

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ERIC JOSHUA TURNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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ATTORNEYS FOR RESPONDENT

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OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
) 2005-GS-47-21 (COUNTS 1, 5, 6, 7)

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF.)
)
vs.)
)
ERIC JOSHUA TURNER,)
)
)
)
DEFENDANT.)



ORIGINAL

TRANSCRIPT OF RECORD

AUGUST 22, 2006
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

SUSAN O. PORTER, ESQ.
Attorney for the State.

CHRISTOPHER T. POSEY, ESQ.
Attorney for the Defendant.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

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E X H I B I T S

-----NO EXHIBITS OFFERED-----

P R O C E E D I N G S

(05-GS-47-21)

(AUGUST 22, 2006 - 11:41 A.M.)

1
2
3
4 MS. PORTER: UM -- AND NEXT, YOUR HONOR, IS
5 ERIC JOSHUA TURNER.

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
7 CONFERENCE, OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 MS. PORTER: HE IS REPRESENTED BY MR. CHRIS POSEY.

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
11 CONFERENCE, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 MS. PORTER: AND I'LL BE HAPPY TO PUT ON THE RECORD THE
14 INDICTMENT AND ALL THAT GOOD STUFF.

15 THE COURT: VERY GOOD; I'LL, UM -- WHEN I GET THERE, IF
16 YOUR WOULD PLEASE?

17 MS. PORTER: YES, SIR.

18 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
19 CONFERENCE, OFF THE RECORD.)

20 (WHEREUPON, COURT RESUMED.)

21 THE COURT: ALL RIGHT, ARE YOU ERIC JOSHUA TURNER?

22 MR. TURNER: YES, SIR.

23 THE COURT: IF YOU WOULD, PLEASE SIR, RAISE YOUR RIGHT
24 HAND.

25 (WHEREUPON, ERIC JOSHUA TURNER WAS DULY SWORN AND

1 TESTIFIED AS FOLLOWS:)

2 THE COURT: THANK YOU, SIR. MR. POSEY, YOU REPRESENT
3 THE DEFENDANT?

4 MR. POSEY: YES, SIR, YOUR HONOR.

5 THE COURT: DID YOU EXPLAIN TO THE DEFENDANT THE CHARGES
6 CONTAINED IN THE INDICTMENT, THE POSSIBLE PUNISHMENTS, AND
7 HIS CONSTITUTIONAL RIGHTS TO -- INCLUDING HIS RIGHT TO A JURY
8 TRIAL?

9 MR. POSEY: I HAVE, YOUR HONOR.

10 THE COURT: AND, UH, MADAME ATTORNEY GENERAL, LET ME BE
11 SURE. THE, UH -- THE -- THE CHARGES ARE TRAFFICKING
12 METHAMPHETAMINE BETWEEN TWENTY-EIGHT AND A HUNDRED GRAMS,
13 SECOND OFFENSE?

14 MS. PORTER: YES, SIR; THERE ARE TWO OF THOSE,
15 YOUR HONOR.

16 THE COURT: AND TWO OF THOSE. AND THOSE -- EACH -- ON
17 EACH ONE WOULD BE SEVEN -- MINIMUM OF SEVEN, MAXIMUM OF
18 THIRTY YEARS; AND, UH, MINIMUM OF FIFTY-THOUSAND-DOLLAR FINE?

19 MR. POSEY: YES, SIR; YOUR HONOR.

20 THE COURT: AND THEN ONE INDICTMENT FOR POSSESSION WITH
21 INTENT TO DISTRIBUTE MARIJUANA, THIRD; WHERE THE MAXIMUM
22 SENTENCE WILL BE FIVE YEARS AND TWENTY-FIVE -- UP -- FROM
23 FIVE TO TWENTY YEARS AND A TWENTY-THOUSAND-DOLLAR FINE?

24 MS. PORTER: YES, SIR, YOUR HONOR.

25 THE COURT: AND, POSSESSION WITH THE INTENT TO

1 DISTRIBUTE MARIJUANA WITHIN ONE-HALF-MILE OF A SCHOOL. UH --
2 TEN YEARS AND TEN THOUSAND DOLLARS MAXIMUM FINE?

3 MS. PORTER: YES, SIR.

4 THE COURT: UH -- IN YOUR OPINION, DOES THE DEFENDANT
5 UNDERSTAND THE CHARGES, THE PUNISHMENTS, AND HIS RIGHTS
6 MR. POSEY?

7 MR. POSEY: YES, SIR, YOUR HONOR; HE DOES.

8 THE COURT: IN YOUR INVESTIGATION INTO THE FACTS OF EACH
9 OF THESE CASES, DO YOU FEEL THE STATE COULD PRODUCE
10 SUFFICIENT EVIDENCE TO ESTABLISH THE DEFENDANT'S GUILT BEYOND
11 A REASONABLE DOUBT, AND IF HE STOOD TRIAL HE WOULD MOST
12 PROBABLY BE FOUND GUILTY ON EACH INDICTMENT?

13 MR. POSEY: I BELIEVE HE WOULD, YOUR HONOR.

14 THE COURT: ARE YOU AWARE OF ANY PHYSICAL, MENTAL, OR
15 EMOTIONAL PROBLEM THAT MIGHT KEEP THE DEFENDANT FROM
16 UNDERSTANDING WHAT HE'S DOING TODAY?

17 MR. POSEY: NO, SIR, YOUR HONOR.

18 THE COURT: NOW, MR. TURNER, BEFORE I CAN ACCEPT A
19 GUILTY PLEA, IT'S NECESSARY FOR ME TO MAKE SURE THAT PLEA IS
20 MADE FREELY AND VOLUNTARILY. THEREFORE, I NEED TO ASK YOU
21 SOME QUESTIONS.

22 IF YOU DO NOT UNDERSTAND THE QUESTIONS OR THE WORDS I
23 USE, PLEASE ADVISE ME; I'LL EXPLAIN THEM TO YOU.

24 ALSO, IF AT ANY TIME DURING QUESTIONING, YOU NEED TO
25 CONSULT -- NEED TO CONSULT WITH YOUR ATTORNEY, YOU'LL BE

1 PERMITTED TO DO THAT AS WELL.

2 DO YOU UNDERSTAND THIS?

3 MR. TURNER: YES, SIR.

4 THE COURT: DO YOU UNDERSTAND?

5 MR. TURNER: YES, SIR.

6 THE COURT: ALL RIGHT. YOU'RE -- JUST MIGHT NEED TO
7 SPEAK A LITTLE LOUDER, OKAY?

8 UM -- ALSO IF AT ANY TIME, AS I SAY, YOU NEED TO CONSULT
9 WITH YOUR LAWYER, YOU'LL BE ABLE TO DO THAT AS WELL.

10 DO YOU UNDERSTAND?

11 MR. TURNER: YES, SIR.

12 THE COURT: HOW OLD ARE YOU, SIR?

13 MR. TURNER: TWENTY-FIVE.

14 THE COURT: HOW FAR HAVE YOU DONE IN SCHOOL?

15 MR. TURNER: NINTH GRADE.

16 THE COURT: UH -- WHAT KIND OF WORK DO YOU DO?

17 MR. TURNER: LAWN WORK AND LIKE THAT.

18 THE COURT: ARE YOU MARRIED?

19 MR. TURNER: NO, SIR.

20 THE COURT: DO YOU HAVE ANY CHILDREN?

21 MR. TURNER: NO, SIR.

22 THE COURT: HAVE YOU EVER BEEN TREATED FOR ABUSE OF
23 ALCOHOL OR DRUGS OR MENTAL ILLNESS?

24 MR. TURNER: NO, SIR.

25 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY

1 MEDICATION, DRUGS OR ALCOHOL AT THIS TIME?

2 MR. TURNER: NO, SIR.

3 THE COURT: ARE YOU AWARE OF ANY PHYSICAL, EMOTIONAL, OR
4 NERVOUS PROBLEM THAT MIGHT KEEP YOU FROM UNDERSTANDING WHAT
5 YOU'RE DOING TODAY?

6 MR. TURNER: NO, SIR.

7 THE COURT: YOU'VE HEARD YOUR ATTORNEY TELL ME THAT HE'S
8 EXPLAINED TO YOU THE CHARGES AGAINST YOU, THE POSSIBLE
9 PUNISHMENTS AND YOUR CONSTITUTIONAL RIGHTS, AND THAT YOU
10 UNDERSTAND THESE THINGS.

11 IS THAT CORRECT?

12 MR. TURNER: YES, SIR.

13 THE COURT: YOU ARE PLEADING GUILTY TO TWO COUNTS,
14 UM -- UH, OF AN INDICTMENT CHARGING TRAFFICKING, UH,
15 METHAMPHETAMINE BETWEEN TWENTY -- TWENTY-EIGHT AND A HUNDRED
16 GRAMS, SECOND OFFENSE, WHERE THE MAXIMUM SENTENCE ON EACH
17 COUNT -- OR, MINIMUM SENTENCE IS SEVEN YEARS AND THE MAXIMUM
18 SENTENCE IS THIRTY YEARS AND FIFTY THOUSAND DOLLARS.

19 AND TWO COUNTS, ONE -- WELL, TWO COUNTS OF POSSESSION
20 WITH INTEND TO DISTRIBUTE MARI- -- UH, MARIJUANA, THIRD
21 OFFENSE. ON ONE COUNT WHERE THE MAXIMUM SENTENCE IS BETWEEN
22 FIVE AND TWENTY YEARS AND TWENTY THOUSAND DOLLARS; AND ONE
23 COUNT OF POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
24 WITHIN ONE-HALF MILE OF A SCHOOL WHERE THE MAXIMUM SENTENCE
25 IS TEN YEARS AND TEN THOUSAND DOLLARS.

1 IF I SHOULD SENTENCE YOU CONSECUTIVELY, YOU COULD BE
2 SENTENCED TO SIXTY YEARS AND A HUNDRED AND THIRTY THOUSAND
3 DOLLARS. DO YOU UNDERSTAND THAT?

4 MR. TURNER: YES, SIR.

5 THE COURT: ALSO, THESE ARE GRADUATED OFFENSES. IN
6 OTHER WORDS, IF YOU'RE CONVICTED OF THE SAME OR A SIMILAR
7 CRIME IN THE FUTURE, YOUR PUNISHMENT WILL BE, UM, GREATER THE
8 NEXT TIME BECAUSE YOU'LL HAVE PRIOR OFFENSES.

9 DO YOU UNDERSTAND THAT?

10 MR. TURNER: YES, SIR.

11 THE COURT: IT WILL ALSO AFFECT YOUR ABILITY TO GET
12 YOUR DRIVER'S LICENSE OR TO HAVE A DRIVER'S LICENSE IN
13 SOUTH CAROLINA.

14 DO YOU UNDERSTAND THAT?

15 MR. TURNER: YES, SIR.

16 THE COURT: DO YOU UNDERSTAND THE NATURE OF THE CHARGES
17 AGAINST YOU AND THE RANGE OF POSSIBLE PUNISHMENTS?

18 MR. TURNER: YES, SIR.

19 THE COURT: NOW, WHEN YOU PLEAD GUILTY, UH, MR. TURNER,
20 YOU GIVE UP CERTAIN IMPORTANT CONSTITUTIONAL RIGHTS.

21 FIRST, YOU GIVE UP THE RIGHT TO REMAIN SILENT. THAT
22 IS, THE RIGHT TO SAY NOTHING AT ALL. THE RIGHT AGAINST
23 SELF-INCRIMINATION. UH -- YOU CANNOT BE COMPELLED TO
24 TESTIFY AGAINST YOURSELF -- TESTIFY AGAINST YOURSELF OR OFFER
25 EVIDENCE AGAINST YOURSELF.

1 DO YOU UNDERSTAND THIS?

2 MR. TURNER: YES, SIR.

3 THE COURT: SECOND, YOU GIVE UP YOUR RIGHT TO A JURY
4 TRIAL. THAT IS, THE RIGHT TO HAVE A JURY TRIAL DETERMINE
5 WHETHER OR NOT YOU'RE GUILTY BEYOND A REASONABLE DOUBT.

6 IN A JURY TRIAL YOU'D BE PRESUMED TO BE INNOCENT, AND
7 ALL TWELVE MEMBERS OF THE JURY WOULD HAVE TO BE CONVINCED OF
8 YOUR GUILT BEYOND A REASONABLE DOUBT.

9 DO YOU UNDERSTAND THIS?

10 MR. TURNER: YES, SIR.

11 THE COURT: THIRD, YOU GIVE UP YOUR RIGHT TO CONFRONT.
12 THAT IS, THE RIGHT TO, UH, SEE, HEAR, AND CROSS-EXAMINE THE
13 WITNESSES CALLED AGAINST YOU DURING YOUR TRIAL AS WELL AS TO
14 HAVE, UH -- OR, PRESENT AND CALL WITNESSES ON YOUR OWN BEHALF
15 IN THAT TRIAL.

16 DO YOU UNDERSTAND THAT?

17 MR. TURNER: YES, SIR.

18 THE COURT: DO YOU UNDERSTAND, WHEN YOU PLEAD GUILTY,
19 YOU WAIVE OR GIVE UP THESE RIGHTS?

20 MR. TURNER: YES, SIR.

21 THE COURT: YOU UNDERSTAND YOU WILL NOT GET A JURY TRIAL
22 WHEN YOU PLEAD GUILTY?

23 MR. TURNER: YES, SIR.

24 THE COURT: YOU MAY HAVE DEFENSES TO THE CHARGES AGAINST
25 YOU. I DON'T KNOW WHETHER YOU DO OR NOT. BUT DO YOU

1 UNDERSTAND, IF YOU PLEAD GUILTY, YOU WILL WAIVE OR GIVE UP
2 ANY, UH, DEFENSES YOU MAY HAVE?

3 MR. TURNER: YES, SIR.

4 THE COURT: IF YOU'VE GIVEN A -- AN INCRIMINATING
5 STATEMENT IN ANY OF THESE CASES, DO YOU UNDERSTAND, IF YOU
6 PLEAD GUILTY, YOU WAIVE OR GIVE UP YOUR RIGHT TO CHARGE
7 WHETHER OR NOT SUCH STATEMENTS WERE GIVEN IN ACCORDANCE WITH
8 YOUR CONSTITUTIONAL RIGHTS FREELY AND VOLUNTARILY?

9 DO YOU UNDERSTAND THAT?

10 MR. TURNER: YES, SIR.

11 THE COURT: DO YOU UNDERSTAND, WHEN YOU PLEAD GUILTY,
12 YOU ADMIT THE TRUTH OF THE CHARGES MADE AGAINST YOU?

13 MR. TURNER: YES, SIR.

14 THE COURT: UNDERSTANDING THEN THE NATURE OF THE CHARGES
15 AGAINST YOU AND THE CON- -- CONSEQUENCES OF A GUILTY PLEA,
16 HOW DO YOU WISH TO PLEA TO EACH OF THESE COUNTS, OR THESE --
17 IN EACH INDICT- -- OR, IN THESE INDICTMENTS?

18 THAT'S COUNT ONE, FIVE, SIX, AND SEVEN. SEVEN?

19 MS. PORTER: SEVEN, YOUR HONOR.

20 THE COURT: ALL RIGHT, SEVEN. HOW DO YOU PLEAD GUILTY
21 (SIC)---

22 MR. TURNER: GUILTY.

23 THE COURT: ---HOW DO YOU PLEAD TO EACH OF THESE
24 INDICTMENTS AND THE COUNTS?

25 MR. TURNER: GUILTY.

1 THE COURT: DID YOU, UH -- ARE YOU, IN FACT, GUILTY?

2 MR. TURNER: (NO RESPONSE.)

3 THE COURT: IN FACT, GUILTY OF EACH OF THESE
4 INDICTMENTS---

5 MR. TURNER: YES, SIR.

6 THE COURT: ---AND CHARGES IN EACH INDICTMENT?

7 MR. TURNER: YES, SIR.

8 THE COURT: YOU WANT TO, UH -- WANT TO TELL ME WHAT YOU
9 DID?

10 MR. TURNER: YES, SIR.

11 THE COURT: WHAT DID YOU DO?

12 MR. TURNER: (NO RESPONSE.)

13 THE COURT: DID YOU HAVE METHAMPHETAMINE?

14 MR. TURNER: YES, SIR.

15 THE COURT: TWO DIFFERENT OCCASIONS?

16 MR. TURNER: YES.

17 THE COURT: AT LEAST TWENTY-EIGHT GRAMS?

18 MR. TURNER: YES, SIR.

19 THE COURT: UM -- YOU ALSO HAD SOME, UH, MARIJUANA ON
20 ONE OCCASION?

21 MR. TURNER: YES, SIR.

22 THE COURT: AND WERE YOU, UM, WITHIN A HALF-MILE OF A
23 SCHOOL?

24 MR. TURNER: YES, SIR.

25 THE COURT: NOW, DID YOU KNOW WHAT YOU DID WAS WRONG IN

1 EACH OF THESE CASES?

2 MR. TURNER: YES, SIR.

3 THE COURT: UH -- DO YOU BELIEVE THE STATE COULD PRODUCE
4 SUFFICIENT EVIDENCE TO ESTABLISH YOUR GUILT BEYOND A
5 REASONABLE DOUBT; AND IF YOU STOOD TRIAL YOU'D MOST PROBABLY
6 BE FOUND GUILTY?

7 MR. TURNER: YES, SIR, I DO.

8 THE COURT: ALL RIGHT. IT'S MY UNDERSTANDING THE
9 SENTENCE IS TO BE DEFERRED IN THESE CASES?

10 MS. PORTER: YES, YOUR HONOR.

11 THE COURT: HAS ANYONE PROMISED YOU ANYTHING OR HELD OUT
12 ANY HOPE OR REWARD TO GET YOU TO PLEAD GUILTY?

13 MR. TURNER: NO, SIR.

14 THE COURT: HAS ANYONE THREATENED YOU OR USED FORCE TO
15 CAUSE YOU TO PLEAD GUILTY?

16 MR. TURNER: NO, SIR.

17 THE COURT: HAVE YOU HAD ENOUGH TIME TO MAKE UP YOUR
18 MIND AS TO WHETHER OR NOT YOU WANT TO PLEAD GUILTY?

19 MR. TURNER: YES, SIR.

20 THE COURT: ARE YOU PLEADING GUILTY OF YOUR OWN FREE
21 WILL AND ACCORD?

22 MR. TURNER: YES, SIR.

23 THE COURT: HAVE YOU FULLY DISCUSSED ALL ASPECTS OF THIS
24 CASE WITH YOUR LAWYER?

25 MR. TURNER: YES, SIR.

1 THE COURT: NEED ANY MORE TIME TO TALK TO YOUR LAWYER?

2 MR. TURNER: NO, SIR.

3 THE COURT: ARE YOU COMPLETELY SATISFIED WITH
4 MR. POSEY'S SERVICES AS YOUR ATTORNEY?

5 MR. TURNER: YES, SIR.

6 THE COURT: DO YOU HAVE ANY COMPLAINT THAT YOU WANT TO
7 MAKE ABOUT YOUR LAWYER, THE SOL- -- SOLICITOR, OR THE
8 ATTORNEY GENERAL, OR ANY OF THE LAW ENFORCEMENT OFFICERS?

9 MR. TURNER: NO, SIR.

10 THE COURT: IN OTHER WORDS, HAS ANYONE MISTREATED YOU IN
11 ANY WAY?

12 MR. TURNER: NO, SIR.

13 THE COURT: HAVE YOU UNDERSTOOD MY QUESTIONS?

14 MR. TURNER: YES, SIR.

15 THE COURT: IS THERE ANYTHING YOU'D LIKE TO ASK ME ABOUT
16 WHAT WE'VE JUST BEEN OVER SO FAR?

17 MR. TURNER: NO, SIR.

18 THE COURT: ALL RIGHT, WHAT ARE THE FACTS OF THE CASE,
19 UH---

20 MS. PORTER: THANK YOU, YOUR HONOR.

21 THE COURT: ---ATTORNEY GENERAL?

22 MS. PORTER: UH -- THIS CONSPIRACY IN INDICTMENT
23 2005-GS-47-21, UM, OCCURRED -- OR, BEGAN IN OCTOBER OF 2004
24 AND ENDED IN DECEMBER OF 2005.

25 SOMETIME AROUND THE END OF JANUARY 2005, UM, MR. TURNER

1 MOVED IN WITH HIS BROTHER -- WHO IS J. J. TURNER WHO WE SPOKE
2 ABOUT BEFORE.

3 UM -- WHILE HE WAS THERE, HE AND J. J. MADE AN AGREEMENT
4 THAT THEY WOULD BEGIN RECEIVING ICE AND JOSH WOULD SELL IT
5 FOR J. J.

6 UM -- HE ALSO ASSISTED J. J. WHEN J. J. WAS SELLING ICE.
7 FOR INSTANCE, IF SOMEBODY WAS COMING TO J. J.'S HOUSE TO BUY
8 THE ICE AND DIDN'T KNOW HOW TO GET THERE, JOSH WOULD GO OUT,
9 MEET 'EM, BRING 'EM BACK TO THE HOUSE, AND MAKE SURE THAT THE
10 DEAL WENT DOWN.

11 UM -- IN ADDITION, JOSH HAS SOLD ICE TO SEVERAL
12 DIFFERENT INDIVIDUALS, INCLUDING SCOTTY POPE, WHO TYPICALLY
13 RECEIVED A HALF-OUNCE TO ONE OUNCE OF ICE FROM JOSH TWICE A
14 WEEK. SCOTTY POPE IS ANOTHER INDICTED CO-CONSPIRATOR.

15 IN MARCH OF 2005, JOSH RECEIVED FOUR OUNCES OF ICE FROM
16 J. J. AND SPENT THE NIGHT AT A HOTEL -- THE SANDS. THE SANDS
17 MOTEL AT 1410 POINSETT HIGHWAY. HE -- SPECIFICALLY, ROOM
18 EIGHT. THAT IS IN GREENVILLE COUNTY.

19 A SEARCH WARRANT WAS ISSUED ON THAT, UH, HOTEL ROOM
20 AND THAT IS THE BASIS FOR COUNTS FIVE THROUGH SEVEN OF THE
21 INDICTMENT.

22 AT THE TIME, JOSH TURNER WAS THE ONLY OCCUPANT OF THE
23 ROOM.

24 UM -- HE -- THE -- THE FOLLOWING ITEMS WERE FOUND. A
25 HUNDRED-AND-FIVE GRAMS OF METHAMPHETAMINE; AND APPROXIMATELY

1 A HUNDRED-AND-FIVE GRAMS OF MARIJUANA.

2 SINCE THAT TIME HE WAS ARRESTED WITH THAT, UM, HE
3 ADMITTED THE ICE WAS -- CAME FROM J. J. AND WAS BEING
4 DELIVERED TO SCOTTY POPE.

5 UM -- IN ADDITION, HE HAS ACCOMPANIED J. J. WHEN HE
6 DELIVERED ICE TO DENNIS STILES.

7 HE HAS DELIVERED ICE TO PAM BOSSIE (PHONETIC) IN OCONEE
8 COUNTY.

9 HE'S ALSO DELIVERED ICE TO BERNIE ROBERTS IN ANDERSON
10 COUNTY.

11 AND, HE HAS RECEIVED ICE ON J. J.'S BEHALF FROM ANOTHER
12 INDICTED CO-CONSPIRATOR, EPHRAIM MARTINEZ, ON AT LEAST TWO
13 OCCASIONS.

14 THIS EVIDENCE CAN BE CORROBORATED NOT ONLY BY HIS
15 OWN CONFESSION, BUT BY SIX OTHER INDICTED AND UNINDICTED
16 CO-CONSPIRATORS.

17 HIS PRIOR RECORD CONSISTS OF A 1999 POSSESSION WITH
18 INTENT TO DISTRIBUTE CHARGE. UM -- IT SAYS A SCHEDULE ONE,
19 TWO, OR THREE ON THAT, SO I'M ASSUMING THAT'S MARIJUANA BUT
20 IT'S NOT CLEAR.

21 ALSO IN 2002 HE HAS A POSSESSION OF MARIJUANA
22 CONVICTION. UM -- IN -- IN BOTH MARCH AND JULY OF THAT YEAR,
23 YOUR HONOR.

24 SO HE DOES HAVE THREE PRIOR, UM, DRUG OFFENSES.

25 IN ADDITION, I BELIEVE HE IS IN FEDERAL CUSTODY FOR A

1 GUN CHARGE, BUT I'M NOT -- IT'S NOT CLEAR BY THE RAP SHEET.

2 THE COURT: ALL RIGHT; DO YOU AGREE WITH THE FACTS AS
3 STATED BY THE, UH, ATTORNEY GENERAL?

4 MR. TURNER: YES, SIR.

5 THE COURT: AND ALSO YOUR PRIOR RECORD?

6 MR. TURNER: YES, SIR.

7 THE COURT: NOW YOU DO UNDERSTAND THAT, UM, IF YOU ARE
8 ON PROBATION OR PAROLE, THAT YOUR PROBATION/PAROLE COULD BE
9 REVOKED BECAUSE OF YOUR GUILTY PLEA IN THIS CASE AND YOU
10 COULD BE INCARCERATED FOR ADDITIONAL TIME?

11 YOU DO UNDERSTAND THAT?

12 MR. TURNER: YES, SIR.

13 THE COURT: DO YOU STILL WISH TO PLEAD GUILTY TO THESE
14 INDICTMENTS?

15 MR. TURNER: YES, SIR.

16 THE COURT: ALL RIGHT, HAS EACH AND EVERY ANSWER YOU'VE
17 GIVEN THE COURT TODAY BEEN ABSOLUTELY TRUTHFUL?

18 MR. TURNER: YES, SIR.

19 THE COURT: ALL RIGHT. I FIND THAT THERE IS A -- A
20 SUBSTANTIAL FACTUAL BASIS FOR EACH OF THESE PLEAS.

21 I FIND THAT DEFENDANT'S DECISION TO PLEAD GUILTY TO EACH
22 INDICTMENT AND EACH COUNT IN THE INDICTMENT IS FREELY,
23 VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY MADE, WITH ADVICE
24 AND COUNSEL OF AN ATTORNEY WITH WHOM THE DEFENDANT SAYS HE IS
25 SAT- -- HE IS SATISFIED.

1 THE PLEAS -- THE DEFENDANT'S PLEA OF GUILTY TO EACH
2 COUNT IN THE INDICTMENT IS ACCEPTED.

3 COMES NOW THE DEFENDANT, ERIC JOSHUA TURNER, IN OPEN
4 COURT, IN HIS OWN PROPER PERSON, PLEADS GUILTY TO INDICTMENT
5 2005-GS-47-21, COUNT ONE, COUNT FIVE, COUNT SIX, AND COUNT
6 SEVEN, AND SUBMITS TO THE SENTENCE OF THE COURT.

7 ALL RIGHT, IT'S MY UNDERSTANDING THE, UH, SENTENCE IS TO
8 BE DEFERRED. IS THAT CORRECT, MR. POSEY?

9 MR. POSEY: YES, SIR; YOUR HONOR.

10 THE COURT: ALL RIGHT; VERY GOOD. LUCK TO YOU, SIR.

11 MR. POSEY: THANK YOU, YOUR HONOR.

12 (WHEREUPON, HEARING ENDED.)

13 *****END OF REQUESTED TRANSCRIPT*****
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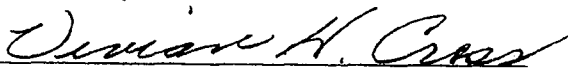
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF ALL PROCEEDINGS RECORDED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 22ND DAY OF AUGUST 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MAY 28, 2009



VIVIAN H. CROSS
CIRCUIT COURT REPORTER

STATE OF SOUTH) IN THE COURT OF GENERAL
 CAROLINA) SESSIONS
)
 STATE GRAND JURY) CASE NO: 2005-GS-41-21
) COUNTS 1, 5, 6,
 COUNTY OF GREENVILLE)

STATE OF SOUTH)
 CAROLINA,)

ORIGINAL

PLAINTIFF,) TRANSCRIPT OF RECORD
) SENTENCING HEARING
 -VS-) (PLED GUILTY ON
) AUGUST 22, 2006)
 ERIC JOSHUA TURNER,)
)
 DEFENDANT.)

NOVEMBER 19, 2007
 GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

JENNIFER EVANS, ESQ.
 ASSISTANT ATTORNEY GENERAL
 STATE GRAND JURY
 ATTORNEY FOR THE PLAINTIFF

CHRISTOPHER TODD POSEY, ESQ.
 ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
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NO WITNESSES WERE CALLED.

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EXHIBITS

NO.	DESCRIPTION	ID.	EV.
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NO EXHIBITS WERE INTRODUCED.

1 ***** START OF REQUESTED TRANSCRIPT OF RECORD *****

2 MS. EVANS: STANDING BEFORE YOU IS ERIC
3 JOSHUA TURNER. HE IS NOT ON HERE, BUT I WILL TELL YOU
4 WHERE HE WOULD FIT IN ON THE CHART WHEN I GO OVER THE
5 FACTS.

6 HE PLED GUILTY ON AUGUST 22ND, 2006, SO I
7 WOULD LIKE TO INCORPORATE WHAT WAS SAID AT THE GUILTY
8 PLEA INTO THIS RECORD HERE.

9 HE IS BEING SENTENCED TODAY FOR CONSPIRACY
10 TO TRAFFIC METH, 28 TO A HUNDRED GRAMS, SECOND OFFENSE,
11 TWO CHARGES; POSSESSION WITH INTENT TO DISTRIBUTE
12 MARIJUANA, THIRD OFFENSE; POSSESSION WITH INTENT TO
13 DISTRIBUTE MARIJUANA WITHIN A HALF MILE OF A SCHOOL.

14 WE ARE ASKING FOR 18 YEARS CONCURRENT ON ALL
15 CHARGES AND THAT WOULD BE CONCURRENT WITH THE FEDERAL
16 SENTENCE HE'S SERVING AT THIS POINT. FEDERALLY HE WAS
17 SENTENCED APRIL 4TH, 2006, TO 90 MONTHS FOLLOWED BY FIVE
18 YEARS SUPERVISED RELEASE.

19 THE COURT: ARE YOU ERIC JOSHUA TURNER?

20 THE DEFENDANT: YES, SIR.

21 (WHEREUPON, THE DEFENDANT WAS SWORN.)

22 THE COURT: VERY GOOD, THANK YOU.

23 MR. POSEY, YOU REPRESENT MR. TURNER?

24 MR. POSEY: I DO, YOUR HONOR.

25 THE COURT: NOW, MR. TURNER, YOU PLED ON

1 AUGUST THE 22ND, 2006, PLED GUILTY TO INDICTMENTS NUMBER
2 2005-GS-47-21, COUNT ONE, COUNT FIVE, COUNT SIX AND
3 COUNT SEVEN?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: AND YOUR SENTENCING WAS DELAYED
6 UNTIL A LATER TIME, WHICH IS TODAY; IS THAT CORRECT?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: YOU UNDERSTAND, OF COURSE, THAT
9 ON COUNT ONE OF THE INDICTMENT, TRAFFICKING METH -- OR
10 ACTUALLY COUNT ONE AND COUNT FIVE -- TRAFFICKING METH
11 BETWEEN 28 AND A HUNDRED GRAMS, SECOND OFFENSE, THAT THE
12 MINIMUM SENTENCE IS SEVEN, THE MAXIMUM SENTENCE IS 30,
13 TO \$50,000.00; AND ON COUNT SIX, POSSESSION WITH INTENT
14 TO DISTRIBUTE MARIJUANA, THIRD OFFENSE, THE MINIMUM IS
15 FIVE AND THE MAXIMUM IS 20 AND \$20,000 IN FINES; AND
16 POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA WITHIN
17 PROXIMITY OF A SCHOOL, THE MAXIMUM SENTENCE IS TEN YEARS
18 AND \$10,000. IF I SHOULD SENTENCE YOU CONSECUTIVELY,
19 YOU COULD BE SENTENCED TO 90 YEARS AND \$135,000.00. DO
20 YOU UNDERSTAND THAT?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: DO YOU UNDERSTAND THAT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: ALL RIGHT. MADAM ATTORNEY
25 GENERAL, WOULD YOU TELL ME A LITTLE BIT ABOUT THE CASE?

1 STATEMENT OF FACTS BY ATTORNEY GENERAL:

2 MS. EVANS: YES, YOUR HONOR. AS IT RELATES
3 TO THE CONSPIRACY, MR. TURNER IS JAY JAY TURNER WHO WE
4 HAVE BEEN HEARING ABOUT SINCE WE STARTED THIS MORNING.
5 HE'S NOT ON HERE BECAUSE, AS YOU ALREADY HEARD,
6 MR. TURNER WAS NOT TOTALLY FORTHRIGHT WITH THE STATE
7 TELLING ABOUT PEOPLE SUCH AS HIS WIFE AND GOOD FRIENDS
8 OF HIS WHEN HE WAS FIRST APPROACHED.

9 JUST SO IT'S CLEAR, MR. TURNER WAS ONLY
10 ARRESTED TWO TIMES. HE WAS APPROACHED WHEN HE DID THE
11 FIVE-POUND BUY FROM THIS. HE WAS NEVER ARRESTED BECAUSE
12 HE AGREED TO COOPERATE. THEN HE ABSCONDED AND THEN HE
13 WAS ACTUALLY ARRESTED THE SECOND TIME THEY FOUND HIM.
14 WE DID AGREE TO RELEASE HIM ON A BOND. HE ABSCONDED
15 AGAIN, AND THEN I GUESS WE DECIDED NOT TO RELEASE HIM ON
16 A BOND AND THEN HELD HIM.

17 AS THIS INVESTIGATION UNFOLDED, MR. TURNER
18 TOLD ON EVERYBODY ABOVE HIM BUT FAILED TO LEAVE OUT
19 [SIC] WHO HE WAS PARTNERS WITH, WHICH HIS BROTHER JOSH
20 WAS ONE OF HIS PARTNERS. WHEN JOSH GOT OUT OF JAIL
21 APPROXIMATELY JANUARY 2005, HE MOVED IN WITH HIS
22 BROTHER, JOHN NELSON TURNER, JUNIOR, HE GOES BY JAY JAY.
23 AT WHICH TIME MR. NELSON [SIC] WAS SELLING LARGE AMOUNTS
24 OF ICE THAT HE WAS GETTING FROM THIS SOURCE AT FIRST BUT
25 IT SEEMS HE HAD SEVERAL DIFFERENT SOURCES THAT HE

1 EVENTUALLY WOULD TURN ON.

2 THE BASIC WAY TO DESCRIBE IT IS SOMETIMES
3 JOSH WOULD BE SELLING FOR JAY JAY. A GOOD EXAMPLE WOULD
4 BE IF SOMEBODY WAS COMING THAT NEVER DEALT WITH JAY JAY
5 BEFORE AND DIDN'T KNOW WHERE JAY JAY LIVED, HE WOULD
6 SEND JOSH TO MEET THEM AND BRING THEM TO THE HOUSE.

7 BUT JOSH WAS ALSO ALLOWED TO SELL HIS OWN
8 DRUGS THAT HE GOT FROM JAY JAY. HE SOLD SEVERAL OUNCES
9 TO SCOTTIE POPE. HE WENT OVER AND SOLD SOME TO PAM
10 BOZZI. AND SO HE WAS ABLE TO DEVELOP HIS OWN BUSINESS
11 WITH THE DOPE THAT HE GOT FROM JAY JAY, BUT HE WAS ALSO
12 IN THE SAME THING, JAY JAY'S RIGHT-HAND MAN WHEN IT CAME
13 TO DOING A LOT OF OTHER THINGS, COLLECTING MONEY FROM
14 PEOPLE, DOING VARIOUS THINGS FOR JAY JAY IN HIS DRUG
15 TRAFFICKING BUSINESS.

16 AND THAT'S IN ESSENCE THE CONSPIRACY. IT
17 WAS TWOFOLD. HE WAS HELPING JAY JAY WITH HIS DRUG
18 BUSINESS, AND IN TURN KIND OF HAD HIS OWN BUSINESS ON
19 THE SIDE AND HIS OWN CUSTOMERS SEPARATE AND APART FROM
20 HIS BROTHER JAY JAY'S.

21 BASED UPON THIS ONGOING INVESTIGATION -- AND
22 I APOLOGIZE, I DO NOT KNOW THE DATE -- IT WAS ON MARCH
23 18TH, 2005, THERE WAS A SEARCH WARRANT EXECUTED AT THE
24 SANDS MOTEL, WHICH IS LOCATED AT 1410 POINSETT HIGHWAY,
25 ROOM NUMBER 8. WE HAD INFORMATION THAT THERE WAS

1 SUPPOSEDLY A QUARTER POUND OF ICE AND MARIJUANA IN THE
2 ROOM.

3 UPON EXECUTION OF THE SEARCH WARRANT JOSH
4 TURNER WAS THE ONLY INDIVIDUAL THAT WAS IN THE ROOM.
5 THE FOLLOWING ITEMS -- AND THIS IS COUNTS FIVE, SIX, AND
6 SEVEN, YOUR HONOR, OF THAT SAME INDICTMENT. UPON
7 ARRIVING THEY FOUND 105 GRAMS OF METH IN THE ROOM, THEY
8 FOUND 105 GRAMS OF MARIJUANA IN THE ROOM. AND THAT
9 HOTEL IS IN WITHIN HALF A MILE OF I THINK IT'S
10 CHERRYDALE ELEMENTARY SCHOOL, THEREFORE THE PROXIMITY
11 CHARGE.

12 MR. TURNER HAS AT LEAST FROM WHAT I COULD
13 TELL FROM HIS N.C.I.C. REPORT, AT LEAST FOUR PRIOR DRUG
14 CONVICTIONS. WE HAD TO TREAT THE CONSPIRACY AS A SECOND
15 OFFENSE, BECAUSE EVEN DROPPING THE WEIGHT DOWN TO THE
16 THIRD OFFENSE WOULD PUT HIM WITH THE MANDATORY 25 YEARS,
17 SO WE ARE TREATING THAT AS A SECOND OFFENSE. THE REST
18 OF THOSE CHARGES, COUNTS FIVE, SIX AND SEVEN, WE ARE
19 TREATING AS A THIRD OFFENSE BASED UPON HIS LENGTHY
20 RECORD. AS I SAID, HE'S CURRENTLY SERVING FEDERAL TIME,
21 90 MONTHS.

22 WE ARE RECOMMENDING 18 YEARS IN THIS CASE.
23 HE DID COOPERATE WITH LAW ENFORCEMENT, AND BASED UPON
24 HIS COOPERATION HE DID FULLY ADMIT TO THE FACTS THAT
25 I'VE JUST TOLD YOU ABOUT, AND WOULD HAVE, IF NECESSARY,

1 TESTIFIED IF ANY OF THE INDIVIDUALS THAT YOU PROBABLY
2 HEARD FROM TODAY WOULD HAVE REQUESTED A TRIAL, HE WAS
3 COOPERATING AND DID AGREE TO TESTIFY FOR THE STATE.

4 THE COURT: DO YOU--AGREE WITH THOSE FACTS,
5 MR. TURNER?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: PRIOR RECORD? YOU SAY IT'S
8 RATHER EXTENSIVE.

9 MS. EVANS: SOME OF THESE ARE FROM OUT OF
10 STATE. I KNOW IN JUNE OF 1999 HE HAD A MANUFACTURING OF
11 A SCHEDULED NARCOTICS; APRIL 27TH, 2002, POSSESSION OF
12 LESS THAN 28 GRAMS OF MARIJUANA; SAME YEAR, JULY OF
13 2002, AGAIN, ANOTHER POSSESSION OF LESS THAN 28 GRAMS OF
14 MARIJUANA. AND I BELIEVE IT'S AN OUT-OF-STATE CHARGE
15 AND IT JUST SAYS THAT IN OCTOBER OF 2004 A DRUG CHARGE.
16 BUT HE HAS AT LEAST THREE PRIOR.

17 MR. POSEY: THAT ONE WAS MARIJUANA, AS WELL,
18 YOUR HONOR.

19 MS. EVANS: MARIJUANA, AS WELL.

20 THE COURT: DO YOU AGREE WITH YOUR RECORD AS
21 WELL?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: WHEN DID THE FEDERAL -- IS THIS
24 TO RUN CONCURRENT?

25 MS. EVANS: WE ARE ASKING IT TO RUN

1 CONCURRENT WITH THE FEDERAL SENTENCE, WHICH --

2 THE COURT: BACKDATE IT TO THE SENTENCE?

3 MR. POSEY: YOUR HONOR, HE HAS BEEN IN JAIL
4 FOR 809 DAYS AS OF TODAY.

5 THE COURT: SO JUST GIVE HIM 809 DAYS?

6 MS. EVANS: YES.

7 THE COURT: ALL RIGHT. MR. POSEY, WHAT DO
8 YOU HAVE TO SAY ON BEHALF OF MR. TURNER?

9 MR. POSEY: YOUR HONOR, I'LL BE AS BRIEF AS
10 POSSIBLE, BUT I THINK MR. TURNER'S INVOLVEMENT IN THIS
11 WHOLE THING REQUIRES SOME EXPLANATION.

12 JOSH IS A DRUG ADDICT. HE HAS BEEN SINCE
13 MIDDLE SCHOOL AGE. HE BEGAN SMOKING MARIJUANA AS EARLY
14 AS THE SIXTH GRADE, WAS NOT EVER DISCOURAGED BY ANYBODY
15 IN HIS FAMILY TO STOP SMOKING. HE BECAME HIGHLY
16 ADDICTED TO MARIJUANA AND STAYED WITH MARIJUANA. THAT'S
17 WHY HIS RECORD REFLECTS NOTHING BUT MARIJUANA FOR A LONG
18 TIME.

19 THE FIRST PLEA YOU TOOK TODAY, YOUR HONOR, I
20 THINK MS. PORTER POINTED OUT THAT INITIALLY JOSH DIDN'T
21 GET ANY DRUGS FROM HIS BROTHER. HIS BROTHER HAD HIM GET
22 DRUGS FROM SAMMY BAKER. YOUR HONOR, IN SOME WAYS -- AND
23 I'M NOT USING THIS AS MITIGATION. JOSH HAS ADMITTED
24 EVERYTHING HE'S DONE AND HAS TAKEN FULL RESPONSIBILITY
25 FOR IT.

1 JOSH KNEW HIS BROTHER WAS A DRUG ADDICT -- I
2 MEAN JAY JAY KNEW HIS BROTHER WAS A DRUG ADDICT. HE
3 USED MR. BAKER TO GET HIM HOOKED ON METH TO HELP HIM
4 FACILITATE HIS BUSINESS.

5 THE COURT: HIS BROTHER JAY JAY GOT
6 JOSHUA ---

7 MR. POSEY: MR. BAKER, WHO YOU HEARD FROM,
8 WHO WAS YOUR FIRST SENTENCING THIS MORNING, AND AS THE
9 ATTORNEY GENERAL DETAILED, SOLD DRUGS DIRECTLY TO
10 MR. JOSH TURNER. THAT WAS HOW HIS INITIAL INVOLVEMENT
11 BEGAN WITH METHAMPHETAMINE, JUDGE.

12 ONCE HE WAS FULLY INVOLVED IN THE USE OF
13 METHAMPHETAMINE, I DON'T KNOW ANY OTHER WAY TO DESCRIBE
14 IT. HE BECAME A FIEND FOR THE DRUG. HE WOULD BASICALLY
15 INGEST THE DRUG THE WAY YOU AND I MIGHT INGEST M AND M'S
16 OR A PIECE OF CANDY. MASSIVE QUANTITIES. IT'S AMAZING
17 FROM ONE STANDPOINT HE'S STANDING HERE TO BE SENTENCED
18 TODAY, AS MUCH METHAMPHETAMINE AS HE HAS TAKEN OVER THE
19 LAST THREE TO FIVE YEARS.

20 AGAIN, I DON'T OFFER THAT AS AN EXCUSE FOR
21 WHAT HE DID, BUT I WOULD LIKE THE COURT TO UNDERSTAND
22 WHERE HE'S COMING FROM. ALL THE DRUGS HE RECEIVED FROM
23 HIS BROTHER HE NEVER SAW A DIME FROM, YOUR HONOR, NOT
24 ONE DIME. I THINK THE ATTORNEY GENERAL WOULD AGREE WITH
25 ME. WHILE THEY SEIZED SEVERAL HUNDRED THOUSAND DOLLARS'

1 WORTH OF ASSETS FROM JAY JAY TURNER, THEY HAVE RECEIVED
2 NOTHING FROM JOSH TURNER.

3 HE WAS NOT ALLOWED TO BE PART OF THE MONEY.
4 HE WAS A MULE. I THINK MS. PORTER AND I HAD THAT
5 DISCUSSION EARLIER. AND I DESCRIBED HIM AS A MULE AND
6 SHE DID NOT DISAGREE WITH THAT ASSESSMENT, YOUR HONOR.
7 HE WAS JAY JAY'S MULE.

8 EVEN THE ALLEGED -- HIS OWN DRUG BUSINESS
9 WAS, ESSENTIALLY EVERYTHING WAS ROUTED BACK TO JAY JAY.
10 NOTHING STAYED WITH HIM MONEY-WISE. HE NEVER HAD ANY
11 MONEY. HIS PAYMENT WAS ENOUGH DRUGS TO KEEP HIM SO
12 ADDICTED HE WOULD DO ANYTHING HE WAS TOLD TO DO.

13 JUDGE, HE NEVER PARTICIPATED IN ANY MONEY.
14 AS A MATTER OF FACT, HE IS THE ONE WHO I THINK GAVE THE
15 ATTORNEY GENERAL THE IMPETUS AND THE KNOWLEDGE TO GO
16 FORWARD ON KELLY TURNER. HE WAS NEVER A FINANCIAL
17 BENEFACTOR OF THIS BUSINESS. HE DIDN'T HAVE ONE THING.
18 AND WHEN HE COMES OUT OF PRISON, YOUR HONOR, HE'S NOT
19 GONNA HAVE ONE THING.

20 I THINK HE WAS USED. I WENT BACK AND LOOKED
21 THROUGH ALL OF THE DISCOVERY INFORMATION AGAIN OVER THE
22 WEEKEND JUST TO MAKE SURE I WAS RIGHT. THERE WAS NOT
23 ANY -- HE ACCUMULATED NO ASSETS FOR ALL THESE DRUGS HE
24 SUPPOSEDLY MOVED -- THAT HE ADMITTED MOVING. HE'S NOT
25 DENYING HE MOVED THEM. BUT IT WAS TO FEED A HABIT, A

1 HABIT THAT HE VOLUNTARILY WENT INTO, A HABIT THAT HE
2 DOES NOT DENY HAVING.

3 I'M NOT SURE IF I PUT METHAMPHETAMINE ON
4 THIS TABLE RIGHT NOW, HE COULD NOT PICK IT UP AND IN
5 SOME WAY TRY TO USE IT IN FRONT OF YOUR HONOR. THAT'S
6 HOW BAD HIS ADDICTION WAS.

7 I THINK HE WAS USED IN LARGE PART BY HIS
8 FAMILY. I THINK THE PLEA YOU JUST HEARD FROM
9 MS. TURNER, I THINK HER AND JAY JAY BENEFITTED SO MUCH
10 FINANCIALLY FROM THIS, HE WAS USED AS A PAWN IN SOME
11 WAYS. BUT HE ALLOWED HIMSELF TO BE. LIKE I SAID, I
12 DON'T MITIGATE WHAT HE -- I DON'T EXCUSE WHAT HE DID,
13 BUT I THINK SOME MITIGATION IS WARRANTED HERE.

14 HE WAS USED AS A PAWN BY BOTH OF THEM. WHEN
15 YOU HEARD THE STATEMENT DURING MS. TURNER'S PLEA THAT
16 SHE NEVER PUT HER HANDS ON DOPE, IT'S BECAUSE THEY PUT
17 IT IN JOSH'S HANDS TO DELIVER IT. I ALWAYS SAY
18 DENIABILITY. THEY WERE ALWAYS ABLE TO DENY. THEY USED
19 HIM.

20 YOUR HONOR, AND TO GIVE YOU ANOTHER EXAMPLE,
21 HE WAS ARRESTED, AS I TOLD YOU, AUGUST 21ST, 2005. I
22 THINK EVERYONE ELSE IN THE CONSPIRACY WAS ARRESTED
23 SHORTLY THEREAFTER. HIS FAMILY AT THAT TIME BASICALLY
24 IN SOME WAYS ABANDONED HIM FROM THE STANDPOINT --
25 EVERYBODY ELSE I THINK INVOLVED FAMILY-WISE IN THIS

1 CONSPIRACY HAD LEGAL REPRESENTATION RIGHT OFF THE BAT.
2 I WAS ACTUALLY RETAINED BY OTHER PEOPLE WILLING TO HELP
3 OUT MR. TURNER I THINK TEN DAYS BEFORE THE FIRST STATUS
4 CONFERENCE HERE BEFORE YOUR HONOR.

5 AND I WOULD LIKE TO PUT ON THE RECORD I
6 THANK THE ATTORNEY GENERAL'S OFFICE, AND I KNOW
7 MR. TURNER AGREES. THEY QUICKLY PROVIDED DISCOVERY AND
8 HELPED GET ME UP TO SPEED AND ALLOWED ME TO REPRESENT
9 HIM.

10 YOUR HONOR, I'VE REPRESENTED, I'VE BEEN IN
11 THIS FOR 17 YEARS, BOTH SIDES OF THE AISLE, STANDING
12 WHERE THE ATTORNEY GENERAL IS AND AS A SOLICITOR AND
13 BEEN ON THIS SIDE. WHILE WHAT HE DID IS BAD, AND AS THE
14 COURT HAS MENTIONED TO SEVERAL PEOPLE TODAY, TO PUT
15 DRUGS IN PEOPLE'S HANDS, THERE'S NO EXCUSE FOR IT,
16 THERE'S NO EXCUSE FOR WHAT HE PUT IN HIS BODY FOR THE
17 LAST FOUR OR FIVE YEARS.

18 I DON'T THINK HE'S ANY WORSE THAN THE PEOPLE
19 WHO BENEFITTED FINANCIALLY IN THIS CONSPIRACY. HE WAS
20 USED. HE ALLOWED HIMSELF TO BE USED. BUT IN SOME WAYS
21 I ALWAYS -- I DON'T KNOW IF WE CAN EVER STOP THE FLOW OF
22 DRUGS, BUT I THINK WE GOT TO CUT OFF THE MONEY TO STOP
23 THE FLOW.

24 YOUR HONOR, I UNDERSTAND THE ATTORNEY
25 GENERAL'S RECOMMENDATION, 18 YEARS. WHEN THEY FIRST

1 PICKED HIM UP, HE WAS SO STRUNG OUT, THEY TRIED TO GET
2 HIM TO COOPERATE. HE COULDN'T TALK. AND IF HE HAD
3 TALKED, IT PROBABLY WOULDN'T HAVE DONE THEM ANY GOOD.
4 HE WAS IN A FAR AWAY LAND. AS SOON AS I GOT INVOLVED IN
5 THE CASE, HE SAT DOWN WITH AGENT DORSEY ON TWO
6 OCCASIONS, MS. PORTER I THINK ON TWO OCCASIONS -- ONE OR
7 TWO OCCASIONS, I DON'T WANT TO MISSPEAK -- TOLD THEM
8 EVERYTHING HE KNEW, WAS WILLING TO TESTIFY AGAINST ANY
9 AND EVERYBODY HE KNEW ABOUT.

10 YOUR HONOR, HE KNOWS HE'S GOT TO PAY A
11 PRICE. HE'S ALREADY UNDER A, AS THE ATTORNEY GENERAL
12 TOLD YOU, A 90-MONTH ---

13 **THE COURT:** WHAT IS THAT SENTENCE FOR?

14 **MR. POSEY:** IT IS FOR A WEAPONS CHARGE THAT
15 WAS INITIALLY INDICTED BY THE ATTORNEY GENERAL AS PART
16 OF THIS CONSPIRACY AS WELL. THE FEDS ADOPTED IT BECAUSE
17 IT WAS IN RELATION TO DRUGS BEING PRESENT. HE RECEIVED
18 A 90-MONTH SENTENCE ON THAT.

19 THE ATTORNEY GENERAL DISMISSED THE CHARGE
20 ONCE THE FEDERAL PROSECUTION WAS THROUGH WITH THAT
21 PARTICULAR COUNT OF THE INDICTMENT.

22 JUDGE, HE'S GONNA SPEND A GOOD BIT OF TIME
23 IN JAIL. I WISH IN SOME WAYS YOU COULD SUSPEND ONE OF
24 THESE SENTENCES WHICH OUR LEGISLATURE IN THEIR INFINITE
25 WISDOM HAS DENIED YOU THE ABILITY TO DO. BECAUSE WHEN

1 HE COMES OUT, HE'S GONNA NEED SOME HELP. HE'S GONNA
2 NEED SOME HELP.

3 HE'S GOT TO PAY A PRICE FOR WHAT HE DID. I
4 THINK 18 IS FAR TOO HIGH A PRICE FOR HIM TO PAY, IN
5 RELATION TO ESPECIALLY WHAT PEOPLE WHO SPENT ALL THE
6 MONEY THAT WAS ACCUMULATED, BENEFITTED FROM THE ASSETS
7 OF THIS RECEIVED. BECAUSE I THINK IF YOU HAD THE
8 ATTORNEY GENERAL PUT HIM ON THAT LINE, I THINK HE WOULD
9 BUTT RIGHT NEXT TO KELLY TURNER. AND I DON'T THINK I'M
10 MISSPEAKING THERE. THEY WOULD BE RIGHT NEXT TO EACH
11 OTHER.

12 **THE COURT:** THAT'S ALL RIGHT.

13 **MR. POSEY:** YOUR HONOR, I WOULD ASK YOU TO
14 CONSIDER -- I'M NOT EVEN GONNA ASK YOU TO GIVE HIM THE
15 SEVEN THAT YOU COULD GIVE HIM. I WOULD ASK YOU TO
16 CONSIDER A SENTENCE AROUND 10 TO 11 YEARS. THAT WOULD,
17 HE WOULD STILL OWE THE STATE A LITTLE BIT. I'LL ALSO
18 ASK YOU -- AND I DON'T THINK THE ATTORNEY GENERAL --
19 THEY'VE ASKED YOU TO RUN EVERYTHING CONCURRENT, WHICH WE
20 APPRECIATE. ALSO ALLOW HIM TO SERVE SENTENCE IN A
21 FEDERAL FACILITY UNTIL THAT SENTENCE RUNS OUT, WHICH I
22 THINK YOU CAN INDICATE ON YOUR SHEET, AND I THINK IN THE
23 END THAT'S GONNA BE UP TO THE FEDERAL AUTHORITIES. BUT
24 USUALLY THEY WILL ALLOW IT TO WORK THAT WAY.

25 HE WOULD STILL OWE THE STATE SOME TIME EVEN

1 UNDER THAT AFTER HE'S DONE. FEDERAL SENTENCE IS DAY FOR
2 DAY, NO PAROLE ON THAT.

3 YOUR HONOR, JOSH IS NOT AN INTELLIGENT MAN.
4 I THINK HIS FAMILY PLAYED ON THAT. I THINK THEY PLAYED
5 ON HIS VULNERABILITY AND WEAKNESS TO DRUGS. I WOULD
6 JUST ASK THE COURT TO TAKE THAT IN CONSIDERATION. HE
7 HAS BEEN A MAN ABOUT THIS FROM DAY ONE, AND I THINK THAT
8 RANGE OF SENTENCE WOULD BE A FAIR SENTENCE. IT'S NOT AN
9 EASY SENTENCE, IT TAKES TEN YEARS OUT OF HIS, ROUGHLY
10 TEN YEARS OUT OF HIS LIFE, WITH NO PAROLE.

11 AND I WOULD JUST ASK THE COURT I THINK, IN
12 LINE WITH WHAT OTHER PEOPLE HAVE GOTTEN, AND HIS ACTUAL,
13 WHILE HIS INVOLVEMENT IN MOVING AMOUNTS MAY HAVE BEEN
14 GREATER, I DON'T THINK HIS BENEFIT WAS NEAR WHAT MANY
15 OTHERS WAS IN THIS CASE. HIS BENEFIT WAS TO CONTINUE A
16 FIENDISH ADDICTION. AND I APPRECIATE THE COURT'S
17 INDULGENCE.

18 **THE COURT:** THANK YOU, SIR.

19 ANYTHING YOU WOULD LIKE TO SAY, MR. TURNER?

20 **THE DEFENDANT:** YES, SIR. I WANT TO
21 APOLOGIZE FOR MY INVOLVEMENT IN ALL THIS. AND I GOT
22 HOOKED ON DRUGS, AND THAT HAS A LOT TO DO WITH WHAT I
23 WAS OUT THERE DOING. AND I JUST NEED SOME HELP GETTING
24 OFF OF THEM NOW.

25 **MR. POSEY:** YOUR HONOR, HE'S BEEN IN

1 ANDERSON CITY JAIL FOR THE PAST I GUESS 16 MONTHS NOW.
2 THEY RECENTLY HAD A MURDER DOWN THERE -- NOT A MURDER.
3 SOME INMATE BROUGHT IN METH TO THE JAIL AND KILLED
4 ANOTHER INMATE. MR. TURNER KNEW THAT, WAS HELPFUL TO
5 THAT, AS WELL.

6 YOUR HONOR, AND HE TOLD ME THE LAST TIME I
7 TALKED TO HIM AT THE JAIL, WHICH WAS LAST WEEK, HE
8 WISHED HE'D HAVE BEEN THE ONE TO TAKE THAT AMOUNT TO END
9 IT. IT'S RUINED HIM AND HIS FAMILY. HE BASICALLY WILL
10 NOT HAVE A FAMILY WHEN HE GETS OUT. I THINK THIS WHOLE
11 CASE HAS SPLIT THAT AND WILL FOREVER SPLIT IT.

12 **MS. EVANS:** YOUR HONOR, I WOULD LIKE TO BE
13 HEARD. AS MS. PORTER SAID, OUR RECOMMENDATION ON
14 MS. TURNER WAS NOT WHAT WE BELIEVED, IT'S WHAT WE COULD
15 PROVE AND BRING INTO COURT, ACTUAL COURT. ALTHOUGH WE
16 ARE NOT SAYING HE BENEFITTED FINANCIALLY, THE AMOUNT OF
17 METH THAT HE MOVED FOR JAY JAY -- AND I'M NOT STANDING
18 HERE DEFENDING JAY JAY TURNER ONE BIT WHATSOEVER. HE'S
19 COMING BEFORE YOU. HE'S GOTTEN EVERYBODY INVOLVED IN
20 THE METH. HIS COOPERATION HAS BEEN IMMENSE AND WE HAVE
21 BEEN ABLE TO GET ALL THE WAY UP TO WHAT WE THINK IS A
22 SUPER LAB OUTSIDE OF ATLANTA. I'M NOT SITTING HERE
23 DEFENDING HIM. BUT PEOPLE ARE PAID IN DIFFERENT WAYS.

24 JUST BECAUSE THIS INDIVIDUAL CHOSE TO USE
25 THE MASSIVE AMOUNTS OF DRUGS HE WAS USING AND JAY JAY

1 TURNER CHOSE TO KEEP THE MONEY, IT'S STILL THE MASSIVE
2 AMOUNT OF DRUGS THAT THIS INDIVIDUAL WILLINGLY, WHETHER
3 BECAUSE OF AN ADDICTION OR NOT, BROUGHT ALL THOSE DRUGS
4 TO ALL THESE INDIVIDUALS. THERE'S NO LOW PLAYERS
5 ANYWHERE ON THIS CHART EXCEPT FOR MAYBE SOME OF,
6 MS. MCALISTER AND SOME USER AMOUNTS. THESE ARE ALL
7 MAJOR DRUG DEALERS HERE, AND THE AMOUNT INVOLVED THAT HE
8 HAD WITH HIS BROTHER, WHETHER IT WAS BECAUSE OF AN
9 ADDICTION OR BECAUSE OF AN ADDICTION TO MONEY, IT MAKES
10 NO DIFFERENCE WITH THE AMOUNT OF DRUGS HE WAS DOING.

11 WE ARE NOT CHARGING HIM WITH MONEY
12 LAUNDERING. WE'RE NOT CHARGING HIM FOR DOING THIS FOR A
13 PROFIT TO LIVE A DIFFERENT LIFE-STYLE. WE ARE CHARGING
14 HIM WITH DISTRIBUTING LARGE AMOUNTS OF METH IN AND
15 AROUND OCONEE, ANDERSON, GREENVILLE AND PICKENS COUNTY,
16 AND BEING USED AS THE MULE.

17 I KNOW IT WAS A LONG TIME AGO, BUT THESE TWO
18 INDIVIDUALS WERE JUST THE MULE FOR THE MAIN PEOPLE.
19 THAT'S HOW DRUG DEALERS DEAL IN THIS BUSINESS. HE
20 KNOWINGLY LET HIMSELF BE A MULE.

21 IN ADDITION, WE'VE HAD TO DROP THIS DOWN AND
22 IGNORE TWO PRIOR DRUG CONVICTIONS JUST TO GET HIM AT
23 THIS LEVEL WHERE HE'S NOT FACING A MANDATORY 25 YEARS,
24 WHICH WE DROPPED DOWN. NOT TO MENTION WITHIN A HALF
25 MILE OF AN ELEMENTARY SCHOOL HE WAS CAUGHT WITH 105

1 GRAMS OF METH AND 105 GRAMS OF MARIJUANA.

2 I WOULD ASK THAT YOU DO GIVE HIM A
3 SUBSTANTIAL SENTENCE BECAUSE OF THE DIFFERENT DRUGS
4 INVOLVED, BECAUSE OF HIS LEVEL OF INVOLVEMENT, AND IF
5 YOU DO WANT TO SUSPEND SOME SORT OF SENTENCE, YOU CAN
6 SUSPEND THE PROXIMITY CHARGE. THE LEGISLATURE HAS NOT
7 TAKEN AWAY YOUR ABILITY TO SUSPEND THAT. HE IS GOING TO
8 HAVE SUPERVISED RELEASE ON HIS FEDERAL SENTENCE.

9 BUT I THINK JUST THE SHEER AMOUNT OF DRUGS,
10 THE REASON FOR IT IS ALL DIFFERENT. SOME PEOPLE DO IT
11 TO FEED THEIR HABIT. HE CLEARLY HAD A MORE EXPENSIVE
12 HABIT. IT DOESN'T NEGATE THE AMOUNT OF DRUGS THAT HE
13 HELPED HIS BROTHER JAY JAY GET IN AND AROUND THE STREET
14 AND THE AMOUNT OF PEOPLE THAT THEY GOT AND KNOWINGLY
15 DOING IT, YOUR HONOR.

16 PEOPLE HAVE ALL DIFFERENT MOTIVATIONS. I
17 THINK THAT FROM HIS LEVEL OF INVOLVEMENT, HIS RECORD,
18 AND THE OTHER DRUGS AND THE PROXIMITY BEING WITHIN A
19 HALF MILE OF AN ELEMENTARY SCHOOL HERE IN GREENVILLE
20 COUNTY, THAT HE DOES DESERVE A LITTLE BIT MORE TIME THAN
21 SOME OF THE OTHER PEOPLE. BUT I AM IN NO WAY DEFENDING
22 JAY JAY TURNER AND HIM GETTING HIS BROTHER INVOLVED.

23 **MR. POSEY:** AND, YOUR HONOR, I THINK I MADE
24 IT CLEAR THAT I WAS NOT EXCUSING MR. TURNER'S ACTIONS.
25 BUT CONSIDERING THAT THREE OF HIS PRIOR CONVICTIONS

1 BASICALLY WERE FOR POSSESSION OF MARIJUANA, ONE FOR
2 MANUFACTURING OF MARIJUANA, WHICH HE WAS GROWING PLANTS
3 BASICALLY FOR HIS OWN USE AND HE GOT CAUGHT.

4 THOSE WERE HIS PRIOR DRUG CONVICTIONS. IT
5 WASN'T DISTRIBUTING METHAMPHETAMINE, IT WASN'T DOING
6 THAT. AND, YOUR HONOR, I WILL FORCEFULLY UNTIL THE DAY
7 I DIE DISAGREE WITH THE ATTORNEY GENERAL. THERE IS A
8 DIFFERENCE IN PEOPLE WHO MAKE MONEY OFF OF DRUGS AND
9 PEOPLE WHO ARE DRAWN IN AND PREYED UPON A WEAKNESS TO
10 DELIVER SYSTEM. THE PEOPLE WHO MAKE PURE MONEY OFF
11 DRUGS TO ME ARE MUCH MORE EVIL IN THE DRUG TRADE THAN
12 ANYBODY WHO IS BROUGHT IN BY AN ADDICTION.

13 **THE COURT:** ANYTHING ELSE?

14 **MS. EVANS:** NOTHING ELSE FROM THE STATE.

15 **THE COURT:** MR. TURNER, ANYTHING?

16 **THE DEFENDANT:** NO, SIR.

17 **THE COURT:** WHEN WE TALK ABOUT THE
18 SIGNIFICANCE OF TRANSPORT, YOU MIGHT REMEMBER THE BATTLE
19 OF BOSWORTH FIELD. FOR WANT OF A NAIL, A SHOE WAS LOST.
20 FOR WANT OF A SHOE, A HORSE WAS LOST. FOR WANT OF A
21 HORSE, A KINGDOM WAS LOST. THAT TRANSPORT, THAT HORSE,
22 WAS SO IMPORTANT TO RICHARD THE THIRD, HE LOST THE
23 KINGDOM AND HE LOST HIS TRANSPORT.

24 SO I DON'T KNOW WHY PEOPLE BENEFIT OR HOW
25 THEY BENEFIT. IT'S WHAT THEY DO THAT FURTHERS THEIR

1 ENTERPRISE. AND ALTHOUGH I HAVE AS MUCH COMPASSION FOR
2 YOU AS I DO ANYONE ELSE WHO OBVIOUSLY HAS BEEN
3 OVERREACHED, I CAN'T IGNORE WHERE YOU FIT IN THE SCHEME
4 OF THINGS. ALL RIGHT.

5 MR. POSEY: AND, YOUR HONOR, CAN I POINT OUT
6 ONE OTHER THING?

7 THE COURT: PLEASE.

8 MR. POSEY: AND I UNDERSTAND THAT MR. TURNER
9 IS PLEADING TO YOU NEXT, AND THE ONLY THING I HAVE TO GO
10 ON IS WHAT'S BEEN DONE UP TO THIS POINT. HE IS
11 CURRENTLY UNDER A 15-YEAR SENTENCE BY YOUR HONOR. I
12 DON'T KNOW THE ATTORNEY GENERAL'S POSITION AND I'M NOT
13 HERE TRYING TO INFLUENCE MR. WATSON'S CASE AT ALL. BUT
14 MR. TURNER IS SENTENCED BY YOUR HONOR TO 15 YEARS ON ONE
15 OF THESE CONSPIRACY CHARGES.

16 AND I'M NOT SPEAKING FOR YOUR HONOR. I
17 DON'T KNOW WHAT YOU'RE GONNA DO WHEN HE PLEADS IN FRONT
18 OF YOU. BUT AS MR. JOSH TURNER'S LAWYER, I HAVE TO USE
19 THAT AS A BASELINE. IF HE ENDS UP WITH A 15-YEAR
20 SENTENCE, IT WOULD BE HARD FOR ME TO FATHOM THAT JOSH
21 TURNER COULD RECEIVE MORE TIME THAN HIS BROTHER IN THIS
22 CASE.

23 THE COURT: WHAT SORT OF RECORD DOES HIS
24 BROTHER HAVE?

25 MR. POSEY: I HAVE NO IDEA, YOUR HONOR, BUT

1 I KNOW THE AMOUNT OF ---

2 **THE COURT:** DID HE HAVE A RECORD THAT WOULD
3 REQUIRE A MINIMUM SENTENCE OF 25 YEARS?

4 **MR. POSEY:** I THINK SO, YOUR HONOR.

5 **MS. EVANS:** YES, HE DID. YOUR HONOR, WE
6 RECOMMENDED 20 YEARS. HE'S PLEADING GUILTY TO
7 ADDITIONAL CHARGES. AND, YOUR HONOR, THAT WAS THE
8 INITIAL SENTENCE. WE DID ONE PLEA AND WITHHELD OTHER
9 ONES BEING THAT HE'S SUCH AN INTEGRAL PART TO SO MANY
10 CASES, WE HAD TO WAIT TO SEE IF THEY ALL WERE. WE HAVE
11 FOR A 20-YEAR ---

12 **THE COURT:** WELL, I CAN ASSURE YOU THAT I DO
13 NOT SENTENCE PEOPLE BASED ON SOMEBODY ELSE'S SENTENCE.

14 **MS. EVANS:** BUT WE ARE GOING TO BE ASKING
15 FOR 20 YEARS ON HIM.

16 **THE COURT:** I DON'T CARE -- I'M NOT GOING TO
17 BE CONCERNED. IN FACT, I LOOK AT THE CONSTITUTION
18 OCCASIONALLY AND I KNOW ABOUT EQUAL PROTECTION, BUT I
19 HAVE YET TO KNOW ABOUT THE EQUAL PUNISHMENT CLAUSE.
20 EACH CASE STANDS ON ITS OWN. SINCE PLANS HAVE BEEN MADE
21 TODAY ON THEIR OWN BOTTOM, I GUESS YOU WOULD SAY SIT ON
22 THEIR OWN BOTTOM.

23 ALL RIGHT. ANYTHING ELSE, MR. POSEY?

24 **MR. POSEY:** NO, SIR, YOUR HONOR.

25 **THE COURT:** ANYTHING FROM THE STATE?

1 MS. EVANS: NO, SIR.

2 THE COURT: MR. TURNER?

3 THE DEFENDANT: NO, SIR.

4 THE COURT: MR. TURNER, ANYTHING ELSE YOU
5 WOULD LIKE TO SAY?

6 THE DEFENDANT: NO, SIR.

7 SENTENCE OF COURT:

8 THE COURT: INDICTMENT 2005-GS-47-21, THE
9 STATE VERSUS ERIC JOSHUA TURNER, COUNT ONE, THE SENTENCE
10 OF THE COURT IS THE DEFENDANT BE COMMITTED TO THE STATE
11 DEPARTMENT OF CORRECTIONS FOR A TERM OF 18 YEARS PLUS
12 PAY THE COSTS AND ASSESSMENTS AS APPLICABLE.

13 COUNT SIX, THE SENTENCE OF THE COURT IS THE
14 DEFENDANT BE COMMITTED TO THE STATE DEPARTMENT OF
15 CORRECTIONS FOR A TERM OF 18 YEARS PLUS PAY THE COSTS
16 AND ASSESSMENTS AS APPLICABLE.

17 COUNT FIVE, IT'S THE SENTENCE OF THE COURT
18 THE DEFENDANT BE COMMITTED TO THE STATE DEPARTMENT OF
19 CORRECTIONS FOR 18 YEARS PLUS PAY THE COSTS AND
20 ASSESSMENTS AS APPLICABLE.

21 DEFENDANT BE GIVEN CREDIT FOR 809 DAYS TIME
22 SERVED. THOSE SENTENCES TO RUN CONCURRENT. ALSO, WHILE
23 INCARCERATED, HE IS TO UNDERGO DRUG AND ALCOHOL TESTING
24 AND TREATMENT AND SUBSTANCE ABUSE COUNSELING TO INCLUDE
25 A.T.U. WHILE INCARCERATED.

1 INDICTMENT NUMBER 2005-GS-47-21, COUNT
2 SEVEN, THE SENTENCE OF THE COURT IS THE DEFENDANT BE
3 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
4 TERM OF TEN YEARS, PROVIDED UPON PAYMENT OF COSTS AND
5 ASSESSMENTS AS APPLICABLE. THE BALANCE IS SUSPENDED
6 WITH PROBATION FOR FIVE YEARS. THIS SENTENCE TO RUN
7 CONSECUTIVE TO THE SENTENCES ON 2005-GS-45-21 COUNT ONE,
8 COUNT FIVE AND COUNT SIX.

9 SPECIAL CONDITIONS OF THE SENTENCE IS THAT
10 HE IS TO UNDERGO DRUG AND ALCOHOL TESTING AND TREATMENT
11 AND SUBSTANCE ABUSE COUNSELING WHILE ON PROBATION.

12 ALL RIGHT. GOOD LUCK TO YOU, SIR.

13 MR. POSEY: YOUR HONOR, CAN HE SERVE THAT IN
14 A FEDERAL FACILITY?

15 THE COURT: WHERE DO I PUT THAT ON THERE?

16 MR. POSEY: INDICATE THAT IT'S A SPECIAL
17 CONDITION, YOUR HONOR, THAT HE BE ALLOWED TO SERVE HIS
18 SENTENCE IN A FEDERAL FACILITY.

19 THE COURT: I'LL PUT IT ON FIVE SINCE THAT'S
20 THE ONE THAT HAS SPECIAL CONDITIONS.

21 MS. EVANS: THANK YOU, YOUR HONOR.

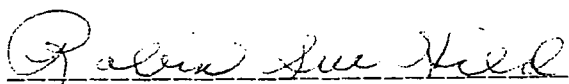
22 ***** END OF REQUESTED TRANSCRIPT OF RECORD *****
23
24
25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE THIRTEENTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
THE EVIDENCE INTRODUCED IN THE SENTENCING HEARING OF THE
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
GENERAL SESSIONS FOR GREENVILLE COUNTY, STATE GRAND
JURY, SOUTH CAROLINA, ON THE 19TH DAY OF NOVEMBER, 2007

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MAY 4, 2009



ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

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

ERIC JOSHUA TURNER)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2008-CP-23-

8783

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention FCI, Fort Dix, P.O.BOX 2000, FORT DIX, NJ 08640
2. Name and location of Court which imposed sentence County of Greenville, S.C.
3. Name(s) of co-defendant(s) (if any) see attached brief
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: Case No. 05GS47 21/2005GS2304485/2005GS2304486 2005GS2304487/ 2005GS2304488 /
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 19, 2007, 18 years
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (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. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel failure to file timely notice o appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See attached brief

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

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

- (a) Ineffectice Assistance of Counsel
- (b) Breach of the guilrty Plea
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

Petitioner seeks specific preformance of the plea deal with state.

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

Yes

STATE OF ^{New Jersey} SOUTH CAROLINA)

County of Burlington)

VERIFICATION

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

x Eric Turner

SWORN to and subscribed before me this 4th
day of November, 2008.

[Signature] (L.S.)
Notary Public

My Commission Expires: 05/26/2011

JOSE J. CURBELO
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 5/26/2011

NOTARY PUBLIC
JOSE J. CURBELO
5/26/2011

2008 NOV 21 PM 4:26

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

I, ^E~~Eric~~ Joshua Turner, 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.

Eric Turner

Applicant

SWORN or affirmed to and subscribed before me this
4th day of November, 2008.

[Signature]
Notary Public

My Commission Expires: 05/26/2011

JOSE L. CURBELO
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 5/26/2011

IN THE STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

ERIC JOSHUA TURNER

vs.

STATE OF SOUTH CAROLINA

:
:
:
:
:
:
:

CASE NO: 2005GS2304485
2005GS2304486
2005GS2304487
2005GS2304488

BRIEF IN SUPPORT FOR APPLICATION FOR
POST-CONVICTION RELIEF

COMES NOW, the Petitioner Eric Joshua Turner, (hereinafter the Petitioner), moves this Honorable Court to set aside, or correct his sentence that was imposed in violation of the Constitutions of the State of South Carolina, and the U.S. Constitutions. (affidavits in support are attached herein).

The Petitioner now file this motion to vacate sentence on three grounds: Firstly, that his trial counsel rendered ineffective assistance of counsel during all stages of the case; and Secondly, the State breached its agreement by not informing the sentencing judge of the promised deal it reached with petitioner;

and Thirdly, the sentence imposed was unreasonable giving the circumstances and role of the petitioner.

These acts and omissions deprived the petitioner of his rights under the Fifth, Sixth, Amendments to the Constitution of the United States. Petitioner further asserts that he would not have pled guilty and would have continued to trial.

Statement Of The Case

On December 13, 2005 the Petitioner was indicted among others in a Six counts indictment by the State Grand Jury of South Carolina, case No.05GS4721 charging the petitioner of Conspiracy of trafficking Methamphetamine, S.C. Code Ann §44-53-375(C)(5); and trafficking of 100 grams or more of Methamphetamine Code Ann. §44-53-375(C)(3); trafficking of 10-28 grams of Methamphetamine S.C. Code Ann §44-53-375 (C)(1); Distribution of Methamphetamine S.C. Code Ann §44-53-375(B); Possession with intent to Distribute Marijuana within proximity of a School S.C. Code Ann §44-53-445 (B)(1).

On or about early 2006, the Petitioner through his trial Counsel negotiated a guilty plea of 10-12 years to be served with the federal charges stemming from drug trafficking related to the present case.

On November 19, 2007 the sentencing judge imposed 18 year sentence to run concurrent with the federal sentence. No appeal was taken due to trial counsel failure to file one; this post-conviction application/ and brief in support followed.

STATEMENT OF QUESTIONS PRESENTED

- I. DID THE PETITIONER RECEIVE CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL DURING THE PLEA NEGOTIATIONS WITH THE STATE; AND DURING THE SENTENCING HEARING ??
- II. DID THE STATE BREACH ITS PLEA AGREEMENT WHEN IT DECLINED TO RECOMAND AND ADVISE THE SENTENCING JUDGE OF ITS PROMISE TO THE PETITIONER OF TEN TO TWELVE YEARS SENTENCE ??
- III. DID THE MOVANT ENTER A VOLUNTARY, KNOWING AND INTELEAGENT GUILTY PLEA AS REQUIRED BY THE CONSTITUTION ??
- IV. WHETHER THE SENTENCE IMPOSED REASONABLE UNDER THE STATE GUIDELINES AND THE FEDERAL GUIDELINES ??

ARGUMENT

The standard of review for a guilty plea on collateral attack was stated by the Fourt Circuit court of appeals, as follows:

Habeas corpus relief is generally available only to to protect against a fundamental defect which inherently results in a complete miscarriage of justice or an omission inconsistaent with the rudimentary demands of fair procedure. Hill v. United States, 368 U.S. 424, 428 82 S.Ct. 468, 471. 7 L.Ed.2d 417; Accordingly, petitioner

must establish that such an event has occured in order to be successful on his claim.

Review of questions relating the effectiveness of counsel in connection with the guilty plea process are governed by the standards set out by the supreme court in Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). This standard states:

To show that ineffective assistance of counsel made his or her guilty plea involuntary, the petitioner must show that (i) his or her counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases, and (ii) there is a reasonable probability that, but for counsel's errors, he or she would have proceeded to trial instead of pleading guilty.

As a general rule, plea agreements are enforced by the courts, and the state is compelled to comply with the obligations with which it agrees to undertake, as set forth herein. Santobello vs. New York, 404 U.S. 257 (1971); The State must strickly adhere to the terms of the bargain it strikes with defenadnts. The Court must scrutinize closely the promise made by the State in order to determine whether it has performed. In the case at bar, the promise in question was its recomandation to the court of 10-12 years sentence. rather than its silence during the sentencing haering.

I. DID THE PETITIONER RECEIVE CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL DURING THE PLEA NEGOTIATIONS WITH THE STATE; AND DURING THE SENTENCING HEARING.

The Petitioner assert that he received ineffective assistance of counsel throughout the pretrial stage and during the sentencing hearing. The decision whether to plead guilty or contest a criminal charge is ordinarily the most important single decision in any criminal cases. This decision must ultimately be left to the client's wishes.... But counsel may and must give the client the benefit of counsel's professional advise on this crucial decision, Anthony G. Amsterdam, Trial Manual 5 for Defense of Criminal Cases (1988). Trial Counsel grossly underestimated Petitioner's sentencing exposure. The knowledge of the comparative sentence exposure between standing trial and accepting a plea will often be crucial to the decision whether to plead guilty.

In the case at bar, the petitioner was denied all these safe guards required from his trial counsel, trial counsel failed to come close to any of these requirements, rendered his performance deficient under the Washington vs. Strickland, standards. Counsel failed to offer the petitioner any advise or guidance as to the offer and its consequences.

Essentially the basic claims of ineffective counsel center around the failure of counsel to bring to the court's attention of the agreed sentence the parties reached with the prosecution prior to pleading guilty, and hold the government to its promised sentence of 10-12 years,

Trial counsel remained a mute and did not attempt to let the sentencing court be aware of the agreed sentence between the parties, followed by his failure to file notice of appeal challenging the sentence imposed based on the reasonableness and disparity among the defendants. As such, the ineffectiveness of counsel ingredients set forth in Strickland, are unquestionably met in this case. Trial counsel's performance must be deemed deficient under any objective standard of reasonableness. Trial counsel was simply not competent in permitting petitioner to be sentenced without advising the court of the agreement and promised sentence the parties have reached. Counsel's deficiency in this matter obviously greatly prejudiced the outcome of petitioner's sentencing process and left him obligated to an unwarranted harsher sentence.

The petitioner asserts that his trial counsel's performance was deficient, and the deficient performance prejudiced the defendant, Strickland vs. Washington, 466 U.S. at 678 (1984). The first prong test requires the petitioner to show that counsel's representation "fell below an objective standard of reasonableness." Strickland, 466 U.S. at 687-88. This standard is highly deferential, and there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 687. Under the second prong, the petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

"A reasonable probability is a probability sufficient to undermine confidence in the outcome," Id. Counsel's performance must have so "undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result" Id. at 686 the petitioner asserts that the proceeding was "fundamentally unfair or reliable"; without focusing on the outcome. Thus petitioner's sentence should be vacated and corrected.

II. DID THE STATE BREACH ITS PLEA AGREEMENT WHEN IT DECLINE TO RECOMMEND AND ADVISE THE SENTENCING COURT OF ITS PROMISE AND AGREEMENT WITH PETITIONER OF THE TEN TO TWELVE YEARS SENTENCE???

Indeed, not only trial counsel was ineffective, but the prosecutor also breached its agreement with the petitioner, that if plead guilty the State will recommend 10-12 years sentence to be imposed concurrent with his federal sentence. Following the State Grand Jury of South Carolina, #05 GS 4721, the petitioner and trial counsel reached an agreement that he plead guilty to the counts I, V, VI, VII of the indictment the State will recommend to the sentencing court its agreement with the petitioner that he will receive 10-12 years concurrent with his federal sentence. Count I, carries (7 to 30 years), Count V, carries (7 to 30 years); Count VI, carries 5 to 20 years); and Count VII, carries (0 to 10 years). In the case at bar, the State, and trial counsel failed to advise the sentencing court of the deal, all parties agreed to prior to the pleading guilty, during the sentencing hearing trial counsel remarks was vaguely and uncertain when he told the sentencing

court nothing concerning the promised deal he reached with the State and its recommendation as to what sentence he should receive, it is well established that the State's recommendation carried with it a huge respect from the courts in accommodating their requests and desire.

As stated earlier, As a general rule, plea agreements are enforced by the courts' and the State is compelled to comply with the obligations with which it agrees to undertake, as set forth herein, Santobello vs. New York, 404 U.S. 257 (1971) The State must strictly adhere to the terms of the bargain it strikes with defendants. In this case the court was kept in the dark as to the promise the State undertook with the defendant prior to him pleading guilty.

Petitioner's affidavit and his mother will attest to the promises the State made prior to pleading of guilty, trial counsel assist the State in its Breach while remaining a mute during the sentencing hearing. The State has an obligation under the terms of the plea and its verbal agreements and promises with the petitioner's trial counsel and in person. The petitioner respectfully request that this court vacate this sentence and imposed the promised sentence the State offered in order to have its plea of guilt and conviction. For the interest of justice, a specific performance is the appropriate remedy giving the circumstances in this case.

III. DID THE PETITIONER ENTERED A VOLUNTARY, KNOWING AND INTELEAGENT GUILTY PLEA AS REQUIRED BY THE CONSTITUTION

The Petitioner did not enter a knowing and intelligent guilty plea because the plea was based on promise by the prosecutor. The Petitioner entered pleas of guilty on Count I,V,VI,VII of the indictment. The plea was based on negotiated sentence between trial counsel and the presecutor, which the recommendation of 10-12 years, the counts however carries minimum of 7 years and maximum of 30 years. The petitioenr reliance on negotiated plea when he agreed to plea guilty. The colloquy between the trial Court and the Petitioner was limited to naming the crimes charged in the indictment. The Court's inquiry into the defendant's understanding of the nature of the charges was limited.

The Petitioner asserts that the colloquy between the Court and him was inadequate to demonstrate that the defendant had full understanding of the nature of the charges, or of the consequences of his plea, so as to be a valid plea under either the Fifth Amendment to the Constitution, or under Rule 11, Fed.R. Crim. P.

A plea of guilty is constitutionally valid to the extent that it is "voluntary" and "intelligent." Brady v. United States, 397 U.S. 742, 748.

A plea may be involuntary either because the defendant does not understand the nature of the Constitutional protections he is waiving, or because he has such an inadequate understanding of the charges that his plea cannot stand as an intelligent admission

of guilt. Henderson v Morgan, 426 U.S. 637, 645 f n.13, 49 L.Ed.2d 108,114 f n. 13, 96 S.Ct. 2253 (1976).

The Supreme Court has long held that " a plea does not qualify as intelligent unless a criminal defendant first receives real notice of the true nature of the charges against him, the first and most universally recognized requirement of due process."

Smith v. O'Grady, 312 U.S. 329, 334 85 L.Ed.2d 859. Bousley v. U.S., 523 U.S. 614, 140 L.Ed.2d 828,837 (1998). ("Because a guilty plea is an asmission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.).

One of the purposes of Rule 11, Fed.R.Crim.P., is to implement the requirement that a defendant who pleads guilty understands the nature of the charges and the consequences of his plea. Woodward v. United States, 426 F.2d 959,962 (3rd Cir. 1970). The rule is also intended to produce a complete record of the factors relevant to that determination, so as "to eliminate any need to resort to a later fact-finding proceeding in this highly subjective area." McCarthy v. United States, supra, 394 U.S. at 469, 22 L.Ed.2d at 427.

Rule 11(c) provides (in pertinent part):

(c) Advice to Defendant. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, including the effect of any special parole or supervised release

term, the fact that the court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances, and when applicable, that the court may also order the defendant to make restitution to any victim of the offense;

Fed.R.Crim.P., Rule 11(c) (as amended, 1989).

The effect of a failure to comply with the requirements of Rule 11 depends on the nature of the failure. Mere technical violations of the procedural requirements of the rule do not warrant setting aside the plea. United States v. Timmreck, 441 U.S. 780, 60 L.Ed.2d 634, 99 S.Ct. 2085 (1979); United States v. DeLuca, 889 F.2d 503, 506-07 (3d Cir.1989).

However, a violation that implicates one of the rule's "core concerns" mandates that the plea be set aside. United States v. Allard, 926 F.2d 1237, 1244-45 (1st Cir.1991), citing McCarthy, 394 U.S. at 471-72, 22 L.Ed.2d at 428, and United States v. v. Cantor, 469 F.2d 435,437(3d Cir.1972).

Most Courts of appeal agree that the three "core concerns" of Rule 11 are 1) that a guilty plea must be free from coercion; 2) the accused must understand the nature of the charges; and, 3) the defendant must be aware of the direct consequences of his guilty plea. United States v. Isom, 85 F.3d 831, 835 (1st Cir. 1996); United States v. Johnson, 1 F.3d 296, 300 (5th Cir. 1993)(en banc); United States v. Zickert, 955 F.2d 665, 668 (11th Cir. 1992).

Thus, when these "core concerns," which are intended to ensure that a guilty plea is voluntary and intelligent, are not fulfilled, the defendant has been denied due process of law, and habeas corpus

relief becomes available to redress the deprivation. United States v. Allard, supra, (Defendant did not understand that mail fraud indictment charged fraud on private hospital as well as fraud on the Commonwealth of Massachusetts); United States v. Scott, 987 F.2d 261 (5th Cir. 1993) (Court failed to advise of consequences of plea, incorrect statement of minimum term, maximum fine, no explanation of supervised release); United States v. Mercer, 691 F.2d 343 (7th Cir. 1982) (Actual consequences of pleading guilty were contrary to the consequences conveyed to the defendant by the district court prior to acceptance of the plea); United State v. Pogue, 865 F.2d 226 (5th Cir. 1989) (Defendant not informed of the possibility of being required to pay restitution, and restitution was ordered).

IV. WHETHER THE SENTENCE IMPOSED WAS REASONABLE UNDER THE STATE GUIDELINES AND THE FEDERAL GUIDELINES ??

The petitioner asserts that the sentence he received is unreasonable under all guidelines, whether federal or State guidelines. The State guidelines calls for a sentence range from 7-20 years as a punishment for such violation of that statute, the petitioner contends that the imposed sentence was greater than necessary to achieve the goal and appropriate sentence for such conduct. It is worthy to notice that the brother of the petitioner received a sentence of 20 years where he was consider the leader organizer in the conspiracy, however the petitioner's role was limited and was considered minimum under the circumstances, he is being punished severely just because he is the brother of the leader organizer in the conspiracy.

The petitioner prays that this court will vacate the sentence and conviction, and initiate an evidentiary hearing as to the reasonableness of the sentence and the role of the petitioner in the conspiracy, in fact the evidence is not supportive of any finding of this harsh sentence.

Furthermore, the State agreed with the petitioner that it will seek only 10-12 years knowingly that what he deserve in terms of punishment, and finally the entire guilty plea was rested on the agreed 10-12 years, which made his guilty plea unknowing and unintelegent.

CONCLUSION

The Petitioner submit that his guilty plea was obtained in violation of the Constitutions of the United states, and respectfully request that his sentence be vacated and resentenced based on the promised 10-12 year sentence the parties agreed to.

Additionally, the Petitioner contends that his trial counsel rendered ineffective assistance of counsel throughout the proceedings by his failure to enforce the guilty plea promises and his failure to let the sentencing court aware of such deal.

For the interest of justice and judicial economy, the Petitioner prays that this court sentence him to the promised 10-12 years.

On November 11, 2008

Via Certified Mail No:
7008 0500 0000 8658 6135

Respectfully Yours

Eric Turner

Eric Joshua Turner
Reg# 13068-171
FCI, Fort Dix
P.O.Box 2000
Fort Dix, NJ 08640

VERIFIED STATEMENT OF ERIC JOSHUA TURNER

I, Eric Joshua Turner, hereby Certify under oath and penalty of perjury that the foregoing statement are true and correct, pursuant to Title 28 U.S.C. §1746, and state the following:

1) that I am the subject matter in this criminal action, and was represented by Attorney Chris Plter Posey Esq. in the matter of State of South Carolina vs. Eric Joshua Turner, case number 2005GS2304485/86/87/88 in the County of Greenville, S.C.

2) that based upon the advise and assurance of trial counsel I agreed to plea guilty to all charges with the promise to receive a concurrent sentence between 10-12 years.

3) that based on the representation of trial counsel, I decided to plea guilty.

4) that during the negotiations my father and mother were aware of the promises made by trial counsel and the prosecuter.

5) that based upon my understanding I was to receive a sentence between 10-12 years only, and the prosecuter will make the sentencing judge aware of such.

6) that I believe I was mislead by trial counsel and I was coerced in pleading guilty based on false promises.

WHEREFORE, I certify that all statements are true and correct.

On November, 11, 2008

X Eric Turner
Eric J. Turner

AFFIDAVIT OF JOHN TURNER

I, John Turner, the father of Eric J. Turner, duly sworn under oath, and the penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and pursuant to Title 28 U.S.C. §1746, do state the followings:

1. That I am the father of Eric J. Turner, whom is the subject person in this affidavit and its written on his behalf.

2. That I have full knowledge of the circumstances of my son and the criminal charges he was faced with.

3. That I was present during discissions took place with his trial counsel, concerning a plea offer submitted by the State prosecutor in the present case.

4. That trial counsel submitted an offer made by the prosecuter on behalf of the State, that if my son pleaded guilty he will receive a sentence between 10-12 years to be served concurrent with the federal cahrges pending for disposition.

5. That trial counsel assured me and my wife of the promised deal of 10-12 years sentence on all charges made against my son in the State of South Carolina, specifically the case at issue now for post conviction relief.

6. That to the best of my knowledge trial counsel failed to advise the court of the promise 10-12 years sentence made by the State.

7. That trial counsel misrepresented himself in making my son to accept guilty plea on promises he failed to bring to the court's attention.

8. That neither the prosector nor trial counsel brought up this promised deal to the court's attention during the sentencing hearing.

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, John Turner, being duly sworn upon my oath, depose and say that I have knowledge of the foregoing matter and submitting this statement under the penalty of perjury to be correct and true to the best of my knowledge.

John N. Turner Sr.

SWORN to and subscribed before me this 14th
day of NOVEMBER 2008.

Yolanda McNeal

Notary Public

(L.S.)

My Commission Expires
My Commission Expires: February 25, 2018

AFFIDAVIT OF HELEN TURNER

I, Helen Turner, Mother of Eric J. Turner, duly sworn under oath, and the penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and pursuant to Title 28 U.S.C. §1746, do state the following:

1. That I am the Mother of Eric J. Turner, the subject matter in this criminal case, submit this affidavit in support of his claim for post conviction relief.
2. That I was present during the plea negotiations between the prosecutor and trial counsel for my son.
3. That I was aware of the offer submitted by the prosecutor to my son through trial counsel, that if he plead guilty to the charges the State will recommend 10-12 years sentence.
4. That trial counsel informed me that these offers are valid and the court abide by such, to dispose of the charges.
5. That trial counsel assured me that my son will receive the promised sentence and that such sentence will run concurrent with the federal sentence my son was charged with.
6. That trial counsel and the prosecutor failed to let the sentencing judge be aware of such deal and stayed silent during the sentencing hearing.
7. That the sentence was harsh giving my son role and involvement in the case.

8. That trial counsel misrepresent to me and my family the deal he strike with the State in reduced sentence if he pled guilty to the cahrges.

STATE OF SOUTH CAROLINA)
County of Pickens)

VERIFICATION

I, Helen Turner, being duly sworn upon my oath, depose and say that I have knowledge of the foregoing matter and submitting this statement under the penalty of perjury to true and correct to the best of my knoweldge. Helen Turner

SWORN to and subscribed before me this 4

day of November 2008

Debra P. Culley (L.S.)

My Commission Expires: September 7, 2010

CERTIFICATE OF SERVICE

I, Eric Joshua Turner, hereby Certify that copy of this post-conviction have been served upon the Assistant Attorney General of the State of South Carolina by U.S. Certified mail return receipt #7008 0500 0000 8658 6081, on the 11th of November 2008.

To: Paul B. Wickensimer, Clerk
Greenville County
305 East North Street
Greenville, South Carolina 29601

To: Assistant Attorney General
Karen Ratigan
Rembert C. Building
P.O.Box 11549
Columbia, SC 29211-1549

On November 11, 2008

X Eric Joshua Turner

Eric Joshua Turner

NOV 17 2008

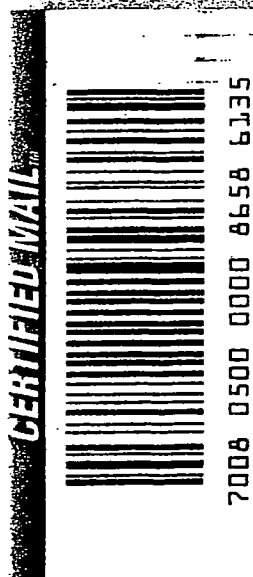
ERIC JOSHUA TURNER

Reg # 13068-17

FCT, Fort Dix

P.O. Box 2000

Fort Dix, NJ 08640



5E1T 9598 0000 0050 9002

Clerk,
Paul B. Wickensimer
GREENVILLE COUNTY CLERK
305 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2008-CP-23-8783
COUNTY OF GREENVILLE	)	
	)	
Eric Joshua Turner,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed November 21, 2008, the Respondent would show this Court:

I.

The Applicant is incarcerated at the Federal Correctional Institution in Fort Dix, New Jersey. The Greenville County Grand Jury indicted the Applicant at the June 2005 term of General Sessions for trafficking methamphetamine (2005-GS-23-4485), possession with intent to distribute (PWID) methamphetamine within proximity of a school (2005-GS-23-4486), PWID marijuana (2005-GS-23-4487), PWID marijuana within proximity of a school (2005-GS-23-4488), possession of a controlled substance (2005-GS-23-5028), and financial transaction card forgery (2005-GS-23-5576). The State Grand Jury indicted the Applicant at the December 2005 term for trafficking methamphetamine (conspiracy) (2005-GS-47-21, count 1), trafficking methamphetamine, more than 100 grams (2005-GS-47-21, count 5), possession with intent to distribute (PWID) marijuana (2005-GS-47-21, count 6), and PWID marijuana within proximity of a school (2005-GS-47-21, count 7). The Applicant was represented by Christopher T. Posey, Esquire.

On November 19, 2007, the Applicant pled guilty to two (2) counts of trafficking methamphetamines (28-100 grams), PWID marijuana, and PWID marijuana within proximity of a school.¹ The Honorable Alexander S. Macaulay sentenced the Applicant to concurrent terms of eighteen (18) years on each count of trafficking methamphetamines, second offense and eighteen (18) years for PWID marijuana, third offense. Judge Macaulay also levied a consecutive sentence for PWID marijuana within proximity of a school of ten (10) years imprisonment, provided upon payment of costs and assessments the balance is suspended with probation for five (5) years. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of both the Greenville County and State Grand Jury Clerks of Court regarding the subject conviction. The plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel.
2. Breach of the guilty plea.
3. Involuntary guilty plea.
4. Unreasonable sentence.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

¹ The Greenville County charges were not prossed.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland

v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion 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. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (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 Applicant 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) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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 Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, 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

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2008-CP-23-8783

ERIC JOSHUA TURNER)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

**Eric Joshua Turner, 13068-171
FCI Fort Dix
Post Office Box 2000
Fort Dix NJ 08640**

DATED this 2nd day of April, 2009.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 08-CP-23-8783
	)	
Eric Turner,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

May 25, 2010
Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

KAREN RATIGAN, Esquire
Attorney for the State

CAROLINE HORLBECK, Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

I N D E XDIRECT CROSS REDIRECT RECROSS

Christopher Posey

by Ms. Horlbeck 6

by Ms. Ratigan 17

by Ms. Horlbeck 20

John Turner

by Ms. Horlbeck 21

by Ms. Ratigan 23

Susan Porter

by Ms. Ratigan 25

by Ms. Horlbeck 32

Certificate of Reporter 37

EXHIBITS PAGENO.DESCRIPTIONID EV

APPLICANT EXHIBITS

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

THE COURT: My understanding, Ms. Horlbeck, you represent Mr. Turner. He is in federal custody and you will be presenting that and you will waive your client's right to be here. Is that correct?

MS. HORLBECK: That's correct, Your Honor. I do have a petition that Ms. Ratigan also has a copy of ---

THE COURT: Okay.

MS. HORLBECK: --- that I will be handing up and it's signed by Mr. Eric Joshua Turner.

THE COURT: Okay.

MS. HORLBECK: So in place of his testimony, we'll have a petition for Your Honor to review.

THE COURT: All right. Any objection to that mode of proceeding, Ms. Ratigan?

MS. RATIGAN: No, Your Honor. I believe that was actually attached -- pardon me -- to his original PCR application.

THE COURT: Okay.

MS. RATIGAN: If I may, Your Honor, just for the purpose of the record, if I could put in the procedural history of the case.

THE COURT: Yes, ma'am.

1 **MS. RATIGAN:** Mr. Eric Joshua Turner was
2 indicted -- pardon me -- by the State Grand Jury
3 for Trafficking Methamphetamines by Conspiracy,
4 Trafficking Methamphetamines in excess of 100
5 grams, Possession with Intent to Distribute
6 Marijuana and Possession with Intent to
7 Distribute within Proximity. I will note that he
8 also was indicted for Greenville charges. Those
9 charges were nol prossed when he pled guilty to
10 the State Grand Jury charges. He pled guilty on
11 August 22nd, 2006 before Judge McCauley. Pled
12 guilty to two counts of Trafficking
13 Methamphetamines, 28 to 100 grams, second
14 offense, PWID Marijuana third offense and PWID
15 Marijuana within Proximity. Sentencing was
16 deferred at that time.

17 Mr. Turner appeared back before Judge
18 McCauley, November 19th, 2007. At that time, he
19 was sentenced to 18 years for each count of meth
20 -- for Trafficking Methamphetamine second
21 offense, 18 years for PWID third offense, 10
22 years -- and those were to be concurrent, Your
23 Honor. He received a 10-year consecutive
24 sentence for PWID Marijuana within Proximity.
25 Judge McCauley noted that was consecutive

1 provided upon the payment of costs and
2 assessments, the balance would be suspended with
3 five years probation.

4 Again, Mr. Turner is in federal custody. So
5 we are proceeding in his absence today.

6 **THE COURT:** Good enough. Okay.

7 Ms. Horlbeck?

8 **MS. HORLBECK:** Your Honor, the petitioner
9 would call Mr. Posey as the first witness.

10 **THE COURT:** All right.

11 **CHRISTOPHER POSEY**

12 having first been sworn, testifies as follows:

13 **THE CLERK:** You may be seated.

14 **DIRECT EXAMINATION**

15 **BY MS. HORLBECK:**

16 **Q** Mr. Posey, were you hired to represent Eric
17 Joshua Turner in a criminal case?

18 **A** I was.

19 **Q** And what was the charge that -- charges that
20 you represented?

21 **A** He was indicted several times with the State
22 Grand Jury regarding trafficking methamphetamine and
23 also some marijuana charges.

24 **Q** When were -- I'm sorry. Go ahead.

25 **A** And, uh, I was hired to represent him on all

1 of those.

2 Q When were you hired?

3 A Uh, I think it was early August of 2006, I
4 believe.

5 Q Okay.

6 A There was short -- about a week and a half
7 before the plea took place.

8 Q All right. And where you able to get your
9 hands on discovery before the --

10 A I was. Most of it was done by desk.
11 Luckily, Joe Watson represented Mr. Turner's brother.
12 He allowed me, once all the legal things had been met
13 with the Grand Jury, was able to see the discovery and
14 go over it with him and talk with Josh about it prior
15 to the plea.

16 Q All right. At that point, was there a
17 recommendation -- let me back up a little bit. Which
18 Assistant Attorney General was handling the case
19 against Josh?

20 A Susan Porter.

21 Q Okay. And did you have the opportunity to
22 speak with Ms. Porter about a recommendation?

23 A I spoke to her by phone. At that point in
24 time, Josh had refused to cooperate with SLED and the
25 State Grand Jury. There was a plea offer on the

1 table. They included a recommendation for 18 years.

2 Q Okay.

3 A I talked to Ms. Porter once I got in the
4 case. I said, you know, let me -- give me a chance to
5 talk to him and see if I could get him to cooperate.
6 And we then met the day that he entered the plea
7 against Judge McCauley. By that point in time, I had
8 spoken to Josh several times and spoke to his parents
9 as well. He had agreed to cooperate against his, uh,
10 sister-in-law, which is, I think, the person they were
11 most interested in, Kelly Turner.

12 He talked with Ms. Porter about that. She
13 said, well, let's go ahead and do the pleas, go ahead
14 and sign the plea agreement and we will renegotiate if
15 his information proves to be useful and valuable.

16 Q Okay.

17 A I did not get that in writing.

18 Q Okay. It was oral then.

19 A It was oral.

20 Q And did she indicate specifically what
21 information Josh needed to give?

22 A I know Kelly Turner was one of the subjects
23 that they were most interested in. Of course, any
24 information he could provide on any of the other -- I
25 think there were some 30 or 40 people indicted in this

1 thing. Any information I think he could provide, of
2 course, they would be willing to take.

3 Q Did Ms. Porter, at that point, tell you,
4 look, in order for us to renegotiate this 18-year
5 recommendation, Josh Turner has to give us
6 information, enough information so that we can get
7 somebody outside as conspiracy?

8 A No, but it is, in fact, in the plea
9 agreement. I did not, uh, -- it's in the written plea
10 agreement. I think it's in all their written plea
11 agreements.

12 Q Okay.

13 A But my understanding with Ms. Porter at that
14 time was if he cooperates, we will discuss the
15 sentencing again.

16 Q Okay. All right.. And --

17 A He was not sentenced at the time he entered
18 the plea.

19 Q And at that time he entered the plea, did he
20 sign that written plea agreement that the AG's office
21 has?

22 A And I did as well, I believe.

23 Q All right. Now, subsequent to the plea
24 agreement, did Josh cooperate?

25 A Yes, he met with SLED investigators. I

1 forget who the lead was on this case off the top of my
2 head. He met with him two or three times. I know he
3 also met with Ms. Porter, I'm sure of one time, I'm
4 thinking it's two.

5 Q Okay.

6 A But I know of one for sure. Josh was housed
7 at the Anderson Detention Center, the City of Anderson
8 Detention Center. We all met there, I know, with Ms.
9 Porter on at least one occasion. Met with the SLED
10 officer on at least two other occasions, I believe.
11 He basically gave them Kelly Turner in their lap.

12 Q So the information that Josh was able to give
13 the Attorney General's office and their agents was
14 enough that they could then prosecute Kelly Turner?

15 A I think the information he gave them allowed
16 them to prosecute Kelly Turner and secure a guilty
17 plea from her.

18 Q And Kelly Turner -- information on Kelly
19 Turner was something that Ms. Porter told you she
20 specifically was looking for from Josh Turner.

21 A I think both she and the SLED agent in
22 charge. I can't remember his name off the top of my
23 head. But, uh, they, uh, -- both of them wanted
24 Kelly.

25 Q All right.

1 **A** Basically, they were following money trail at
2 that time too.

3 **Q** And information on Kelly Turner was one of
4 the conditions that Ms. Porter set out in order for
5 renegotiation of the recommendation?

6 **A** That was my understanding, yes.

7 **Q** I understand that was oral, correct?

8 **A** Yes.

9 **Q** Okay. All right. Now, was Josh also willing
10 to testify against other co-defendants if necessary?

11 **A** I think there was one other gentleman.
12 Again, I forget specific names. There was one other
13 gentleman in the conspiracy that were willing to use
14 him to testify against, but that gentleman pled guilty
15 and became a moot point.

16 **Q** But he would have?

17 **A** He would have testified, yes.

18 **Q** Did you discuss that with Josh?

19 **A** Yes, basically by that point in time, Josh
20 was willing to pretty much testify against anybody.
21 The only one I'm not sure, if his brother would have
22 went to a jury trial, I'm not sure he would have
23 gotten on the stand against J.J., but he might have
24 even done that at that point in time.

25 **Q** All right. Now, I understand your testimony

1 was the plea agreement or the plea agreement makes it
2 clear that the Defendants have to present information
3 outside of the conspiracy if possible.

4 **A** Yes.

5 **Q** Was it possible for Eric Turner or Eric Josh
6 Turner to give the State any information about anybody
7 out of his little circle?

8 **A** Basically, I don't think so. Eric Joshua
9 Turner was basically a person. His brother was the
10 king of this conspiracy along with a couple of people
11 of Mexican origin. J.J. got Josh hooked on
12 methamphetamine, became his mule. The only people he
13 knew in this whole deal was inside that little circle.

14 **Q** All right. Did Eric Josh Turner, did he do
15 as much as he could have done in your opinion to
16 cooperate with the State?

17 **A** You know, whether he -- I think he did
18 everything that was asked of him.

19 **Q** All right.

20 **A** He may have been able to provide information
21 on some other people I don't know about, but he was
22 never asked about.

23 **Q** Okay. All right. Now, when it came time for
24 the sentencing hearing on August 22nd, 2006 or prior
25 to that day, did you try to discuss the -- did you try

1 to renegotiate the recommendation with Ms. Porter?

2 **A** I think he got sentenced in November of '07,
3 I believe.

4 **Q** I'm sorry. You are correct. November the
5 19th, '07.

6 **A** Basically at that time, that's when was told,
7 no, we will not renegotiate because of what's in the
8 plea agreement, even though he had provided that
9 information.

10 **Q** And did you have subsequent -- did you also
11 talk about what the State would or would not say
12 during the sentencing?

13 **A** I'm not sure it was in that conversation but
14 in a conversation prior to sentencing. I think after
15 that conversation, I probably went to Josh and told
16 him the recommendation wasn't changing.

17 **Q** Okay.

18 **A** I did ask that -- I would not agree with the
19 recommendation. We made that clear. We're not going
20 up there to tell Judge McCauley, yes, we are in
21 agreement, we're going to swallow 18 years.

22 **Q** Okay.

23 **A** The only thing I asked for is as long as I
24 spoke the truth that they not do a rebuttal against
25 what I said, and that was agreed upon.

1 Q Okay. All right. Did you say anything to
2 the court during sentencing that was not truthful?

3 A To my knowledge, no. I don't think anything
4 I said in that whole, I guess mitigation ---

5 Q Okay.

6 A --- part of the plea sentencing, I don't
7 think anything I said was untruthful.

8 Q All right. And even though you said we're
9 just mitigating on behalf of your client, what did the
10 state do?

11 A Jennifer Evans, at that time, spent about the
12 next 15 to 17 minutes telling Judge McCauley what an
13 evil person Eric Joshua Turner was.

14 Q All right. So Ms. Evans handled the actual
15 sentencing hearing and not Ms. Porter?

16 A Ms. Porter was in the courtroom, basically
17 seated at the table in courtroom 8, I believe.

18 Q All right. Was it Ms. Evans or Ms. Porter
19 that agreed not to rebut?

20 A Ms. Porter.

21 Q Ms. Evans handled the plea?

22 A Yes.

23 Q I mean the sentence?

24 A Yes.

25 Q Okay. All right. And when Ms. Evans went on

1 for about 15 to 17 minutes saying what a bad person
2 Mr. Turner was, did you make any sort of objection?

3 **A** I did not object on the record. I did turn
4 around and looked at Ms. Porter and said you need to
5 stop this. She shrugged her shoulders at me a little
6 bit.

7 **Q** All right. Was it stopped?

8 **A** No.

9 **Q** Was Ms. Evans stopped at all?

10 **A** No.

11 **Q** All right. And did you maintain sort of a
12 formal motion for any kind of specific performance of
13 the oral agreement?

14 **A** I didn't at that point in time. I ran
15 through my mind and I wondered what good it would do.
16 In all honesty, the guilty plea had been in. The
17 sentence had been in. Basically, Judge McCauley knew
18 about everything. To be honest with you, I was about
19 as mad as I could get at the time. I was kind of
20 afraid what I would say.

21 **Q** Okay. Did you make a formal motion for
22 specific performance of the oral agreement to
23 renegotiate the recommendation if Mr. Turner
24 cooperated?

25 **A** No, I did not.

1 Q All right. All right. Despite the fact that
2 the recommendation or that they refused to change
3 their recommendation from 18 years, did you and Mr.
4 Turner have any discussions about what you would ask
5 for?

6 A I was asking for somewhere around 12 years.

7 Q Okay.

8 A He's under federal sentence. Forgive me. I
9 don't remember, because I got a lot of things, but
10 it's like a 10-year federal sentence.

11 Q Okay.

12 A It's up in that range right now. Uh, I asked
13 for a 12-year sentence because I knew that would
14 pretty much -- he couldn't never match it up day for
15 day what he would serve. It would be kind of close.
16 And to be honest with you, I thought that was very
17 reasonable for Josh.

18 Q All right. Did you ever tell Josh or any --
19 you know, his parents or anybody that the
20 recommendation was 10 to 12 years?

21 A No. I told them that was what I would always
22 try to seek. But we never had it. I think Josh was
23 clear that we never had it.

24 Q Okay. Do you believe that Mr. Turner
25 detrimentally relied on the State's oral agreement

1 that they would renegotiate if he cooperated?

2 **A** Yes.

3 **Q** Okay. All right. That's all I have. Please
4 answer any questions that the Assistant Attorney
5 General may have for you.

6 **CROSS-EXAMINATION**

7 **BY MS. RATIGAN:**

8 **Q** So when you were retained on the case, that
9 18 years was already outstanding, that plea offer?

10 **A** That was the first offer that was given to
11 me. I guess it was already outstanding. The
12 Solicitor's office gave it him.

13 **Q** And you discussed with Mr. Turner that 18
14 years ---

15 **A** Yes.

16 **Q** --- offer? And you discussed with him that
17 he would have to sign that plea agreement with the
18 State before the plea hearing?

19 **A** Yes.

20 **Q** I believe your testimony was that you had
21 spoken with Ms. Porter before the plea hearing about
22 getting Josh to cooperate?

23 **A** Yes.

24 **Q** And did you and Ms. Porter discuss before the
25 plea hearing precisely what Josh would have to do to

1 get the sentence renegotiated or was it just kind of a
2 general --

3 **A** It was more general. The only specific name
4 was Kelly Turner. But like I said, I think they were
5 willing to listen to anything he could possibly give
6 them, but I know they wanted Kelly.

7 **Q** And your testimony is he did cooperate with
8 SLED and the Grand Jury and that's how they got
9 evidence on Kelly?

10 **A** I think it made it very -- I think it made it
11 much easier for them to get Kelly to plea guilty based
12 on his cooperation.

13 **Q** And sentencing was in November of '07. About
14 how far ahead of that sentencing hearing did you
15 contact the state about renegotiating the sentence?

16 **A** Uh, I don't want to give a specific time. It
17 was not a long time ahead of time. I guess when we
18 started getting the scheduling dates is probably when
19 I probably started contacting -- how don't know how
20 far in advance those came out. Really don't remember
21 off the top of my head.

22 **Q** As a result of those conversations, I believe
23 you testified they weren't willing to back off the 18-
24 year recommendation. And you testified you had spoken
25 with Ms. Porter and you basically had an agreement

1 that as long as everyone was being truthful, that no
2 one would try and rebut your mitigation, does that
3 sound about right?

4 **A** Basically, I was told that the only they were
5 doing at sentencing was reit -- giving Judge McCauley
6 a short reiteration of the facts of the case and as
7 long as I was truthful, they had no reason to rebut.

8 **Q** When did y'all come to that understanding?

9 **A** That was probably a week or so or a few days
10 before the actual hearing.

11 **Q** And you came to that agreement with Ms.
12 Porter?

13 **A** Yes.

14 **Q** And she was in the courtroom that day, but
15 Ms. Evans was the one who actually presented the case?

16 **A** Yes.

17 **Q** Now, you stated that Ms. Evans then kind of
18 went on at some length to basically impugn your
19 client. If you had objected, do you think at that
20 point it would have changed the outcome of the case?

21 **A** No.

22 **Q** Did you, in fact, ask Judge McCauley to
23 depart from the 18-year recommendation and give less
24 time?

25 **A** Yes.

1 **Q** This hasn't been brought up in direct, but I
2 know that it's been an issue, so I just want to ask,
3 did you give Mr. Turner any representations in terms
4 of how much state time he would have to do after he
5 finished his federal sentence?

6 **A** I don't know if we ever discussed it. He was
7 fully aware that he would have state time to do after
8 his federal sentence. The State sentence does run
9 concurrent with the federal sentence. The federal
10 sentence will expire before the state sentence
11 expires.

12 **Q** So he understood that he would have to come
13 back to South Carolina and do some time here after he
14 was released from the federal?

15 **A** To the best of my knowledge, yes, he did.

16 **MS. RATIGAN:** That's all I have, Your Honor.

17 **MS. HORLBECK:** Your Honor, just briefly.

18 **REDIRECT EXAMINATION**

19 **BY MS. HORLBECK:**

20 **Q** Mr. Posey, did you file an appeal in this
21 case?

22 **A** No.

23 **Q** Were you asked to file an appeal?

24 **A** No, I don't believe I was.

25 **Q** That's all I have. Thank you.

1 **THE COURT:** All right. Thank you, Mr.
2 Posey.

3 Anything further from the applicant?

4 **MS. HORLBECK:** Yes, sir. Just briefly, the
5 petitioner would call John Turner.

6 **JOHN TURNER**

7 having first been sworn, testifies as follows:

8 **THE CLERK:** All right. You may be seated.
9 State your full name for the record please.

10 **THE WITNESS:** John Nelson Turner, Sr.

11 **THE CLERK:** Thank you.

12 **DIRECT EXAMINATION**

13 **BY MS. HORLBECK:**

14 **Q** Mr. Turner, what relation to you are Eric
15 Josh Turner?

16 **A** Father.

17 **Q** You need to -- back up just a little bit.

18 **A** Father.

19 **Q** And what's the name of the attorney that
20 represented your son?

21 **A** Christopher Posey.

22 **Q** Did you hire Mr. Posey?

23 **A** Yes, we did.

24 **Q** Now, what was your understanding of the
25 original recommendation? Just to your knowledge. If

1 you don't know, say you don't know. The original
2 recommendation when you hired Mr. Posey.

3 **A** The original recommendation was 18 years.

4 **Q** Okay. And do you know anything about what
5 conditions Mr. -- your son, Josh, had to meet in order
6 to get that recommendation reduced?

7 **A** Yes, I was told if he cooperated with the
8 Grand Jury as far as them being able to indict Kelly
9 that, uh, that his chance was that he would get 18
10 years.

11 **Q** Were you present at the sentencing hearing?

12 **A** Yes, I was.

13 **Q** Had the recommendation changed? At the
14 sentencing hearing, to your knowledge, did the State's
15 recommendation change any?

16 **A** No, it did not.

17 **Q** All right. And did Mr. Posey make an
18 objection during the sentencing?

19 **A** I can't remember.

20 **Q** Do you know if he filed a formal motion to
21 force the State to comply with their oral agreements
22 to renegotiate?

23 **A** Yes, he did.

24 **Q** Okay. He did?

25 **A** Yes.

1 Q All right. Did he -- you saying he did that
2 during the sentencing hearing in November?

3 A No, I think that was done before the hearing.

4 Q Okay. All right. And did you complete an
5 affidavit?

6 A Yes.

7 Q And have you had a chance to review it?

8 A Yes, ma'am.

9 Q And in your affidavit, what did you say your
10 understanding of what the recommendation would be?

11 A Mr. Posey, we were waiting for him to come in
12 and talk to him. He comes in and told us that he had,
13 uh, -- since Josh had cooperated, he had asked for the
14 time to be cut to 10 to 12 years. That's what we
15 thought that he was going to get.

16 Q All right. That's all I have. Please answer
17 any questions the Assistant Attorney General may have
18 for you.

19 **CROSS-EXAMINATION**

20 **BY MS. RATIGAN:**

21 Q Let me make sure I have the timeline right.
22 So did -- Mr. Posey told you he thought Josh would
23 get 10 to 12 years?

24 A Well, no. He didn't say he thought it. He
25 said that they had told him that if Josh cooperated

1 and he gave up Kelly, which he did, that he would
2 probably have a chance of getting 10 years.

3 **Q** And that was between the plea hearing and the
4 sentencing hearing?

5 **A** Yes.

6 **Q** So Mr. Posey just told you that he thought
7 there would be a good opportunity for that?

8 **A** Yes.

9 **Q** Okay.

10 **MS. RATIGAN:** That's all I have, Your Honor.

11 **THE COURT:** Anything further?

12 **MS. HORLBECK:** Nothing further, and
13 petitioner rests.

14 **THE COURT:** You may step down. Thank you
15 for being here, sir. I appreciate that.

16 Anything further from the petitioner?

17 **MS. HORLBECK:** No, Your Honor.

18 **THE COURT:** All right. Anything from the
19 State?

20 **MS. RATIGAN:** Your Honor, the State would
21 call Susan Porter.

22 **SUSAN PORTER**

23 having first been sworn, testifies as follows:

24 **THE CLERK:** State your full name for the
25 record please..

1 **THE WITNESS:** Susan Omert Porter. That's
2 O-L-M-E-R-T, P-O-R-T-E-R.

3 **DIRECT EXAMINATION**

4 **BY MS. RATIGAN:**

5 **Q** And Ms. Porter, where are you currently
6 employed?

7 **A** The Attorney General's Office.

8 **Q** And what is your position in the office?

9 **A** Chief of the Prosecution Division.

10 **Q** Did you hold that position during the
11 pendency of this Operation Ice Cream case?

12 **A** No, I did not. I was an Assistant Attorney
13 General assigned to the State Grand Jury Prosecution
14 Division under Jennifer Evans.

15 **Q** What was your involvement in the overall
16 Operation Ice Cream case?

17 **A** I was the prosecuting attorney.

18 **Q** And Mr. Posey testified he was not the first
19 lawyer on this case. Is that your recollection?

20 **A** As far as representing Eric Turner, I believe
21 that he was the first attorney that I ever dealt with
22 regarding Eric Turner's charges in Operation Ice
23 Cream. Eric -- we adopted some charges from
24 Spartanburg County and included them in our
25 conspiracy. Those were out of Spartanburg -- I think

1 Spartanburg, might have been Greenville County, but
2 nevertheless, we adopted those charges. He may have
3 had an attorney on those charges, but I did not deal
4 with that attorney.

5 Q So who did you convey that 18-year plea offer
6 to? Was it Mr. Posey?

7 A It was. Uh, actually, I wrote the plea offer
8 letters, the offer letters in April of 2006 and then
9 went on maternity leave after the birth of my son.
10 They were actually sent out by Jennifer Evans but I
11 prepared all of them. I believe they were sent out
12 the following month. Actually, I have a copy of the
13 letter here. It's May 18th, 2006.

14 Q And Mr. Posey testified he was retained
15 shortly before the plea. Did you have a conversation
16 with him between the time he was retained in early
17 August and the plea hearing?

18 A I'm sorry. Would you repeat that?

19 Q Mr. Posey stated he was retained very
20 shortly, about a week or two before the plea. Did you
21 have a conversation with him about this 18-year offer
22 between the time he was retained and the plea hearing?
23 Do you remember?

24 A I did. If I may refer to my notes, uh, this
25 was a complex 44-Defendant case. So on each

1 individual, I had a folder that I kept notes on for
2 each Defendant. I have that I sent -- I don't have
3 when he was retained, but the offer letter was sent to
4 Mr. Posey in May of '06. He must have been retained
5 by May 18th. In addition, I had a phone conversation
6 with him on August 1st, 2006. That was after he had
7 informed me that Mr. Turner was accepting our offer.
8 We were scheduling a time for him to be debriefed by
9 Special Agent Max Dorsey, or Lieutenant Max Dorsey
10 now. That debriefing took place on August 7th, 2006
11 and then he plead guilty on August 22nd, 2006.

12 **Q** Prior to the plea offer, did you come to an
13 agreement with Mr. Posey about Josh cooperating?

14 **A** Prior to the plea offer?

15 **Q** To the plea -- let me take that -- prior to
16 the plea hearing?

17 **A** Yes.

18 **Q** What was that agreement that you came to?

19 **A** That if he cooperated and if he testified
20 against co-Defendants and if he was fully debriefed,
21 then he would receive an 18-year recommendation. The
22 18-year recommendation was depended upon his full
23 cooperation, otherwise, we would have gone to trial.
24 He was looking at several mandatory minimums of 25
25 years to 30 years.

1 **Q** Was there any agreement that if he provided
2 specific information about Kelly Turner that you would
3 revisit that 18-year offer?

4 **A** No. What was discussed between Mr. Posey and
5 I is that, pursuant to his plea agreement, we would
6 ask him to plead guilty, to testify against Kelly
7 Turner. He was not the only individual that was going
8 to testify against her. Her husband J.J. Turner was
9 also going to testify against her and some other
10 individuals. But specifically, that was a part of the
11 original plea agreement.

12 Now, in my discussions with Mr. Posey, we
13 talked about the fact that Judge McCauley would
14 oversee the trial and would see Eric Turner's
15 cooperation. We also discussed how Judge McCauley had
16 cut our recommendations in several other Defendants
17 cases and that was not our realm of possibility. But
18 I never indicated that my recommendation would go
19 below 18 years.

20 **Q** So you never said at any point that this was
21 open to renegotiation?

22 **A** I said that he could argue. I expected him
23 to argue for less than 18 years. But that our
24 recommendation would be 18 years. Again, I reiterated
25 that Judge McCauley had gone below us on several

1 different Defendants and that that was a possibility,
2 a strong possibility, particularly if Eric was willing
3 to testify against Kelly Turner.

4 **Q** Now, did Kelly go to trial?

5 **A** No. She ended up pleading guilty. I believe
6 in the sentencing, we even conveyed to the judge, Ms.
7 Evans conveyed to the judge that he was prepared and
8 had met with us to testify against Kelly Turner.

9 **Q** Now, Mr. Posey testified that about a week
10 before the sentencing hearing, the two of you came to
11 an agreement about how sentencing would be handled.

12 **A** We did have a conversation over the
13 telephone. I apologize, I did not write down the day
14 that we had this conversation, but it was probably, I
15 don't know, two to three days before the sentencing
16 hearing on November 19th. I wish I had written more
17 clear notes. My memory of that conversation was Chris
18 was debating or strategizing on whether to go before
19 Kelly, before J.J., after Kelly, after J.J., where to
20 put Eric in the mix of the guilty plea hearings. We
21 had several that day. And to which I said you can
22 choose, it doesn't matter to me. I gave my opinion.

23 I thought that he should go, uh, before --
24 either before J.J. Turner -- well, I did. I thought
25 he should go before J.J. Turner because we were

1 recommending 20 years on J.J. I thought the facts
2 against him were a little more substantial. We were
3 going to go into greater detail on the facts of J.J.
4 to ensure that he did get the 20 years. I thought it
5 would benefit his client to go first.

6 I did agree not to hammer the facts or to go
7 light on the facts. I did convey that to Ms. Evans.
8 Upon looking at the transcript and refreshing my
9 memory of what happened that day, I was present and
10 did listen. I believe she held up our end of the
11 bargain. She reiterated the facts that were presented
12 at the sentencing hearing, and I know this, 1, because
13 I was there and, 2, because she used my notes, my plea
14 notes and basically read them verbatim. I don't feel
15 that we didn't hold up our end of the bargain.

16 **Q** Now, Mr. Posey testified he believed that Ms.
17 Evans went on 15 minutes or so kind of talking about
18 what a bad guy Josh was. Does that jog your
19 recollection?

20 **A** No. My recollection was Mr. Posey, in
21 mitigation, went on and on and on about Eric Turner
22 being a victim and not profiting from his drug
23 dealings other than supporting his own habit. Our
24 evidence did not support that. Although Eric Turner
25 didn't have a number of assets that J.J. Turner did,

1 our evidence is that he was high up on the totem pole,
2 was delivering substantial amounts, pound amounts of
3 methamphetamines for his brother and then had his own
4 business on the side.

5 My recollection was, after Mr. Posey's
6 mitigation, which was a little off the ranch and was
7 not substantiated by our facts, Ms. Evans simply said
8 whether it was to support his habit or not, it was --
9 these are large amounts -- and reminded the Court that
10 we were not talking about dealing a gram here or a
11 gram there, but we were talking about dealing pounds
12 of methamphetamines.

13 **Q** And did you -- was your opinion that she
14 honored the kind of informal agreement you have with
15 Mr. Posey?

16 **A** Either -- the agreement was between Mr. Posey
17 and I. I conveyed to Ms. Evans that we were going to
18 go light on the facts. We weren't going to hammer the
19 facts because Eric had been cooperating. I think she
20 did honor that. I think Mr. Posey went too far in
21 mitigation. I think it was a proportional response to
22 his mitigation.

23 **Q** I'm sorry. If Ms. Evans in your opinion had
24 gone beyond what you had agreed to with Mr. Posey,
25 would you have interjected yourself into the

1 proceedings?

2 **A** Yes, I would have gone and tugged on her
3 sleeve and whispered in her ear.

4 **Q** Your agreement with Mr. Posey did not
5 proclude him for asking for something less than the
6 recommendation?

7 **A** No, my recommendation is he asked somewhere
8 between 10 and 11 years so that Mr. Turner would
9 finish his 90-month sentence in the federal court and
10 only serve a short time in the state court. In
11 addition, we agreed to give him credit for the time he
12 had already served in federal court, which was not
13 necessarily warranted. He was directly indicted on
14 our charges. Not in jail on our charges, he was in
15 jail on the federal charges. So we, I guess, uh, in
16 good faith gave him credit for all the time that he
17 had been in jail on the federal charges. I feel like
18 we did uphold our end of the bargain.

19 **MS. RATIGAN:** That's all I have, Your Honor.

20 **THE COURT:** Okay.

21 **CROSS-EXAMINATION**

22 **BY MS. HORLBECK:**

23 **Q** Ms. Porter, just briefly, you said that Ms.
24 Evans handled the actual sentencing hearing?

25 **A** Yes, ma'am.

1 **Q** And you were present in the courtroom sitting
2 at one of the tables?

3 **A** Yes, ma'am. We alternated every other one.

4 **Q** Okay. And Ms. Evans actually relayed the
5 State's position on pages 5, 6, 7 and the top of 8 or
6 half of page 8. I don't know if you had a copy.

7 **A** Yes, ma'am. I have a copy.

8 **Q** Towards the end of the transcript, that's
9 when Mr. Posey began his mitigation?

10 **A** Yes.

11 **Q** All right.

12 **A** Then, I believe she responded on pages 17, 18
13 and part of 19 -- most of 19.

14 **Q** Okay. So she got six or seven pages in,
15 correct, of the State's position?

16 **A** Yes.

17 **Q** Okay. All right. So after Mr. Posey began
18 his mitigation, Ms. Evans had more to say to the
19 court, is that correct?

20 **A** Yes.

21 **Q** Okay. All right. That's all I have.
22 Thanks.

23 **MS. RATIGAN:** I have no further questions,
24 Your Honor.

25 **THE COURT:** Okay.

1 **MS. RATIGAN:** The State would rest at this
2 time.

3 **THE COURT:** Thank you. All right. Anything
4 further from either party?

5 **MS. HORLBECK:** I do have some cases. I
6 don't know if Your Honor wants me to argue them
7 or just hand them up.

8 **THE COURT:** You can hand them to me. I'll
9 be happy to take a look at them.

10 **MS. HORLBECK:** All right. Just for the
11 State's knowledge, what I'm handing up is
12 Custodio versus State and the cite on that is 644
13 S.E.2d 36 and Sprouse versus State, 585 S.E.2d
14 278, and Thompson versus State, 340 S.C. 112, 531
15 S.E.2d 291.

16 **THE COURT:** Okay. Good enough. I may have
17 just a couple of questions. Let me make sure
18 that I -- I just want to make a note so that when
19 I'm reviewing this, I can be a little bit more
20 deliberate in my analysis. In looking at the,
21 first and foremost, Custodio, what proposition
22 does that stand for that you wish to convey to
23 the -- and argue to the Court?

24 **MS. HORLBECK:** Your Honor, uh, --

25 **THE COURT:** You highlighted? You

1 highlighted salient portions?

2 MS. HORLBECK: I may have. I've highlighted
3 so much I'm not sure. I hope I did.

4 THE COURT: Okay.

5 MS. HORLBECK: But just briefly, uh, it's a
6 South Carolina Supreme Court case. I believe
7 Custodio is on point. There was an agreement
8 offering Mr. Custodio a 15-year cap if he would
9 cooperate. The plea agreement was oral. It was
10 not in writing.

11 THE COURT: Okay.

12 MS. HORLBECK: Mr. Custodio fully cooperated
13 with the police, told them about the crimes he
14 committed, assisted in the return of stolen
15 property and the court held that plea counsel was
16 ineffective for failing to have the plea
17 agreement enforced based on the detrimental
18 alliance exception.

19 THE COURT: Okay.

20 MS. HORLBECK: I believe that that case is
21 directly on point with ours.

22 THE COURT: All right. And the other two
23 essentially corroborate that?

24 MS. HORLBECK: Yes, sir.

25 THE COURT: Okay.

1 **MS. HORLBECK:** My main case was Custodio.
2 That's why I put it on top.

3 **THE COURT:** Great. Thank you. I appreciate
4 it. All right. I'll take it under advisement
5 and rule in fairly short order.

6 **MS. HORLBECK:** Thank you, Your Honor.

7 **THE COURT:** Thank you.

8

9 (END OF PROCEEDING)

10

11

CERTIFICATE

37

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of Common Pleas
8 for Greenville, South Carolina, on this 3rd day of
9 November, 2010.

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

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16 Teresa B. Johnson
17 Official Court Reporter
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2008-CP-23-8783
COUNTY OF GREENVILLE	)	
	)	
Eric Joshua Turner,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 21, 2008. The Respondent made its return on April 2, 2009, and an amended return on September 11, 2009. An evidentiary hearing into the matter was held on May 25, 2010, at the Greenville County Courthouse. As the Applicant is in federal custody, he was not present at the hearing but was represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant's plea counsel, Christopher T. Posey, Esquire, testified at the hearing. Also testifying were the Applicant's father, John Turner, and the Chief of Prosecution for the State Grand Jury, Susan O. Porter, Esquire. The Court had before it transcripts of the guilty plea and sentencing hearings, the records of the State Grand Jury Clerk of Court, the application for post-conviction relief and the Respondent's amended return.

PROCEDURAL HISTORY

The Applicant is presently confined in the Federal Correctional Institution in Fort Dix, New Jersey. The Applicant was indicted at the December 2005 term of the State Grand Jury for trafficking methamphetamine (conspiracy) (2005-GS-47-21, count 1), trafficking

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PB 7

methamphetamine, more than 100 grams (2005-GS-47-21, count 5), possession with intent to distribute (PWID) marijuana (2005-GS-47-21, count 6), and PWID marijuana within proximity of a school (2005-GS-47-21, count 7). He was represented by Christopher T. Posey, Esquire.

On August 22, 2006, the Applicant pled guilty before the Honorable Alexander S. Macaulay to two (2) counts of trafficking methamphetamines (28-100 grams), PWID marijuana, and PWID marijuana within proximity of a school. Sentencing was deferred to a later date.

On November 19, 2007, the Applicant appeared for sentencing. Judge Macaulay sentenced the Applicant to concurrent terms of eighteen (18) years on each count of trafficking methamphetamines, second offense and eighteen (18) years for PWID marijuana, third offense. Judge Macaulay also levied a consecutive sentence for PWID marijuana within proximity of a school of ten (10) years imprisonment, provided upon payment of costs and assessments the balance would be suspended with probation for five (5) years. These sentences were to be concurrent with the Applicant's federal sentence. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "[G]rossly underestimated Petitioner's sentencing exposure."
 - b. Failed "to offer the petitioner any advise or guidance as to the offer and its consequences."
 - c. Failed "to bring to the court's attention of the agreed sentence the parties reached with the prosecution prior to pleading guilty, and hold the government to its promised sentence of 10-12 years."
2. Breach of the plea agreement.
3. Involuntary guilty plea:
 - a. Relied upon the promise of a 10-12 year sentence when he entered his guilty plea.
4. Unreasonable sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct.

1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

Plea counsel testified he was retained 1-2 weeks before the plea hearing. Plea counsel testified he received the discovery materials and reviewed them with the Applicant. Plea counsel testified the Applicant initially refused to cooperate with the State. Plea counsel testified Susan Porter – the assistant attorney general in charge of this case – made a plea offer of eighteen (18) years that was contingent on the Applicant’s cooperation. Plea counsel stated he reviewed this offer with the Applicant. Plea counsel stated the Applicant agreed to cooperate against his sister-in-law, Kelly Turner. Plea counsel stated it was decided the Applicant would plead guilty and provide his assistance before he was sentenced. Plea counsel stated the Applicant cooperated with SLED regarding Kelly and would have testified against another co-defendant, but that individual pled guilty. Plea counsel testified that prior to the Applicant’s sentencing hearing, he tried to renegotiate the plea recommendation with Porter. Plea counsel testified Porter would not change the recommendation but agreed he could try and ask for a lesser sentence in court. Plea counsel testified Porter said the State would not rebut his mitigation. Plea counsel stated he asked the plea judge to levy a 10-12 year sentence but asserted he never told the Applicant he would receive a lesser sentence than that recommended. Plea counsel testified he did not say anything in mitigation that was not truthful, but that Jennifer Evans¹ (who was handling the plea while Porter was in the courtroom) then told the plea judge the Applicant was a bad person. Plea

¹ This Court notes that, at the time, Jennifer Evans was the Chief of Prosecution at the South Carolina Attorney General’s Office. As she passed away in 2009, she was unavailable to testify about her understanding of the agreement reached between plea counsel and the State.

RP 5

counsel stated both that Porter did not rein Evans in and that he did not object. Plea counsel admitted, however, that an objection would not have changed the outcome of the sentencing hearing.

John Turner, the Applicant's father, stated plea counsel told them there was "a good chance" the Applicant would receive a 10-12 year sentence if he cooperated with the State. John Turner stated plea counsel, however, did not promise this sentence.

Susan Porter testified on behalf of the State. While Porter is now the Chief of Prosecution at the South Carolina Attorney General's Office, she was the assistant attorney general in charge of prosecuting the Applicant's case (and the entire State Grand Jury operation). Porter testified she conveyed a plea recommendation of eighteen (18) years to plea counsel in April 2006. Porter testified that, prior to the plea hearing, she told the Applicant that he would receive the eighteen (18) year recommendation if he cooperated, was debriefed and would testify at subsequent trials. Porter stated she never said that if the Applicant provided information on Kelly, they would revisit his sentence. Porter stated she told plea counsel he could argue to the plea judge for a sentence less than the eighteen (18) year recommendation, but that the recommendation would not change. Porter stated that while she was present at the sentencing hearing, Jennifer Evans represented the State before the court. Porter stated plea counsel made comments in mitigation that were not supported by the facts and that Evans countered those comments. Porter testified she would have told Evans to back off if she believed Evans was too harsh. Porter testified, regardless, that Evans' comments did not preclude plea counsel from seeking a lesser sentence.

This Court notes that at the guilty plea hearing, the Applicant admitted to the plea judge both that he was guilty and that the facts recited by the State were true. (Guilty plea transcript,

5
R B 7

p.11; p.16). The Applicant was advised of the maximum sentences he was facing. (Guilty plea transcript, pp.4-5; Sentencing transcript, p.4). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel and had not been coerced in any way. (Guilty plea transcript, pp.8-10; pp.12-13). The Applicant told the plea judge he was giving truthful answers. (Guilty plea transcript, p.16).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately explain the plea recommendation. Plea counsel testified he conveyed the eighteen (18) year plea offer to the Applicant. Plea counsel testified he explained to the Applicant that he would have to cooperate with the State in order for that recommendation to be in effect. Plea counsel also testified he told the Applicant he would have to finish serving his state time after his federal sentence was over. This Court finds plea counsel adequately explained the parameters of the eighteen (18) year recommendation to the Applicant. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court notes that when the recommendation was noted at the sentencing hearing, the Applicant did not object. (Sentencing transcript, p.3; p.7). The Applicant's father even admitted that plea counsel planned to ask for a lesser sentence but that counsel never promised he would receive less than the eighteen (18) years.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have argued a breach of the plea agreement. This Court finds the State did not breach the plea agreement. The Applicant signed a written plea agreement before he pled guilty in which he promised to cooperate with the State. Both plea counsel and Porter testified the recommendation was for eighteen (18) years and that a lesser sentence was never promised to the Applicant. The eighteen (18) year recommendation was further stated on the record at the start of the sentencing

hearing. The terms, therefore, of the agreement were known to the Applicant. See, e.g., State v. Thrift, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994) (holding plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement). The Applicant has failed to present any evidence that both parties agreed to sentence recommendation of 10-12 years. While plea counsel may have told the Applicant he would seek such a sentence, counsel testified he never promised the Applicant he would receive less than the eighteen (18) year recommendation. See Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000) (“Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the State’s comments during the sentencing hearing. Porter and plea counsel had an agreement that while the State would not alter its eighteen (18) year recommendation, there would be no objection to plea counsel’s mitigation if it did not deviate from the facts and evidence. Evans recited the facts of the case and noted the eighteen (18) year recommendation. (Sentencing transcript, pp.5-8). The Applicant agreed with both. (Sentencing transcript, p.8). Plea counsel then provided a lengthy speech in mitigation. (Sentencing transcript, pp.9-17). Evans countered some of the points she perceived as inaccurate. (Sentencing transcript, pp.17-19). Porter testified plea counsel’s mitigation deviated from what they had agreed and that Evans’ comments in response were not inappropriate. This Court finds Porter’s testimony is credible. This Court finds there was no basis for plea counsel to have objected to Evans’ comments. Regardless, Petitioner – who absconded twice while on bond² – cannot prove he was

² Sentencing transcript, p.5.

prejudiced by the lack of an objection to those comments. Petitioner entered his guilty plea with the full understanding that the State would recommend an eighteen (18) year sentence and that is the sentence he ultimately received.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant

prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

That the application for post-conviction relief be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 2 day of ^{July}~~July~~, 2010.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: ERIC JOSHUA TURNERIndictment #: 2005GS2304485Address: [REDACTED]Warrant/Ticket #: I358294City: [REDACTED] State: SC ZIP: [REDACTED]

No Warrant: _____

SS#: [REDACTED] Sex: M Race: WOffense Code: 0368Date of Birth: [REDACTED]Offense Name: Drugs / Trafficking in ice, crank or craState: SC Driver's License #: [REDACTED]Date of Arrest: March 18, 2005DATE OF DISPOSITION: March 23, 2006 **MAR 27 2006**

DISPOSITION:

- | | |
|---|---|
| ☐ 1. Guilty Plea | * ☐ 7. Remanded |
| ☐ 2. Trial (Guilty) | ☐ 8. Dismissed at Prelim |
| ☐ 3. Trial (Not Guilty) | ☐ 8. No Bill |
| * ☒ 4. Dism/Nol Pros/Pros Ended | * ☐ 9. Failure to Appear |
| * ☐ 5. Judicial Commitment | * ☐ 10. Other |
| ☐ 6. Judicial Dismissal | |

* Explain: NP with Leave to Restore; Defendant is being prosecuted by State GJ & Feds

Judge: _____

Ct. Reporter: _____

Defense Attorney: CARRUTHERS, JR., P.
MATTHEWSolicitor: Allen Fretwell *CF*Offense Code: 0368Offense Name: Drugs / Trafficking in ice, crank or cra

Sentence: _____

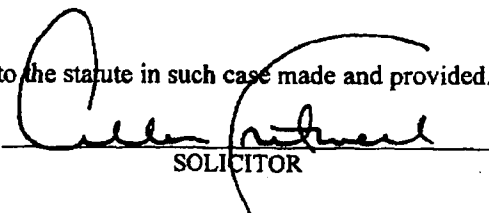
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

At a Court of General Sessions, convened on June 21, 2005 the Grand Jurors of Greenville
County present upon their oath:

That ERIC JOSHUA TURNER did in Greenville County, on or about the 18th day of March 2005, knowingly sell,
manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid,
abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive
possession of more than 100 grams grams of Methamphetamine (Crank). This is in violation of §44-53-375 of the South
Carolina 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.


SOLICITOR

WITNESSES

Craig Moore

Rebecca K

Greenville County Sheriffs Office

3/18/2005

ARREST WARRANT NUMBER

1358294

ACTION OF GRAND JURY

TRUE BILL

H. Daniel Jenkins

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-23004485

AOJ

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JUNE TERM 2005

THE STATE

vs.

ERIC JOSHUA TURNER

Indictment for

0368

TRAFFICKING METHAMPHETAMINE

VIOLATION § 44-53-0375(C)(3)

34

ARREST WARRANT 5531

1-358294 4-8-05

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-05-038533

against

Eric Joshua Turner

Address:

Phone: SSN: [REDACTED]

Sex: M Race: W Height: 6 2 Weight: 225

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Craig Moore

Offense: Drugs / Trafficking in ice, crank or crack - 100 g

or more, but less than 200 g

Offense Code: 0368

Code/Ordinance Sec: 44-53-0375(C)(3)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant ERIC J. TURNER

on 3-18-05

DP 630 A-39
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court

6247 White Horse Road

Greenville, SC 29611

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Craig Moore

who

being duly sworn deposes and says that defendant Eric Joshua Turner

did within this county and state on 03/18/2005

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE:

Drugs / Trafficking in ice, crank or crack - 100 g or more, but less than 200 g

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 03/18/2005 pursuant to a search warrant executed at the defendant's motel room, defendant was found in possession of a quantity of a clear crystal substance that did field test positive for methamphetamine in excess of 100 grams. This offense did occur in Greenville County.

COMPUTER ENTERED

MAR 7 2005

GREENVILLE COUNTY
SHERIFF'S OFFICE

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 666 Perimeter Rd

Greenville, SC 29605-

Affiant's Telephone (864)422-2020

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 3/18/2005

defendant Eric Joshua Turner

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below:

DESCRIPTION OF OFFENSE:

Drugs / Trafficking in ice, crank or crack - 100 g or more, but less than 200 g

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 03/18/2005

Signature of Issuing Judge

Diane D. Cagle

Judge Code: 5531

Judge's Address 6247 White Horse Road

Greenville, SC 29611-3845

Judge's Telephone (864)294-4810

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: ERIC JOSHUA TURNERIndictment #: 2005GS2304486Address: [REDACTED]Warrant/Ticket #: I358295City: [REDACTED] State: SC ZIP [REDACTED]

No Warrant: _____

SS#: [REDACTED] Sex: M Race: WOffense Code: 0107Date of Birth: [REDACTED]Offense Name: Drugs / Distribute, sell, purchase, manuState: SC Driver's License #: [REDACTED]Date of Arrest: March 18, 2005DATE OF DISPOSITION: March 23, 2006 **MAR 27 2006**

DISPOSITION:

- | | |
|--|--------------------------------------|
| <u> </u> 1. Guilty Plea | * <u> </u> 7. Remanded |
| <u> </u> 2. Trial (Guilty) | <u> </u> 8. Dismissed at Prelim |
| <u> </u> 3. Trial (Not Guilty) | <u> </u> 8. No Bill |
| * <u> X </u> 4. Dism/Nol Pros/Pros Ended | * <u> </u> 9. Failure to Appear |
| * <u> </u> 5. Judicial Commitment | * <u> </u> 10. Other |
| <u> </u> 6. Judicial Dismissal | |

* Explain: NP with Leave to Restore; Defendant is being prosecuted by State GJ & Feds

Judge: _____

Ct. Reporter: _____

Defense Attorney: CARRUTHERS, JR., P.
MATTHEWSolicitor: Allen Fretwell *AF*Offense Code: 0107Offense Name: Drugs / Distribute, sell, purchase, manu

Sentence: _____

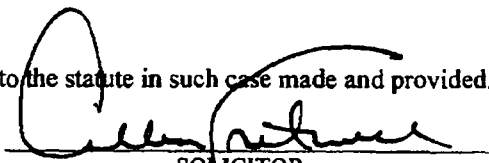
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSS OF METH W/INTENT TO DISTRIBUTE WITHIN 1/2 MILE

At a Court of General Sessions, convened on June 21, 2005 the Grand Jurors of Greenville
County present upon their oath:

That ERIC JOSHUA TURNER did in Greenville County, on or about the 18th day of March 2005, willfully and
unlawfully possess with the intent to distribute a quantity of Methamphetamine (Crank), a schedule II controlled
substance. This incident occurred within one-half (1/2) mile from Cherrydale Elementary School. This is in
violation of §44-53-445 of the South Carolina 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.


SOLICITOR

DOCKET NO. 2005-GS-23- 004486
AOF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JUNE TERM 2005

THE STATE

vs.

ERIC JOSHUA TURNER

WITNESSES

Craig Moore

Greenville County Sheriffs Office

3/18/2005

ARREST WARRANT NUMBER

1358295

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for
0107

POSS OF METH W/INTENT TO DISTRIBUTE
WITHIN 1/2 MILE

VIOLATION § 44-53-0445(B)(1)

35

ARREST WARRANT 5531
1-358295 4-805
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville
THE STATE 1-05-038533
against
Eric Joshua Turner
Address: [REDACTED]
Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: W Height: 6 2 Weight: 225
DL State: SC DL #: [REDACTED]
DOB: [REDACTED] Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriffs Office
Prosecuting Officer: Craig Moore
Offense: Drugs / P W I D Methamphetamine (Ice)
Offense Code: 0107
Code/Ordinance Sec: 44-53-0445(B)(1)
This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.
(L.S.)
Signature of Judge
Date:

RETURN
A copy of this arrest warrant was delivered to
defendant ERIC J. TURNER
on 5-18-05
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville
AFFIDAVIT
Personally appeared before me the affiant Craig Moore who
being duly sworn deposes and says that defendant Eric Joshua Turner
did within this county and state on 03/18/2005 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)
in the following particulars:
DESCRIPTION OF OFFENSE: Drugs / P W I D Methamphetamine (Ice)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 03/18/2005 pursuant to a search warrant executed at the defendant's motel room, defendant was found in
possession of a quantity of a clear crystal substance that did field test positive for methamphetamine in excess of 100
grams. This offense did occur in Greenville County within one half mile of Cherrydale Elementary School, located at
302 Perry Road. COMPUTER ENTERED

MAR 27 2005
GREENVILLE COUNTY
SHERIFF'S OFFICE

Signature of Affiant

C. M. Moore

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville
Affiant's Address 666 Perimeter Rd
Greenville, SC 29605-
Affiant's Telephone (864)422-2020

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 3/18/2005 defendant Eric Joshua Turner
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / P W I D Methamphetamine (Ice)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me
on 03/18/2005

Signature of Issuing Judge
Diane D. Cagle
Judge Code: 5531

Judge's Address 6247 White Horse Road
Greenville, SC 29611-3845
Judge's Telephone (864)294-4810
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: ERIC JOSHUA TURNERIndictment # : 2005GS2304487Address: [REDACTED]Warrant/Ticket # : 1358297City: [REDACTED] State: SC ZIP [REDACTED]

No Warrant: _____

SS#: [REDACTED] Sex: M Race: WOffense Code: 0186Date of Birth: [REDACTED]Offense Name: Drugs / Manuf., poss. of other sub. in SState: SC Driver's License #: [REDACTED]Date of Arrest: March 18, 2005DATE OF DISPOSITION: March 23, 2006 **MAR 27 2006**

DISPOSITION:

- | | |
|--|--------------------------------------|
| <u> </u> 1. Guilty Plea | * <u> </u> 7. Remanded |
| <u> </u> 2. Trial (Guilty) | <u> </u> 8. Dismissed at Prelim |
| <u> </u> 3. Trial (Not Guilty) | <u> </u> 8. No Bill |
| * <u> X </u> 4. Dism/Nol Pros/Pros Ended | * <u> </u> 9. Failure to Appear |
| * <u> </u> 5. Judicial Commitment | * <u> </u> 10. Other |
| <u> </u> 6. Judicial Dismissal | |

* Explain: NP with Leave to Restore; Defendant is being prosecuted by State GJ & Feds

Judge: _____

Ct. Reporter: _____

Defense Attorney: CARRUTHERS, JR., P.
MATTHEWSolicitor: Allen Fretwell **CF**Offense Code: 0186Offense Name: Drugs / Manuf., poss. of other sub. in S

Sentence: _____

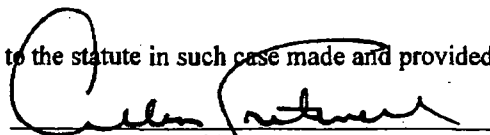
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF MARIJUANA W/INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on June 21, 2005 the Grand Jurors of Greenville County present upon their oath:

That ERIC JOSHUA TURNER did in Greenville County, on or about the 18th day of March 2005, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Marijuana, a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina 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.


SOLICITOR

004487

DOCKET NO. 2005-GS-23-

AOF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JUNE TERM 2005

THE STATE

vs.

ERIC JOSHUA TURNER

WITNESSES

Craig Moore

Greenville County Sheriffs Office

3/18/2005

ARREST WARRANT NUMBER

1358297

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

0188

POSSESSION OF MARIJUANA W/INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370(B)(2)

36

ARREST WARRANT

1-358297

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-05-038533

against

Eric Joshua Turner

Address:

Phone:

SSN:

Sex: M

Race: W

Height: 6

2

Weight: 225

DL State: SC

DL #:

DOB:

Agency ORI #:

SC0230000

Prosecuting Agency:

Greenville County Sheriffs Office

Prosecuting Officer:

Craig Moore

Offense:

Drugs / Possession with the Intent to Distribute Marijuana

Offense Code:

0182

Code/Ordinance Sec:

44-53-0370(d)(3)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on

ERIC J. TURNER

3-18-05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Craig Moore

who

being duly sworn deposes and says that defendant Eric Joshua Turner

did within this county and state on 03/18/2005

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE:

Drugs / Possession with the Intent to Distribute Marijuana

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 03/18/2005 pursuant to a search warrant executed at the defendant's motel room, defendant was found in possession of a quantity of a green leafy plant like material that did field test positive for marijuana in excess of 100 grams. This offense did occur in Greenville County.

COMPUTER ENTERED

MAR 22 2005

GREENVILLE COUNTY

SHERIFF'S SIGNATURE OF AFFIANT

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address

666 Perimeter Rd

Greenville, SC 29605-

Affiant's Telephone

(864)422-2020

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 3/18/2005

defendant Eric Joshua Turner

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below:

DESCRIPTION OF OFFENSE:

Drugs / Possession with the Intent to Distribute Marijuana

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 03/18/2005

Signature of Issuing Judge

Diane D. Cagle

Judge Code: 5531

Judge's Address

6247 White Horse Road

Greenville, SC 29611-3845

Judge's Telephone

(864)294-4810

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

134

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: ERIC JOSHUA TURNERIndictment # : 2005GS2304488Address: [REDACTED]Warrant/Ticket # : 1358296City: [REDACTED] State: SC ZIP [REDACTED]

No Warrant: _____

SS#: [REDACTED] Sex: M Race: WOffense Code: 0107Date of Birth: [REDACTED]Offense Name: Drugs / Distribute, sell, purchase, manuState: SC Driver's License #: [REDACTED]Date of Arrest: March 18, 2005DATE OF DISPOSITION: March 23, 2006 **MAK 27 2006**

DISPOSITION:

- | | |
|--|--------------------------------------|
| <u> </u> 1. Guilty Plea | * <u> </u> 7. Remanded |
| <u> </u> 2. Trial (Guilty) | <u> </u> 8. Dismissed at Prelim |
| <u> </u> 3. Trial (Not Guilty) | <u> </u> 8. No Bill |
| * <u> X </u> 4. Dism/Nol Pros/Pros Ended | * <u> </u> 9. Failure to Appear |
| * <u> </u> 5. Judicial Commitment | * <u> </u> 10. Other |
| <u> </u> 6. Judicial Dismissal | |

* Explain: NP with Leave to Restore; Defendant is being prosecuted by State GJ & Feds

Judge: _____

Ct. Reporter: _____

Defense Attorney: CARRUTHERS, JR., P.
MATTHEWSolicitor: Allen Fretwell *CF*Offense Code: 0107Offense Name: Drugs / Distribute, sell, purchase, manu

Sentence: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF MARIJUANA W/I TO DIST. 1/2 MILE NEAR A
SCHOOL

At a Court of General Sessions, convened on June 21, 2005 the Grand Jurors of Greenville
County present upon their oath:

That ERIC JOSHUA TURNER did in Greenville County, on or about the 18th day of March 2005, willfully and unlawfully possess with the intent to distribute a quantity of Marijuana. This incident occurred within one-half (½) mile from Cherrydale Elementary School. This is in violation of §44-53-445 of the South Carolina 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.

SOLICITOR

WITNESSES

Craig Moore

Greenville County Sheriffs Office

3/18/2005

ARREST WARRANT NUMBER

1358296

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-23-

AOF

004488

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JUNE TERM 2005

THE STATE

vs.

ERIC JOSHUA TURNER

Indictment for

0107

POSSESSION OF MARIJUANA W/I TO DIST. 1/2
MILE NEAR A SCHOOL

VIOLATION § 44-53-0445(B)(1)

37

ARREST WARRANT

I-358296

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-05-038533

against

Eric Joshua Turner

Address:

Phone: SSN: Sex: M Race: W Height: 6 2 Weight: 225

DL State: SC DL #: DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office
Prosecuting Officer: Craig Moore

Offense: Drugs / P W I D Marijuana within 1/2 Mile of School

Offense Code: 0107

Code/Ordinance Sec: 44-53-0445(B)(1)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant ERIC J. TURNER
on 3-18-05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Craig Moore who
being duly sworn deposes and says that defendant Eric Joshua Turner
did within this county and state on 03/18/2005 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)
in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / P W I D Marijuana within 1/2 Mile of School

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 03/18/2005 pursuant to a search warrant executed at the defendant's motel room, defendant was found in
possession of a quantity of a green leafy plant like material that did field test positive for marijuana in excess of 100
grams. This offense did occur in Greenville County within one half mile of Cherrydale Elementary School, located at
302 Perry Road.

COMPUTER ENTERED

MAR 17 2005

GREENVILLE SHERIFFS OFFICE

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 666 Perimeter Rd
Greenville, SC 29605-
Affiant's Telephone (864)422-2020

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 3/18/2005 defendant Eric Joshua Turner
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / P W I D Marijuana within 1/2 Mile of School

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me
on 03/18/2005

Signature of Issuing Judge
Diane D. Cagle

Judge Code: 5531

Judge's Address 6247 White Horse Road
Greenville, SC 29611-3845

Judge's Telephone (864)294-4810

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: ERIC JOSHUA TURNER

Indictment # : 2005GS2305028

Address: [REDACTED]

Warrant/Ticket # : I545326

City: [REDACTED] State: SC ZIP [REDACTED]

No Warrant: _____

SS#: [REDACTED] Sex: M Race: W

Offense Code: 0179

Date of Birth: [REDACTED]

Offense Name: Drugs / Poss. of other controlled sub. i

State: SC Driver's License #: [REDACTED]

Date of Arrest: April 21, 2005DATE OF DISPOSITION: March 23, 2006 **MAR 27 2006**

DISPOSITION:

- | | |
|---|---|
| ☐ 1. Guilty Plea | * ☐ 7. Remanded |
| ☐ 2. Trial (Guilty) | ☐ 8. Dismissed at Prelim |
| ☐ 3. Trial (Not Guilty) | ☐ 8. No Bill |
| * ☒ 4. Dism/Nol Pros/Pros Ended | * ☐ 9. Failure to Appear |
| * ☐ 5. Judicial Commitment | * ☐ 10. Other |
| ☐ 6. Judicial Dismissal | |

* Explain: NP with Leave to Restore; Defendant is being prosecuted by State GJ & Feds

Judge: _____

Ct. Reporter: _____

Defense Attorney: CARRUTHERS, JR., P.
MATTHEWSolicitor: Allen FretwellOffense Code: 0179Offense Name: Drugs / Poss. of other controlled sub. i

Sentence: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

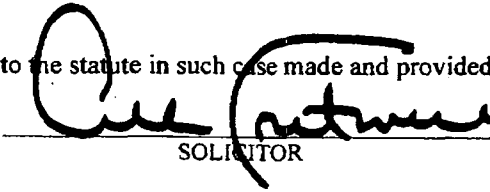
INDICTMENT FOR
POSSESSION OF A CONTROLLED SUBSTANCE

At a Court of General Sessions, convened on July 26, 2005 the Grand Jurors of Greenville

County present upon their oath:

That ERIC JOSHUA TURNER did in Greenville County, on or about the 13th day of October, 2004, willfully and unlawfully have in his possession and under his control a quantity of a schedule IV controlled substance, Alprazolam. This is in violation of § 44-53-370 of the South Carolina 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.


SOLICITOR

DOCKET NO. 2005-GS-23-

AOF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2005

THE STATE

vs.

ERIC JOSHUA TURNER

WITNESSES

Joshua Johnson *odom/s*

Travelers Rest Police Dept

4/21/2005

ARREST WARRANT NUMBER

1545326

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

0180

POSSESSION OF A CONTROLLED
SUBSTANCE

VIOLATION § 44-53-0370

3

ARREST WARRANT
I-545326
STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Travelers Rest

THE STATE **TR06045635**
against

Eric Joshua Turner

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]
Sex: **M** Race: **W** Height: **6** 2 Weight: **225**

DL State: **SC** DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: **SC0230600**

Prosecuting Agency: **Travelers Rest Police Dept**

Prosecuting Officer: **Joshua Johnson**

Offense: **Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense**

Offense Code: **0179**

Code/Ordinance Sec: **44-53-0370(d)(2)**

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant **ERIC TURNER**
on **4-21-05**

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Travelers Rest
6711 State Park Road
Travelers Rest, SC 29690

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Travelers Rest

Personally appeared before me the affiant **Joshua Johnson** who
being duly sworn deposes and says that defendant **Eric Joshua Turner**
did within this county and state on **10/13/2004** violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of **Travelers Rest**)
in the following particulars:

DESCRIPTION OF OFFENSE: **Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense**

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

AFFIANT STATES THAT ON OCTOBER 13, 2004, THE ACCUSED, ERIC JOSHUA TURNER, DID KNOWINGLY, INTENTIONALLY AND WITHOUT AUTHORITY TO DO SO, POSSESS A QUANTITY (3 PILLS) OF ALPRAZOLAM 2 MG., A GENERIC FORM OF XANAX, A SCHEDULE IV CONTROLLED SUBSTANCE. THIS INCIDENT OCCURRED AT DUNCAN ROAD AND WILLIAMS ROAD LOCATED WITHIN THE CITY LIMITS OF TRAVELERS REST.

Signature of Affiant

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Travelers Rest

Affiant's Address **6711 STATE PARK ROAD**
TRAVELERS REST, SC 29690-
Affiant's Telephone **(864)834-9029 x 0000**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on **10/13/2004** defendant **Eric Joshua Turner**
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of **Travelers Rest**) as set forth below:

DESCRIPTION OF OFFENSE: **Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on **04/06/2005**
Signature of Issuing Judge **Shirley Burnette** (L.S.)
Shirley Burnette
Judge Code: **6546**

Judge's Address **6711 State Park Road**
Travelers Rest, SC 29690--1831
Judge's Telephone **(864)834-1630**

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: ERIC TURNER Indictment #: 2005GS2305576
 Address: [REDACTED] Warrant/Ticket #: H942303
 City: [REDACTED] State: SC ZIP: [REDACTED] No Warrant: _____
 SS#: [REDACTED] Sex: M Race: W Offense Code: 0041
 Date of Birth: [REDACTED] Offense Name: FinanTC / Financial Transaction Card
 State: SC Driver's License #: 999999999 For
 Date of Arrest: April 21, 2005

DATE OF DISPOSITION: March 23, 2006

MAR 27 2006

DISPOSITION:

- | | |
|---|---|
| ☐ 1. Guilty Plea | * ☐ 7. Remanded |
| ☐ 2. Trial (Guilty) | ☐ 8. Dismissed at Prelim |
| ☐ 3. Trial (Not Guilty) | ☐ 8. No Bill |
| * ☒ 4. Dism/Nol Pros/Pros Ended | * ☐ 9. Failure to Appear |
| * ☐ 5. Judicial Commitment | * ☐ 10. Other |
| ☐ 6. Judicial Dismissal | |

* Explain: NP with Leave to Restore; Defendant is being prosecuted by State GJ & Feds

Judge: _____ Ct. Reporter: _____

Defense Attorney: CARRUTHERS, JR., P. Solicitor: Allen Fretwell CF
 MATTHEW

Offense Code: 0041 Offense Name: FinanTC / Financial Transaction Card For

Sentence: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FINANCIAL TRANSACTION CARD FORGERY

At a Court of General Sessions, convened on July 26, 2005 the Grand Jurors of Greenville
County present upon their oath:

That ERIC TURNER did in Greenville County, on or about the 21th day of April, 2005, with intent to defraud,
make or emboss a purported financial transaction card or otherwise uttered such a card which he knew to be a
forgery. This is in violation of §16-14-40 of the South Carolina 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.


SOLICITOR

WITNESSES

W. Donohue

Tucker/S

Greenville County Sheriffs Office

4/21/2005

ARREST WARRANT NUMBER

H942303

ACTION OF GRAND JURY

TRUE BILL

H. Daniel J. [Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-23-

SPH

005576

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2005

THE STATE

VS.

ERIC TURNER

Indictment for

0041

FINANCIAL TRANSACTION CARD FORGERY

VIOLATION § 16-14-0040

559

ARREST WARRANT

H- 942303

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

THE STATE OS-053743
against

Eriz John Turner

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 601 Weight: 225

DL State: [REDACTED] DL #: [REDACTED]

DOB: [REDACTED] Agency ORI#: 23000

Prosecuting Agency: CLSO

Prosecuting Officer: Donahue #828553

Offense: Financial Transaction Card

Forgery Offense Code: [REDACTED]

Code/Ordinance Sec. 16-14-40

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: 4-21-05

RETURN

A copy of this arrest warrant was delivered to
defendant E. J. Turner

on 4-21-05

H. R. New A29 A439
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

GARRETT

0041

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

AFFIDAVIT

Personally appeared before me the affiant W. P. Donahue who
being duly sworn deposes and says that defendant Eriz J. Turner
did within this county and state on 4-21-05 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of [REDACTED])
in the following particulars:

DESCRIPTION OF OFFENSE: 16-14-40
Financial Transaction Card Forgery

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

In that the defendant was in possession of a
"Free Clear" MasterCard bearing number 5145 0300 3667 4739
and issued in the name Jonathan Yegor, which the
defendant admitted to having been falsely made
by an unknown conspirator. This occurred in
Greenville County, S.C.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

Affiant's Address 4700 Lee St.

Greenville SC 29601

Affiant's Telephone 251-5710

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 4-21-05 defendant Eriz J. Turner
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of [REDACTED]) as set forth below:

DESCRIPTION OF OFFENSE: 16-14-40

FTC Forgery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 4-21-05

A. L. Gibson (L.S.)

Signature of Issuing Judge

Judge Code: 5032

Judge's Address 2801 Wade Hampton Blvd.

Taylors SC 29687

Judge's Telephone 254-2927

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2008-CP-23-8783
COUNTY OF GREENVILLE	)	
	)	
Eric Joshua Turner,	)	
	)	
Applicant,	)	
	)	AMENDED RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed November 21, 2008, the Respondent would show this Court:

I.

The Applicant is incarcerated at the Federal Correctional Institution in Fort Dix, New Jersey. The Greenville County Grand Jury indicted the Applicant at the June 2005 term of General Sessions for trafficking methamphetamine (2005-GS-23-4485), possession with intent to distribute (PWID) methamphetamine within proximity of a school (2005-GS-23-4486), PWID marijuana (2005-GS-23-4487), PWID marijuana within proximity of a school (2005-GS-23-4488), possession of a controlled substance (2005-GS-23-5028), and financial transaction card forgery (2005-GS-23-5576). The State Grand Jury indicted the Applicant at the December 2005 term for trafficking methamphetamine (conspiracy) (2005-GS-47-21, count 1), trafficking methamphetamine, more than 100 grams (2005-GS-47-21, count 5), possession with intent to distribute (PWID) marijuana (2005-GS-47-21, count 6), and PWID marijuana within proximity of a school (2005-GS-47-21, count 7). The Applicant was represented by Christopher T. Posey, Esquire.

On August 22, 2006, the Applicant pled guilty before the Honorable Alexander S. Macaulay to the State Grand Jury charges of two (2) counts of trafficking methamphetamines (28-100 grams), PWID marijuana, and PWID marijuana within proximity of a school.¹ Sentencing was deferred to a later date.

On November 19, 2007, the Applicant appeared for sentencing. Judge Macaulay sentenced the Applicant to concurrent terms of eighteen (18) years on each count of trafficking methamphetamines, second offense and eighteen (18) years for PWID marijuana, third offense. Judge Macaulay also levied a consecutive sentence for PWID marijuana within proximity of a school of ten (10) years imprisonment, provided upon payment of costs and assessments the balance is suspended with probation for five (5) years. The Applicant did not appeal.

The records of the Greenville County and State Grand Jury Clerks of Court, the guilty plea transcript, and the sentencing transcript have already been filed in this case.

II.

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

1. Ineffective assistance of counsel.
2. Breach of the guilty plea.
3. Involuntary guilty plea.
4. Unreasonable sentence.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense

¹ The Greenville County charges were not prossed.

attorney.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion 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. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (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 Applicant 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) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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 Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, 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) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Amended Return, the Respondent requests that a hearing be held on the issues raised in the PCR application.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

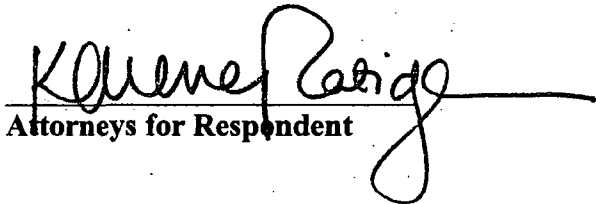
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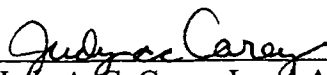
September 11, 2009

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2008-CP-23-8783
	)	
ERIC JOSHUA TURNER	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Caroline M. Horlbeck, Esquire
101 Whitsett Street
Greenville SC 29601-3136

DATED this 11th day of September, 2009.


 Judy A. C. Carey, Legal Assistant
 For Respondent