25 heroin, which would have arose from an unrelated

1 event. It took place beforehand. He was released on  
2 bond, and while on bond, he was doing the other sales.  
3 Your Honor, we're here to wrap this up.

4 THE COURT: Mr. Barr.

5 MR. BARR: Judge, Mr. Brown already indicated  
6 that he is 30 years old. He comes tendering his plea  
7 of guilty. We have looked at the evidence in this  
8 case, and certainly looked at the options as far as  
9 what is available to the defense. Mr. Brown has  
10 recognized that he was caught. Judge, we would hope  
11 that the Court would take this into consideration.

12 I also would ask the Court to take into  
13 consideration -- I understand that the prosecutor's  
14 theory is that Mr. Brown is perhaps somewhere up in  
15 the hierarchy as it relates to these series of  
16 investigations that were being conducted. Of course  
17 I'm not one to say that law enforcement is wrong, but  
18 I certainly take into consideration what I know  
19 Mr. Brown's involvement to be, and it would certainly  
20 seem that selling drugs is just a bad business, Judge.

21 Mr. Brown was sentenced about a month ago, and he  
22 currently is doing a 12-year sentence. Your Honor, we  
23 simply ask the Court to take into consideration the  
24 fact that we're not coming to court and wasting three,  
25 four days of Court's time. We know what would be

1 involved in that. We would ask the Court to give  
2 Mr. Brown a minimum sentence and run it concurrent  
3 with the 12 years he's serving.

4 THE COURT: All right. Mr. Brown, what would you  
5 like to say?

6 MR. BROWN: I just like to ask the Court to have  
7 mercy on me. I know I made the wrong decisions. I'm  
8 sentenced right now, and I'm really trying to  
9 rehabilitate myself as far as taking courses once I  
10 get there and try to come out and better myself.

11 THE COURT: Can you give me any idea about his  
12 past as far as sentences?

13 MR. TODD: Your Honor, he's been sentenced a few  
14 times. 2004 he had his first drug conviction,  
15 possession of cocaine first. I think he was on  
16 probation with that one. Then he had in 2009  
17 possession of ecstasy, and another possession of  
18 cocaine. I think he received three years on that  
19 charge. And from that, I think it wasn't until these  
20 occurrences where he was selling again and we could  
21 get something to buy from him. From what I  
22 understand, he's done about three years in the past.

23 THE COURT: How long ago was that that he was  
24 sentenced on the 12-year sentence?

25 MR. BARR: Last month.

1 THE COURT: Well, you all know my general  
2 philosophy about sentencing, it is down the middle,  
3 and maybe mitigate here or a little bit there.  
4 According to what I hear, we knew -- I say "we" --  
5 the court system was aware that this charge was  
6 pending when he was sentenced on the other one. So it  
7 is sort of caught up in a pickle of what to do. So  
8 I'm going to sentence him to 12 years concurrent, and  
9 I need to know a start date on any jail time.

10 MR. TODD: Okay. I can look that up right now --  
11 well, that would start on July 17<sup>th</sup>, that is when he  
12 was arrested and placed into Georgetown Detention  
13 Center, and he hasn't left since then.

14 THE COURT: July?

15 MR. TODD: July 17<sup>th</sup>, 2014.

16 THE COURT: Credit back to then. All right.

17 MR. BARR: Thank you, Judge.

18 THE COURT: Good luck.

19 (Whereupon, the proceedings concluded.)  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE OF REPORTER

2  
3 State of South Carolina)

4 County of Georgetown )

5  
6 I, Natalie Dahl, Official Court Reporter for the  
7 State of South Carolina, do hereby certify that the  
8 foregoing is a true, accurate and complete Transcript  
9 of Record of the proceedings had and evidence  
10 introduced in the matter of the captioned case,  
11 relative to appeal, in the Court of General Sessions  
12 for Georgetown County, South Carolina, on the 12th day  
13 of May, 2015.

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

16  
17 August 30, 2015

18  
19  
20 

21 Natalie Dahl, RPR

22 Court Reporter  
23  
24  
25

**WITNESSES**

15th Circuit Drug Enforcement Unit

**ARREST WARRANT NUMBER**

2014A2210500348

CDR: 0182 §44-53-0370(d)(4)

DOI: 4/16/2014

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury

Date: 07/23/14

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS2200651

**The State of South Carolina**

**County of Georgetown**

Richard D. Todd, Jr.

14G00368

**COURT OF GENERAL SESSIONS**

**JULY 2014, TERM**

**THE STATE**

**vs.**

**ELIJAH ANTONIO BROWN**

**B / M**

**ATTORNEY:**

**Indictment for**

**POSSESSION OF MARIJUANA,  
LESS THAN ONE OUNCE**

**Jimmy A. Richardson, II, Solicitor**

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## INDICTMENT

At a Court of General Sessions, convened on July 23, 2014, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION OF MARIJUANA  
LESS THAN ONE OUNCE

CDR: 0182 §44-53-0370(d)(4)

That Elijah Antonio Brown did in Georgetown County, on or about April 16, 2014, knowingly and intentionally possess a quantity of Marijuana of less than one ounce, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law and such being the defendant's second or subsequent offense, in violation of Section 44-53-0370(d)(4), S. C. Code of Laws, 1976, as amended.

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

  
JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

**WITNESSES**

15th Circuit Drug Enforcement Unit

**ARREST WARRANT NUMBER**

2014A2210500349

CDR: 0186 §44-53-0370(b)(1)

DOI: 4/16/2014

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury

s: 07/23/14 [Signature]

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS2200652

**The State of South Carolina**

**County of Georgetown**

Richard D. Todd, Jr.

14G00368

**COURT OF GENERAL SESSIONS**

**JULY 2014, TERM**

**THE STATE**

**vs.**

**ELIJAH ANTONIO BROWN**

**ATTORNEY:**

**Indictment for**

**POSSESSION WITH INTENT TO  
DISTRIBUTE HEROIN**

**Jimmy A. Richardson, II, Solicitor**

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## INDICTMENT

At a Court of General Sessions, convened on July 23, 2014, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

CDR: 0185 §44-53-0370(b)(1)

That Elijah Antonio Brown did in Georgetown County on or about April 16, 2014, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Heroin, a Schedule I controlled substance under the provisions of Section 44-53-110, 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(b)(1), S. C. Code of Laws, 1976, as amended.

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

  
JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR *RS*

**WITNESSES**

15th Circuit Drug Enforcement Unit

**REST WARRANT NUMBER**

2014A2210500637

CDR: 0156 §44-53-0370(e)(3)(a)2

DOI: Between 6/12/2014 & 6/18/2014

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date: *[Signature]* 11/12/14

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2014GS2200347<sup>+</sup>✓

**The State of South Carolina**

**County of Georgetown**

Richard D. Tedd, Jr.

14G00623

**COURT OF GENERAL SESSIONS**

**NOVEMBER 2014, TERM**

**THE STATE**

**vs.**

**ELIJAH ANTONIO BROWN**

GE 

**ATTORNEY: Charles D. Barr**

**Indictment for**

**TRAFFICKING IN ILLEGAL DRUGS  
(HEROIN)**

**Jimmy A. Richardson, II, Solicitor**

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

## INDICTMENT

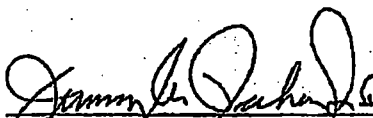
At a Court of General Sessions, convened on November 12, 2014, the Grand Jurors of Georgetown County present upon their oath:

TRAFFICKING IN ILLEGAL DRUGS  
(HEROIN)

CDR: 0156 §44-53-0370(e)(3)(a)2

That Elijah Antonio Brown did in Georgetown County on or between June 12, 2014 and June 18, 2014, 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 four grams or more but less than fourteen grams, 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.

  
JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Georgetown

VS.

Elijah Antonio Brown

AKA:

Race: BLACK Sex: M Age: 30

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2200651

A/W#: 2014A2210500348

Date of Offense: 4/16/2014

S.C. Code § : 44-53-0370(d)(4)

CDR Code #: 0182

## SENTENCE SHEET

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Poss. of <1oz. of Marijuana, 2nd Offense 0-1☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0370(d)(4) of the S.C. Code of Laws, bearing CDR Code # 0182

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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: R.D. Todd SCB74770 Elijah Brown [Signature] SC Bar#  
Todd, Jr., Richard D. Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 1 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: See file  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

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

Recipient: \_\_\_\_\_

|                                        |         |           |
|----------------------------------------|---------|-----------|
| *Fine:                                 |         | \$        |
| § 14-1-206 (Assessments 107.5 %)       |         | \$        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$ 150.00 |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) |         | \$ 8.40   |
| TOTAL                                  |         | \$ 288.40 |

\_\_\_\_\_ 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 \$ 20.00 beginning 1mo after release

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Georgetown

VS.

Elijah Antonio Brown

AKA:

Race: BLACK

Sex: M

Age:

30

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2200652

A/W#: 2014A2210500349

Date of Offense: 4/16/2014

S.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0185

## SENTENCE SHEET

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Possession With Intent to Distribute Heroin; 0-30☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or 2nd 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:

Todd, Jr., Richard D.

SCB74770

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed        yearsand/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or paymentof \$       ; 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: other plea today☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTOP

Total: \$        plus 20% fee: \$       

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$ 150.00 |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ca | \$        |
| Proviso 90.5 (SCJA Surcharge)          | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$ 8.40   |
| TOTAL                                  |         | \$ 288.40 |

       days/hours Public Service EmploymentObtain 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 \$ 20.00 beginning 1 mo after release\$        paid to Public Defender FundOther:       ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCGA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

3/31/15  
2142  
Scanned

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Georgetown

VS.

Elijah Antonio Brown

AKA:

Race: BLACK Sex: M Age: 30

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2200347

A/W#: 2014A2210500637

Date of Offense: 6/12/2014 - 6/18/2014

S.C. Code § : 44-53-0370(e)(3)(a)2

CDR Code #: 0156

## 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 ☒ PLEADSTO: Trafficking in Heroin, 4-14 grams, 1st offense 7-25 yr + 50k

in violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2961

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (ESCw/minor 1st or Lowd Act) ☐ §17-25-45The 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:

Todd, Jr., Richard D.

SCB74770

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☒ County Detention Center,for a determinate term of 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 to other sentence being served.☒ 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. since 7/17/2014☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
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| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$ 150.00 |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCJA Surcharge)          | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$ 8.40   |
| TOTAL                                  | \$      | \$ 288.40 |

PTUP 2

\_\_\_\_\_ 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 \$ 20.00 beginning 1 month after Release

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2014  
May 12, 2015  
Scanned

## FORM 5

STATE OF SOUTH CAROLINA )

COUNTY OF GEORGETOWN )

Elijah A. Brown, #304631  
Full name and prison number (if any) of Applicant. )

v. )

State of South Carolina )

2015-CP-22-00770  
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION REVIEW

ALMA WHITE  
CLERK  
S-CR-1

2015 AUG 1 AM 10:20

FILED  
GEORGETOWN COUNTY, S.C.

**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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Georgetown County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014-CP-22-00652 (PWID Heroin)
  - (b) 2014-CP-22-00347 (Trafficking in Heroin, 4-14 grams, 1st offense)
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) March 31, 2015 (12 years)
  - (b) May 12, 2015 (12 years, concurrent)

Revised 3/2003

- (c) \_\_\_\_\_
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) No issues were preserved for appellate review
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) 6th & 14th Amendment violation to the U.S. Const.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Involuntary Guilty Plea (Memorandum to follow)
- fo(b) Ineffective Assistance of Counsel (Memorandum to follow)
- (c) Due Process violation (Memorandum to follow)
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. \_\_\_\_\_
- (d) the date of each such disposition:
- i. N/A
- 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) Not the proper forum to address these issues
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:

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

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. Charles David Barr
  - ii. P.O. BOX 83, 319 W.Main Street
  - iii. Kingstree, SC 29556
- (b) the proceedings at which each such attorney represented you:
  - i. Plea & Sentencing Hearing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

Enforce plea agreement or in the alternative, a new trial

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

No

STATE OF SOUTH CAROLINA

County of **Dorchester**

VERIFICATION

**Elijah A. Brown**  
 I, **Elijah A. Brown**, 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.

Elijah A. Brown

SWORN to and subscribed before me this 6<sup>th</sup>  
 day of August, 2015.

Lucas Bryant (L.S.)  
 Notary Public

My Commission Expires: May 26, 2020

FILED  
 GEORGETOWN COUNTY, S.C.  
 2015 AUG 11 AM 10:20  
 ALMA Y. WHITE  
 CLERK OF COURT

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

**Elijah A. Brown**

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.

Elijah A. Brown  
Applicant

SWORN or affirmed to and subscribed before me this  
6<sup>th</sup> day of August, 2015.

Luchean Bryant  
Notary Public

My Commission Expires: May 26, 2020

FILED  
GEORGETOWN COUNTY, S.C.  
2015 AUG 11 AM 10:20  
ALMA Y. WHITE  
CLERK OF COURT

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS       |
|                          | ) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN     | ) |                                    |
|                          | ) |                                    |
| Elijah A. Brown,         | ) | Case No. 2015-CP-22-0770           |
| S.C.D.C. No. 304631,     | ) |                                    |
|                          | ) |                                    |
| Applicant,               | ) |                                    |
|                          | ) | <b>RETURN</b>                      |
| v.                       | ) |                                    |
|                          | ) |                                    |
| State of South Carolina, | ) |                                    |
|                          | ) |                                    |
| Respondent.              | ) |                                    |

---

Respondent, making its Return to the application for post-conviction relief (PCR) filed August 11, 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 Georgetown County Clerk of Court. Applicant was indicted at the July 2014 term of the Georgetown County Grand Jury for Possession with Intent to Distribute Heroin (2014-GS-22-0652) and Possession of Marijuana, less than one ounce (2014-GS-22-0651). Applicant was also indicted at the November 2014 term of the Georgetown County Grand Jury for Trafficking in Illegal Drugs (Heroin) Second Offense (2014-GS-22-0347). Applicant was represented by Charles D. Barr, Esquire.

On March 31, 2015, Applicant pled guilty as indicted to Possession with Intent to Distribute Heroin and Possession of Marijuana, less than one ounce. The Honorable George C. James sentenced Applicant to confinement for a period of twelve (12) years for Possession with Intent to Distribute Heroin and a period of one (1) year for Possession of Marijuana, less than one ounce. On May 12, 2015, Applicant pled guilty to the lesser included offense of Trafficking

in Illegal Drugs (Heroin) First Offense. The Honorable Paul M. Burch sentenced Applicant to confinement for a period of twelve (12) years. The sentences were to run concurrently. Applicant did not appeal his convictions or his sentences.

## II.

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. Due Process Violation

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, SCRCP.

Attached to this return and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcripts. 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 asserts Applicant's allegation of ineffective assistance of plea counsel is 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. However, the allegation of ineffective assistance of plea 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 submits that Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz, 338 S.C. at 363-64, 527 S.E.2d at 747 (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Applicant also alleges due process violations. These allegations appear to be merely recitations of her grounds for ineffective assistance of counsel. Therefore, Respondent submits these allegations are without merit and incorporates its response in Part III, supra.

In the event Applicant alleges independent claims of due process violations, Respondent submits such claims are likewise without merit. A due process violation only occurs "when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (citing 21 Am.Jur.2d, Criminal Law § 640 (1981)). Respondent submits the record fully demonstrates Applicant's plea procedures fully complied with the requirements of due process. Accordingly, Respondent submits this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC.

VI.

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

*[Remainder of page left intentionally blank]*

## VII.

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

Respectfully submitted,

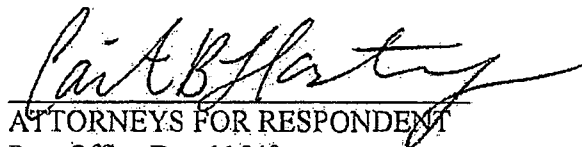
ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

CAITLIN BAZAN HASTINGS  
Assistant Attorney General

By:

  
ATTORNEYS FOR RESPONDENT  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

October 24, 2016

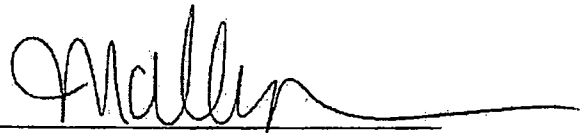
|                           |   |                              |
|---------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA   | ) |                              |
|                           | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GEORGETOWN      | ) |                              |
|                           | ) |                              |
|                           | ) | 2015-CP-26-0770              |
| ELIJAH A. BROWN, #304631, | ) |                              |
|                           | ) |                              |
| Applicant,                | ) |                              |
|                           | ) |                              |
| vs                        | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                           | ) |                              |
| STATE OF SOUTH CAROLINA,  | ) |                              |
|                           | ) |                              |
| Respondent.               | ) |                              |

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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:

James K. Falk, Esquire  
 Falk Law Firm  
 PO Box 1058  
 Charleston, SC 29402

DATED this 24<sup>th</sup> day of October, 2016.



Mallory Morris, Legal Assistant  
 For Respondent

1  
2 State of South Carolina ) Court of Common Pleas  
3 County of Georgetown ) 2015-CP-22-00770  
4

5  
6 Elijah A. Brown )  
7 vs. ) Transcript of Record  
8 State of South Carolina )  
9

10 ORIGINAL

February 10, 2017  
Conway, South Carolina

11  
12 BEFORE:

13 Honorable Michael G. Nettles, Judge.  
14

15 APPEARANCES:

16 James K. Falk, Esq.  
Attorney for the Applicant

17 Jane Diange, Esq.  
18 Rutledge Johnson, Esq.  
Attorneys for the State  
19  
20  
21  
22

23 Teresa J. F. Bautz, RPR  
24 Official Court Reporter  
25

1

## I N D E X

2

WITNESS

DIRECT CROSS REDIRECT RECROSS

3

Elijah A. Brown

4

Mr. Falk

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5

Ms. Diange

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8

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6

Charles D. Barr

7

Mr. Falk

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19

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8

Mr. Johnson

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18

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## E X H I B I T S

13

NO.

DESCRIPTION

ID

EV

14

Plaintiff's-1 Letter from solicitor

14

14

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Exhibits retained by Clerk of Court.

21

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23

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25

1 (The hearing commenced at approximately

2 11:21 a.m.)

3 THE COURT: Yes, sir.

4 MR. JOHNSON: Your Honor, this is Jane Diange with  
5 the Charleston School of Law, she's a third year law  
6 school student. And she'll be presenting Mr. Brown's  
7 case.

8 THE COURT: Your full name again?

9 MS. DIANGE: Jane Diange, D-I-A-N-G-E.

10 THE COURT: All right. Thank you, ma'am.

11 MS. DIANGE: May it please the Court.

12 THE COURT: Yes.

13 MS. DIANGE: Your Honor, this is the case of  
14 Elijah Brown versus the State of South Carolina. It's  
15 Case No. 2015-CP-22-0770. On July 23rd, 2014,  
16 Mr. Brown was charged with possession of marijuana,  
17 less than one ounce, and possession with intent to  
18 distribute heroin. On March 31st, 2015, represented by  
19 Mr. Charles Barr, he pled guilty before the Honorable  
20 George C. James.

21 On March 31st, 2015, he was sentenced to 12 years  
22 for possession with intent to distribute heroin and one  
23 year for possession of marijuana less than one ounce.

24 There was no appeal filed; however, there was a  
25 timely PCR application filed on August 11th, 2015. The

ELIJAH A. BROWN-DIRECT BY MR. FALK

1 State filed its return on October 24th, 2016. He's  
2 represented here today by Mr. James Falk.

3 THE COURT: All right. Mr. Falk, you're  
4 recognized.

5 MR. FALK: Thank you, Your Honor. We would call  
6 Elijah Brown to the stand.

7 THE COURT: Mr. Brown, please come forward. I'm  
8 going to ask you if you could, place your left hand on  
9 the Bible and raise your right hand as the clerk  
10 administers your oath.

11 THE APPLICANT: Yes, sir.

12 ELIJAH A. BROWN, after being duly sworn, testified  
13 as follows:

14 THE CLERK: Please be seated.

15 THE COURT: Have a seat in that witness chair,  
16 pull up real close to that microphone, speak loudly,  
17 clearly and slowly in order that we can hear everything  
18 that you have to say. Let's start with your full name.

19 THE APPLICANT: Elijah Antonio Brown.

20 THE COURT: Very good, Mr. Brown. Mr. Falk.

21 DIRECT EXAMINATION

22 BY MR. FALK:

23 Q Mr. Brown, who represented you on these charges?

24 A Mr. Barr.

25 Q And how did you -- did you retain Mr. Barr, was he

1 appointed?

2 A No, sir. I retained him.

3 Q Okay. And can you tell me, were you in custody at  
4 the time, or were you out on bond?

5 A I was in custody.

6 Q Okay. And how often did you meet with him about  
7 these charges?

8 A I would say probably once a month.

9 Q Once a month?

10 A When he came to the courthouse. Because I never  
11 got out.

12 Q Okay. Did he ever meet with you in the detention  
13 center?

14 A Yes, sir.

15 Q And did y'all ever discuss a possible plea in this  
16 case?

17 A No, sir. It was just the fact that one time when  
18 I went to court for a bond hearing, that's when he  
19 mentioned the fact that they was offering me ten years,  
20 but he would try to get it less than that. And after  
21 that I went for -- I was on the trial roster and went  
22 before the Court with an open plea for between zero to  
23 30.

24 Q So he said that he had gotten a plea deal for ten  
25 years; is that correct?

ELIJAH A. BROWN-DIRECT BY MR. FALK

1 A Yes, sir.

2 Q And was that a deal, was that in writing?

3 A It was in my motion. Like the plea offer that  
4 they offer you that comes with the motion.

5 Q Okay. And when did you get your motion?

6 A I want to say September, I think. September.

7 Q Okay. So was that prior to when you pled?

8 A No. I pled in February or March of '15.

9 Q And you didn't get your motion until when?

10 A September, I want to say, of '14.

11 Q So had you seen this offer prior -- this offer  
12 for -- when did you first see that you had an offer for  
13 ten years?

14 A When I got my motion, which is --

15 MR. JOHNSON: Your Honor, I'm going to object to  
16 this point. There is nothing in his application  
17 concerning a prior plea offer. This is the first time  
18 the State's heard of this, and we ask you to strike his  
19 testimony from the record.

20 THE COURT: I'll allow him to ask about it.

21 MR. JOHNSON: Thank you, Your Honor.

22 Q When was the first time that you heard about this  
23 prior offer?

24 A When he came to the jailhouse to see me when I  
25 went for a bond hearing.

1 Q Okay. And he said that there was an offer for  
2 ten?

3 A Yes, sir.

4 Q Did he ask you whether or not you wanted to accept  
5 it?

6 A No, sir.

7 Q Did he tell you whether or not he thought you  
8 should accept it?

9 A No, sir.

10 Q And all right, so you went for a bond hearing?

11 A Yes, sir.

12 Q And was it denied?

13 A I didn't even see that judge that day.

14 Q Okay. So were you ever out on bond?

15 A No, sir.

16 Q And so then you eventually pled guilty in this  
17 case; is that correct?

18 A Yes, sir.

19 Q And when you were pleading guilty, what did you  
20 think your sentence was going to be?

21 A Anywhere between --

22 Q What did your lawyer tell you?

23 A It was just going to be an open plea from between  
24 zero to 30, hoping that they lean towards the lesser  
25 end of it.

ELIJAH A. BROWN-CROSS BY MS. DIANGE

1 Q Okay. Did he ever tell you -- okay.

2 MR. FALK: No further questions.

3 THE COURT: All right. Cross-examination.

4 CROSS-EXAMINATION

5 BY MS. DIANGE:

6 Q Mr. Brown, did the judge in the case -- did you  
7 plead in the case that you were guilty for the one  
8 ounce of -- you pled in the case that you were guilty  
9 for having one ounce of marijuana; is that correct?

10 A No, ma'am. It was only like a gram of marijuana.  
11 But the charge was for possession of marijuana less  
12 than an ounce.

13 Q Yes, less than one ounce of marijuana. And you  
14 also pled guilty, correct, for the possession with  
15 intent to distribute heroin?

16 A Yes, ma'am.

17 Q And did the judge ask you -- the judge did ask  
18 you, correct, that did anyone promise you anything to  
19 get you to plead guilty?

20 A No, ma'am.

21 Q Okay. And...

22 (Discussion off the record.)

23 MR. JOHNSON: Court's indulgence, Your Honor.

24 THE COURT: Take your time.

25 MS. DIANGE: Your Honor, may I approach the

1 witness, please.

2 THE COURT: You may.

3 MS. DIANGE: Please let the record reflect that I  
4 am showing Mr. Brown the record on page nine.

5 Q Mr. Brown, are you able to read and write English?

6 A Yes, ma'am.

7 Q Okay, good. Could you read on page nine, line 16  
8 for us, please.

9 A Has anyone promised you anything to get you to  
10 plead guilty.

11 Q And your answer?

12 A No, sir.

13 Q Thank you. And Mr. Brown, did the judge also not  
14 ask you at that time, did you have enough time to make  
15 up your mind to decide whether you would take the plea?

16 A Yes, ma'am.

17 Q Okay. Did you also answer to the judge that you  
18 had sufficient time to discuss the case with Mr. Barr?

19 A Yes, ma'am.

20 Q And did you also have the chance -- you did have  
21 the chance also to consult with Mr. Barr that you had  
22 adequate time to enter into that plea?

23 A I don't understand the question.

24 Q Did you not answer to the judge that you had  
25 adequate time to consult with Mr. Barr to accept --

ELIJAH A. BROWN-CROSS BY MS. DIANGE

10

1 enter into the plea?

2 A I mean, I was going to trial that morning, like I  
3 didn't have -- it was really pretty much no choice, I  
4 had to go.

5 Q Yes. But is it not correct that when the judge  
6 asked you if you had enough time to consult with  
7 Mr. Barr, you indicated that you had adequate time?

8 A Yes.

9 Q And is it also not correct that when the judge  
10 asked you, you indicated that you understood that  
11 you're facing from zero to 30 years for the charge for  
12 heroin with intent to distribute?

13 A Yes, ma'am.

14 MS. DIANGE: No further questions, Your Honor.

15 THE COURT: Redirect?

16 MR. FALK: No redirect.

17 THE COURT: You may step down.

18 (Witness excused.)

19 THE COURT: You may call your next witness.

20 MR. FALK: We'll call Mr. Barr to the stand.

21 THE COURT: Mr. Barr, if you could please come  
22 forward.

23 CHARLES D. BARR, after being duly sworn, testified  
24 as follows:

25 THE CLERK: You may be seated.

1 THE COURT: Mr. Barr?

2 THE WITNESS: Yes, sir.

3 THE COURT: State your full name for the record,  
4 please sir.

5 THE WITNESS: Charles David Barr.

6 THE COURT: All right. Mr. Falk, you're  
7 recognized.

8 DIRECT EXAMINATION

9 BY MR. FALK:

10 Q Mr. Barr, do you recall when you got discovery in  
11 this case?

12 A No, sir, I sure don't.

13 Q Do you recall receiving the discovery in this  
14 case?

15 A Yes.

16 Q Was there a plea offer for ten years?

17 A I honestly don't remember. But I don't remember  
18 there being a firm plea offer for ten years. There  
19 were two -- there was a, I think, either a possession  
20 with intent to distribute heroin charge, the marijuana  
21 charge, and then there was another trafficking cocaine  
22 charge.

23 And what we were trying to do is get the -- we  
24 were trying to work out a deal with the solicitor's  
25 office on a minimum sentence on a PWID heroin. One of

CHARLES D. BARR-DIRECT BY MR. FALK

1 the charges, I think it was the PWID heroin, we  
2 actually started -- we actually tried it, started  
3 trying it, and when we got partially through the  
4 trial -- I think that was the best case that we had  
5 because there was an identity issue. They had a video  
6 of Mr. Brown in the store, in the convenience store on  
7 17, and he stashed the heroin. And they bum rushed him  
8 and found it.

9 But they couldn't identify -- they couldn't -- the  
10 person that was -- that stashed the heroin, they  
11 couldn't identify him. So that's the case we went to  
12 trial on. During the course of the trial, Mr. Brown  
13 made a phone call to one of his associates and briefed  
14 his associate on what was going on during the course of  
15 the trial.

16 The police had tape recorded the conversation.  
17 And during the course of the trial they brought the  
18 tape recording back to court and presented it to us as  
19 a part of the ongoing obligation to -- for discovery.

20 Well, they then could identify the person in the  
21 store that stashed the heroin, because Mr. Brown had  
22 told his friend that, listen, they cannot identify me.  
23 This was during the course of the trial.

24 So then we wound up having to turn around, and we  
25 worked out a deal for 12 years, I believe, on that

1 charge. And I think the weaker charge, we came back  
2 later on with judge -- the first case was with judge --  
3 well, now Supreme Court Justice Buck James. But then  
4 the second case was with Judge Burch, I believe, and  
5 that's where we dealt with the heroin trafficking  
6 charge with an agreement whereby his sentence would be  
7 the same thing as it was under the PWID heroin charge.  
8 So he got 12 years for the whole thing.

9 MR. FALK: If I could approach for a moment.

10 THE WITNESS: Yes, sir.

11 MR. JOHNSON: And, Your Honor, I've been shown  
12 this document. There is no signature on that document  
13 and there's no "to." So I don't know where that came  
14 from, who it's to, there's no authentication in that,  
15 and there's no foundation for him to even show it to  
16 the witness, Your Honor.

17 THE COURT: Let me see it.

18 MR. FALK: My client just mailed it to me.

19 THE COURT: Yes, you can introduce that. It's  
20 into evidence, over objection.

21 MR. JOHNSON: Thank you, Your Honor.

22 Q Can you tell me that document, have you ever seen  
23 that before?

24 A I hadn't seen it before. But if it was a part of  
25 discovery, it looks like it had Richard Todd's name on

CHARLES D. BARR-DIRECT BY MR. FALK

1 it, then it was sent to me.

2 Q You did a lot of cases in the 15th Circuit; is  
3 that correct, Georgetown and up here?

4 A Quite a few, um-hum.

5 Q Is that a common practice for the solicitor's  
6 office to send offers like that?

7 A It's very common practice.

8 Q Okay. So then it wouldn't be anything unusual for  
9 them to have sent that?

10 A Well, they could have very well sent that. If I  
11 look at my files, this probably would be in the file.  
12 But don't forget about the heroin trafficking charge.

13 Q Yes, sir, yes, sir.

14 A Right.

15 Q I appreciate that. But, and just if you could say  
16 what that letter says or what --

17 A This letter is from Todd and says that if the  
18 Defendant pleads guilty to PWID heroin, third offense,  
19 and PWID marijuana, the State offers ten years.

20 Q Okay, thank you.

21 MR. FALK: I'll mark that, then.

22 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked  
23 for identification only.)

24 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted  
25 in evidence.)

1 Q And the date on that letter, please?

2 A The date is June 24, 2014.

3 Q Thank you. Did you ever communicate that offer  
4 with Mr. Brown?

5 A Every piece of discovery that comes into my office  
6 there's a person that does -- that makes sure that when  
7 the discovery comes in, it goes out to the client same  
8 day.

9 Q Okay.

10 A So if this came to me, I know it went to him.

11 Q Did you ever get a chance to accept that offer?

12 A I couldn't accept that offer. And he still had a  
13 heroin trafficking charge pending that we still had to  
14 deal with. It wouldn't make sense for me to take ten  
15 years and still have to go to court and try. And on  
16 that case they had videotape.

17 Q Um-hum.

18 A And it was him on the videotape. I saw it.

19 Q So it's your understanding that this was a wrap-up  
20 of?

21 A Everything.

22 Q Everything?

23 A Yes, sir. If we could have gotten -- I wouldn't  
24 care, I tried to get him eight years -- if we could  
25 have gotten that, I would have been happy to get that.

CHARLES D. BARR-DIRECT BY MR. FALK

1 But under the circumstances with the weight that he  
2 had, with the PWID heroin which was a third offense,  
3 and with the trafficking heroin and with the marijuana,  
4 we got 12 years on the whole thing.

5 So now, if we had gotten -- if we had gotten by  
6 the trial that we had, we probably could have -- I felt  
7 like we could have beat that case.

8 Q Which case was that?

9 A That was the one that we were trying where he  
10 called his friend up during the course of the trial and  
11 told him that they don't know that it was me in the  
12 convenience store and identified himself as the person  
13 in the convenience store who hid the drugs in the  
14 store.

15 Well, the identity was the whole issue in that  
16 case. And they recorded his statement. And they  
17 brought the statement to court and said, look, we heard  
18 him, we recorded him during the lunch break, and here  
19 it is. And so we had to give that up and work out the  
20 deal on the -- on the heroin trafficking and the PWID  
21 on the -- possession with intent to distribute heroin  
22 third. And as I said, everything came together for 12  
23 years.

24 MR. FALK: No further questions.

25 THE COURT: All right. Mr. Barr, I just have one

1 question for you.

2 THE WITNESS: Yes, sir.

3 THE COURT: Have you ever received an offer from  
4 the solicitor's office that you did not discuss with  
5 your client?

6 THE WITNESS: Judge, I make it a point to discuss  
7 every offer with the client, just as a matter of  
8 practice. And, I mean, we always get these situations  
9 where you have clients in criminal practice who -- but  
10 at the same time you have to explain to them why it's  
11 not feasible.

12 I mean, Mr. Brown knows that he wasn't going --  
13 what kind of problem he would have had for himself if  
14 he took the ten years with everything else still  
15 hanging out there. He knows that.

16 THE COURT: But you discussed the ten years?

17 THE WITNESS: Yes, sir.

18 THE COURT: After refreshing your recollection  
19 with regard to the ten-year letter, you're convinced  
20 that you went over it with him, that's your general  
21 practice?

22 THE WITNESS: Judge, I know, I know if this came  
23 to my office, and it was sent by Mr. Todd in this case  
24 as a part of discovery, I know I would have gone over  
25 this with him. But also, it would have been discussed

CHARLES D. BARR-CROSS BY MR. JOHNSON

1 in the context of his entire situation as opposed to  
2 just this limited aspect of the case.

3 THE COURT: All right. Very good.

4 Cross-examination.

5 MR. JOHNSON: May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q Mr. Barr, so your testimony here today is that had  
9 you gotten that offer, you would have discussed it with  
10 your client?

11 A I know I would have, yes, sir.

12 Q Okay. And he didn't communicate that he wanted to  
13 accept that offer; did he?

14 A I'm sure he did not. And I would have advised him  
15 not to accept it under the circumstances.

16 Q And under the circumstances, if he pleads to the  
17 first case that he pled to in March, and then you leave  
18 this other charge hanging out --

19 A He's still wide -- he naked on that, wide open.

20 Q You would agree, that would be malpractice;  
21 wouldn't it?

22 A Well, it wouldn't be in his best interest.

23 Q Right. And so your negotiations were to get all  
24 the charges lumped into one, so that he only was  
25 exposed to 12 years and not strikes and, you know, 30

1 years for the trafficking. And based on the weight,  
2 it's a mandatory minimum of 25; is it not?

3 A He got 12 years for the whole thing, which I  
4 thought was very good.

5 Q Okay. So he never discussed it with you, he never  
6 tried to accept the offer. But you would have  
7 discussed it with him; correct?

8 A Oh, yeah, we would have discussed it. And I would  
9 have recommended that he not take. Now, if we could  
10 have gotten 12 years for the whole -- I mean, ten years  
11 for the whole thing, that would have been fine. But  
12 that, the 12 years was just -- I mean, the ten years  
13 that you're talking about here was just for the PWID  
14 heroin third or subsequent and the marijuana charge.

15 Q Not the trafficking?

16 A Not the trafficking.

17 MR. JOHNSON: No further questions, Your Honor.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. FALK:

21 Q When he pled, those other charges were still  
22 pending; that is correct?

23 A Pardon me?

24 Q I mean, the actual day that he pled guilty,  
25 though, the other charges were still open; were they

## CHARLES D. BARR-REDIRECT BY MR. FALK

1 not?

2 A The other charges were still open, but we -- I  
3 talked to Ricky Todd.

4 Q Okay. But there was no -- was he facing any --  
5 was he facing any other exposure on those charges?

6 A What, the other?

7 Q The charges, I mean, he still had charges that  
8 were open?

9 A He still had charges that were open.

10 Q Well --

11 A But we had already talked about, I already  
12 discussed that with the solicitor.

13 Q Okay. But that was not reflected in the record on  
14 this plea; was that?

15 A It's reflected in the second plea. There are two  
16 pleas, one with Judge James and one with Judge Burch.  
17 And if you read the record in the second plea, you'll  
18 see that it was a plea negotiated deal.

19 MR. FALK: No further questions.

20 THE COURT: All right. You may step down, thank  
21 you.

22 (Witness excused.)

23 THE COURT: Any further witnesses?

24 MR. FALK: No, Your Honor.

25 THE COURT: Anything from the State?

1 MS. DIANGE: The State has no further witnesses.

2 THE COURT: Be glad to hear from you, Mr. Falk,  
3 with regard to closing.

4 MR. BARR: And this?

5 THE COURT: That's into evidence.

6 COURT REPORTER: You can leave that here, sir.

7 MR. JOHNSON: And, Your Honor, I must renew my  
8 objection to this coming into evidence.

9 THE COURT: All right. Your objection is noted.

10 MR. JOHNSON: Thank you.

11 MR. FALK: Your Honor, this is really the second  
12 case, it has similar facts, where there's a -- somebody  
13 enters a plea, and there is another case that's been  
14 discussed and pending but it's not reflected in the  
15 record. I mean, my client's position would be that he  
16 was still exposed to those other charges.

17 He had a plea deal for ten years that there's a  
18 difference of testimony. My client says he was never  
19 communicated with it. Mr. Barr said that he did, but  
20 he said that had he would, he would have told him not  
21 to accept it.

22 THE COURT: Say that again now.

23 MR. FALK: I think Mr. Barr's testimony was that  
24 he did communicate the offer just because he always  
25 communicates the offer, didn't have necessarily a

1 specific recollection of having done so, but knows by  
2 practice that he always does. But that his testimony  
3 also was that he would have recommended that he not  
4 take the offer.

5 THE COURT: That's what lawyers do is recommend  
6 whether it's in their best interest to do it or not.

7 MR. FALK: Yes, Your Honor.

8 THE COURT: All right.

9 MR. FALK: Again --

10 THE COURT: Well, the allegations of  
11 ineffectiveness essentially are what, that he was not  
12 communicated the?

13 MR. FALK: The ten-year offer.

14 THE COURT: Ten-year offer. That's essentially  
15 it?

16 MR. FALK: Yes, Your Honor.

17 THE COURT: All right, very good. Be glad to hear  
18 from the State.

19 MR. JOHNSON: May it please the Court, Your Honor.

20 THE COURT: Yes.

21 MR. JOHNSON: The State's position is that we ask  
22 the Court to deny and dismiss this application for a  
23 few reasons. First of all, we don't know who that plea  
24 was to, but Mr. Barr has set there and testified that  
25 had it been in the package, he would have discussed it.

1 And he would have recommended that he not take it.

2 Because I'm looking at his prior records, he's got  
3 a possession of cocaine in 2004 and 2009. He's looking  
4 at a minimum, if my math is correct, with the two  
5 different charges, at 60 something years in prison. So  
6 and it being a third offense, it's going to be a  
7 mandatory minimum of 25 if he goes back to trial.

8 But he testified that if there was an offer, he  
9 would have discussed it. And we ask you to find that  
10 Mr. Barr is more credible than the Applicant in this  
11 case, and we ask you to deny and dismiss his  
12 application, Your Honor.

13 THE COURT: All right. I'm going to ask that you  
14 prepare an order denying the application, and go over  
15 the particulars of the plea and the fact that all of  
16 the elements that are set in each one of the pleas,  
17 they were knowingly entered into, intelligently, and  
18 there was no coercion. There was an indication that he  
19 was satisfied with his lawyer.

20 Most importantly, the only allegation of  
21 ineffectiveness was the Applicant maintains that he was  
22 not communicated the ten-year offer. I have heard the  
23 testimony and had the opportunity to observe both  
24 Mr. Brown and the trial counsel, Mr. Charles David  
25 Barr. And I specifically find Mr. Barr to be credible

1 in that he's a very experienced attorney. He indicates  
2 that he always discusses plea negotiations and pleas  
3 and discusses plea offers with his client.

4 And I understand that he recommended that he not  
5 take the ten-year offer because of the fact that he had  
6 a good opportunity to win that first trial had it not  
7 been for the Defendant admitting his guilt on the jail  
8 call, which happens quite often.

9 And I ask that you prepare the order and have it  
10 within the next 14 days from today's date.

11 MR. JOHNSON: Thank you, Your Honor.

12 (The hearing concluded at approximately  
13 11:48 a.m.)

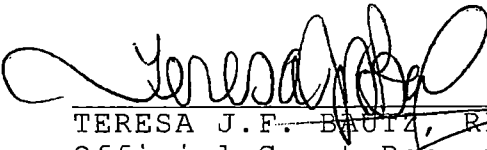
14 (End of Transcript of Record.)  
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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF SOUTH CAROLINA )  
4 COUNTY OF HORRY )  
5

6 I, TERESA J.F. BAUTZ, Official Court  
7 Reporter for the Fifteenth Judicial Circuit of the  
8 State of South Carolina, do hereby certify that the  
9 foregoing is a true, accurate and complete Transcript  
10 of Record of the proceedings had and evidence  
11 introduced in the trial of the captioned case, relative  
12 to appeal, in the Court of Common Pleas for Horry  
13 County, South Carolina, on the 14th day of June, 2017.  
14

15 I FURTHER CERTIFY that I am neither of  
16 kin, counsel nor interest to any party hereto.  
17  
18

19   
20 \_\_\_\_\_  
21 TERESA J.F. BAUTZ, RPR  
22 Official Court Reporter  
23  
24  
25

State of South Carolina  
Office of the Solicitor  
Fifteenth Judicial Circuit



Scott R. Hixson  
Chief Deputy Solicitor

REPLY TO ☐

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REPLY TO ☒

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FAX: 843-545-3268

JIMMY A. RICHARDSON, II  
Solicitor

DATE: June 24, 2014  
TO:  
FROM: Richard D. Todd, Jr., Assistant Solicitor  
RE: State vs. Elijah Antonio Brown Case # 14G00368

Pending Charge(s) Drugs /PWID Heroin - 3rd or sub. offense Warrant(s) 2014A2210500349

Upon reviewing the above referenced case(s) the State makes the following offer regarding the disposition of the charge(s):

*Plea didn't go down at all*

If the Defendant will plead guilty to: PWID Heroin 3rd and PWID Marijuana ?

The State offers the following: 10 years

The Defendant must accept the offer by August 22, 2014 or it is considered rejected and the State will not make the offer again. Should the defendant accept the offer, he or she must enter the plea before or during the August 2014 term of court. Please review the offer with your client, sign and date as indicated below, and return to me no later than August 22, 2014. Please call me at 545-3189 if I may be of service.

**DEFENDANT'S RESPONSE**

TRIAL \_\_\_\_\_ GUILTY PLEA \_\_\_\_\_

Attorney's Signature \_\_\_\_\_

Date: \_\_\_\_\_

Defendant's Signature \_\_\_\_\_

Date: \_\_\_\_\_



The mission of the Fifteenth Circuit Solicitor's Office is to uphold the  
public's trust in the pursuit of justice and enforcement of the law.

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS  
) FIFTHTEEN JUDICIAL CIRCUIT  
)  
)  
)

Elijah A. Brown, #304631

2015-CP-22-0770

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED  
GEORGETOWN COUNTY, S.C.  
2017 MAR -9 AM 10:01  
ALMA Y. WHITE  
CLERK OF COURT

This matter comes before the Court by way of an application for Post-Conviction Relief filed August 11, 2015. Respondent made its Return on October 24, 2016. An evidentiary hearing into the matter was convened on February 10, 2017 at the Horry County Courthouse. James J. Falk, Esquire represented Applicant. Jane Diange, supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Charles D. Barr, Esquire also testified. This Court had before it a copy of the records of Georgetown County Clerk of Court, records from the South Carolina Department of Corrections, the application, the Respondent's Return and the guilty plea transcript.

#### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the July 2014 term of the Georgetown County Grand Jury for possession of marijuana less than one ounce (2014-GS-22-00651) and possession with intent to distribute heroin (2014-GS-22-00652). Applicant was also indicted at the November 2014 term of the Georgetown County

Grand Jury for trafficking in illegal drugs (heroin), second offense (2014-GS-22-00347).

Applicant was represented by Charles D. Barr, Esquire.

On March 31, 2015, Applicant pled guilty as indicted to possession with intent to distribute heroin and possession of marijuana, less than one ounce. The Honorable George C. James sentenced Applicant to confinement for a period of twelve (12) years for possession with intent to distribute heroin and a period of one (1) year for possession of marijuana, less than one ounce. On May 12, 2015, Applicant pled guilty to the lesser included offense of trafficking in illegal drugs (heroin), first offense. The Honorable Paul M. Burch sentenced the Applicant to confinement for a period of twelve (12) years. The sentences were to be served concurrently. Applicant did not appeal his convictions or sentences.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary Guilty Plea
2. Ineffective Assistance of Counsel
3. Due Process Violation

At the hearing, Applicant proceeded on his claim of ineffective assistance of counsel and that his guilty plea was involuntary.

#### SUMMARY OF TESTIMONY

At the evidentiary hearing Applicant testified that he retained Charles D. Barr as counsel. Applicant stated that while he was in custody, he met with Counsel at least one time per month at either the courthouse or detention center. Applicant testified that Counsel did not discuss a plea offer for ten (10) years nor did he ask Applicant if he wanted to accept that plea offer. A document was presented by PCR counsel and was identified as a plea offer for ten (10) years. PCR counsel moved the document into evidence. This Court admitted the document into

evidence as Applicant's Exhibit A, over Respondent's objection. Applicant testified that he pled guilty, thinking the sentence would be ten (10) years, but Applicant also testified that he knew the open plea could yield a sentence of zero (0) to thirty (30) years.

On cross examination, Applicant admitted that he pled guilty to possession of marijuana less than one ounce and possession with intent to distribute heroin. Applicant also admitted that there were no promises made to him to entice him to plead guilty. Additionally, Applicant admitted that he had adequate time with Counsel to discuss his case and make his decision. Applicant further admitted that he knew he was going to trial and that he had adequate time to consult with Counsel, and that he was satisfied with Counsel's representation. Finally, Applicant admitted that that he was aware he was facing a sentence of zero (0) to thirty (30) years.

Counsel testified that he received discovery materials. Applicant's Exhibit A was presented to Counsel for review and was identified as a plea offer for ten (10) years. Counsel reviewed the document for the plea offer for ten (10) years and testified that he had never before seen the document. Counsel further stated that it is his common practice to discuss and review all plea offers with clients. Counsel testified that there was not a firm offer for ten (10) years. Counsel testified that he attempted to work out a plea deal with the Solicitor for a minimum sentence.

Counsel stated the evidence in the case included a video of Applicant at the convenience store involved in a drug transaction and a recorded statement made to the police. Counsel also testified that he discussed the evidence and all discovery with Applicant. Counsel further testified that Applicant did not accept a plea offer because he had other charges pending, which included a drug trafficking charge. Counsel testified that it would not have made sense to plead to one charge while leaving unresolved the other outstanding charges. On cross-examination,

Counsel testified that he would have discussed every offer with Applicant. Counsel testified that Applicant did not accept a plea offer.

### FINDINGS OF FACT AND CONCLUSION 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).

#### Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Applicant admitted his guilt on the jail tape recording. Counsel negotiated with the State in the Applicant's best interest. Applicant admitted there were not promises made to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely, voluntarily and knowingly without any threats, coercion, or promises from anyone else. Furthermore, the Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court also finds Counsel effectively represented Applicant with respect to discussing the plea offer of ten (10) years. Counsel testified that he discussed any and all plea offers and recommended to the Applicant that he not accept the offer because it would have left him vulnerable to the other outstanding charges. Counsel testified that he discusses all plea offers with clients. This Court has observed Counsel and heard his testimony, and this Court

finds Counsel is credible. This Court notes that Counsel is a very experienced criminal defense attorney with many years of practice experience.

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 the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied and dismissed with prejudice.

#### Involuntary Guilty Plea

Applicant alleges that his plea was involuntary. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial's errors, the defendant would not have pled guilty, but would have insisted on going to trial. See Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish

the applicant had a full understanding of the consequences of his plea and the charges against him. See Bovkin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Bovkin the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id.* at 243, 89 S.Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. *Id.* Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

This Court finds that Applicant's plea was entered into freely, voluntarily and knowingly. This Court further finds that Applicant was given plenty of contact with Counsel, in which Counsel discussed the evidence the State had against Applicant and pursuing a plea deal. Applicant was also fully aware of his rights, as the record demonstrates a thorough review of those rights by the plea court. Applicant indicated that he was aware of his rights and understood that by pleading guilty he was waiving those rights. Applicant admitted nobody threatened him to plead guilty and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and

voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

Accordingly, this Court finds the Applicant has not met the burden of proof to illustrate that his plea was made involuntary. Therefore, these allegations are denied and dismissed with prejudice.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this applicant 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.

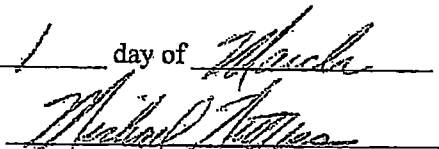
This Court notifies the Applicant the applicant that he must file and serve notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v State, 305 S.C. 453 (1991), an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

*[Remainder of page left blank intentionally]*

**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 1 day of March, 2017.

  
MICHAEL G. NETTLES  
Presiding Judge  
Fifteenth Judicial Circuit

Florence, South Carolina

2015-CP-22-0770