

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Frank R. Addy, Circuit Court Judge

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S.C. Supreme Court

CHRISTOPHER M. VAUGHN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-211289

APPENDIX

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Deputy Chief Appellate Defender
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

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P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Christopher Marcus Vaughn,) 2007-GS-42-1445, 1446
7 Defendant.) February 3, 2010
8 Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. MARK HAYES II, JUDGE
12
13

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

15 RYAN F. MCCARTY, ESQ.
16 Attorney for the State

17 AUGUST G. SWARAT, II, ESQ.
18 Attorney for the Defendant
19
20
21

22 Margaret A. Woods
23 Circuit Court Reporter
24
25

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NO EXHIBITS INTRODUCED

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Incident report, drug reports and search warrant	4	

1 (Incident report, drug reports and search warrant marked
2 State's Exhibit No. 1 for identification.)

3 MR. MCCARTY: May it please the Court, Your Honor. Your
4 Honor, standing in front of you is Christopher Marcus Vaughn,
5 he's here on two separate indictments. Your Honor, the first
6 indictment is 07-GS-42-1445 and 1445A. There are two
7 sentencing sheets accompanying this indictment. The first
8 charge is trafficking in powder cocaine between twenty-eight
9 (28) and one hundred (100) grams, it is a second offense,
10 that's charged as count one of that indictment. Your Honor,
11 the second offense is possession of a firearm during the
12 commission of a violent crime, that's the 5-year statute, Your
13 Honor, is the -- listed as count two under that indictment.
14 Your Honor, the second indictment of course he's pleading to
15 is 2007-GS-42-1446. Your Honor, this charge is trafficking in
16 marijuana ten (10) to one hundred (100) pounds, it is a second
17 offense. Your Honor, he's pleading to both of these
18 indictments. They are lesser included offenses of the
19 original charge and I'll get to that. He was charged with
20 weights greater than this. His sentence has been made to
21 accommodate the negotiated sentence between the State and the
22 defense; a negotiated sentence of 18 years, Your Honor, on
23 both charges. The 5-year charge on count two to run
24 concurrent with that 18-year sentence, Your Honor.

25 EXAMINATION BY THE COURT:

1 Q. You are Mr. Vaughn?

2 A. Yes, sir.

3 Q. Alright, sir, if you would, please raise your right hand
4 and allow the clerk of court to swear you in.

5 CHRISTOPHER MARCUS VAUGHN,
6 having been first duly sworn, testified as follows:

7 EXAMINATION BY THE COURT:

8 Q. Mr. Vaughn, were you able to hear the solicitor when he
9 announced the charges that are against you that he has
10 presented to me?

11 A. Yes, sir.

12 Q. The manner in which he announced the charges is that the
13 same and consistent as what you understand you are pleading to
14 today?

15 A. Yes, sir.

16 Q. All right, sir, if ever during it process you wanna talk
17 to your lawyer, you just let me know and I'll allow you to
18 speak to your lawyer in private, okay?

19 A. Yes, sir. Yes, sir.

20 Q. Sir, how old are you?

21 A. 38.

22 Q. How fardya go in school?

23 A. Eleventh gra -- completed eleventh grade.

24 Q. Did you ever get a GED?

25 A. No, sir, I'm working on it now, sir.

1 Q. Where were you in school when you dropped out?

2 A. Dorman, Dorman High School.

3 Q. Dorman?

4 A. Yes, sir.

5 Q. Presently ya married, single, divorced?

6 A. Married.

7 Q. Do you have children?

8 A. Four kids.

9 Q. How old are they?

10 A. Nine, thirteen, fourteen, seventeen, I have one grand
11 baby that's one-years-old.

12 Q. Prior to your arrest did you have a job?

13 A. No, sir. I I I was working labor for Howells
14 Construction but I haven't been working there now, sir.
15 Howells Howells Construction I was laborer.

16 Q. Alright. Military?

17 A. No, sir.

18 Q. How long were you in -- how long have you been in jail on
19 these charges?

20 A. Since 2007, sir.

21 MR. SWARAT: His arrest date, Your Honor, was February
22 19th 2007.

23 EXAMINATION BY THE COURT:

24 Q. Alright. Now Mr. Vaughn, within the last twenty-four
25 hours have you consumed any typa substance that's adversely or

1 negatively affecting your ability to understand what we're
2 doing today?

3 A. No, sir.

4 Q. You ever been treated for any type of drug or alcohol
5 abuse?

6 A. I went to, went to SADAC one time. I completed it.

7 Q. About how long ago was that?

8 A. That's been, I know it's probly been over seven or eight
9 years ago it was.

10 Q. For alcohol or drug abuse?

11 A. It was, it was part of my sentence for my first charge.
12 Simple possession I had to go through the SADAC classes was
13 parta my -- I had two years probation and I had SADAC class I
14 had to go to. I completed both of 'em.

15 Q. Are you satisfied with the work that your lawyer has
16 done?

17 A. Yes, sir.

18 Q. You feel like you've had enough time to talk to your
19 lawyers about the facts that are behind these cases, the legal
20 elements of the offenses that are -- that you're charged with
21 and also any possible defenses you might have to these
22 cases?

23 A. Yes, sir.

24 Q. Beyond that which might have been stated to me in this
25 courtroom, has anybody come to you and threatened you in any

1 way or made you any promises in order to get you to make the
2 decision to enter these pleas?

3 A. No, sir.

4 Q. Your decision has been made freely and voluntarily?

5 A. Yes, sir.

6 Q. Sir, I need for you to understand that under the law you
7 are presumed innocent of these charges. You do have a right
8 to have a jury trial on these charges.

9 A. Yes, sir.

10 Q. At any trial that would take place it would be the State
11 that has the burden of proof and the State would have to
12 convince all twelve members of a jury that you are in fact
13 guilty beyond a reasonable doubt of of these charges. Now do
14 you understand that you have a right to that trial?

15 A. Yes, sir.

16 Q. And do you wish to have a jury trial on any of these
17 charges?

18 A. No, sir.

19 Q. You wanna give up your right to that trial on all of
20 these charges?

21 A. Yes, sir.

22 Q. Sir, I need for you to understand that there are other
23 very important constitutional rights that you have to give up
24 in order to enter these pleas. You have to give up your right
25 to confront and cross-examine the State's witnesses, you also

1 have to give up your right to present evidence which you or
2 your lawyer might feel would establish a defense to these
3 charges and you have to give up your right to remain silent
4 and you have to give up your right of subpoena. Do you
5 understand all those rights?

6 A. Yes, sir.

7 Q. And you wanna give up all these rights and go ahead and
8 enter these pleas?

9 A. Yes, sir.

10 Q. Alright.

11 THE COURT: And just for clarity purposes, he has
12 indicated that he wishes to waive presentment of the charges
13 to the indictment but they are true billed is that correct?

14 MR. MCCARTY: They are true billed, Your Honor. They
15 they were marked as that. I apologize. They should be both
16 true bill indictments. Every one of those should be ---

17 THE COURT: Alright.

18 MR. MCCARTY: --- a true billed indictment.

19 MR. SWARAT: I I think I had him initial that block, Your
20 Honor, and ---

21 THE COURT: Okay.

22 MR. SWARAT: --- just out of an abundance of caution.

23 THE COURT: Alright. Mr. Vaughn, the gentleman over here
24 again, is a solicitor, he is going to give us the facts.
25 Please listen to him, sir, okay?

1 THE DEFENDANT: Yes, sir.

2 MR. MCCARTY: Your Honor, these facts occurred on
3 February 19th 2007. This was a search warrant that was
4 executed at [REDACTED] in Spartanburg here in
5 Spartanburg County. The Spartanburg County Sheriff's Office
6 Narcotics Unit went to that location, they were there to serve
7 an arrest warrant as well as execute the search warrant on
8 Mr. Vaughn at that residence. They met Mr. Vaughn, once they
9 Mirandized him he did advise them of what was in the house and
10 where it could be located. Your Honor, from that house they
11 removed a quantity of marijuana greater than ten (10) pounds.
12 They also removed and found a quantity of cocaine greater than
13 at the time more than four hundred (400) poun -- or four (400)
14 hundred grams, Your Honor. As I stated the State is agreeing
15 to a negotiated plea that would accommodate this sentence by
16 so he's pleading to a lesser charge. Your Honor, I'm gonna
17 hand up what we have marked as State's Exhibit No. 1 and
18 Mr. Swarat has this, this a copy of what was provided to him
19 in discovery. There's a copy of the incident report as well
20 as the two drug reports are listed in here for the marijuana
21 and the powder cocaine, Your Honor, and a copy of the search
22 warrant. And, Your Honor, as I stated these were second
23 offenses when I announced the case. Mr. Swarat, I don't --
24 it -- this is what I shared with this him earlier. This was
25 just a certified copy, it's not marked for admission but it's

1 a copy of, a certified copy of his previous conviction for
2 possession of crack cocaine under Indictment 02-GS-42-5097,
3 Your Honor, if I may pass these up.

4 MR. SWARAT: And I have no objection, Your Honor.

5 (Whereupon, counsel handed the documents to the Court.)

6 EXAMINATION BY THE COURT:

7 Q. Mr. Vaughn, were you able to hear the solicitor ---

8 A. Yes, sir.

9 Q. --- when he gave me the facts?

10 A. Yes, sir.

11 Q. And do you believe that as he stated the facts that he is
12 substantially correct?

13 A. Yes, sir.

14 Q. Now, Mr. Vaughn, I need for you to understand that this
15 case is being presented to me as a negotiated plea, ---

16 A. Yes, sir.

17 Q. --- therefore if I accept the plea I am bound by the
18 negotiations and I would have to impose the 18-year sentence
19 that was previously announced to me. Now do you understand
20 that?

21 A. Yes, sir.

22 Q. So that I have to impose the 18-year sentence if I accept
23 this plea. You understand that?

24 A. Yes, sir.

25 Q. And that's what you want me to do?

1 A. Yes, sir.

2 Q. Now, Mr. Vaughn, I need ya to understand as well that the
3 trafficking in cocaine, powder cocaine charge and the
4 trafficking in marijuana charge those offenses are classified
5 as violent offenses under the law and they are also classified
6 as serious offenses under the law.

7 A. Yes, sir.

8 Q. Do you understand that?

9 A. Yes, sir.

10 Q. And, sir, do you unders -- have you been able to talk to
11 your lawyers as to the consequences and ramifications of both
12 of these offenses being classified as both violent and serious
13 offenses?

14 A. Yes, sir.

15 Q. And with that understanding of the ramifications and
16 consequences of those two classifications a violent and
17 serious as well as the possible sentence I could impose on
18 those charges, do you still wish to enter these pleas?

19 A. Yes, sir.

20 Q. I mean, I'm sorry, as well as the fact that I am bound by
21 the negotiations and will have to impose that 18-year sentence
22 you still wish to enter the plea?

23 A. Yes, sir.

24 Q. Now, sir, you do understand that if by chance this were
25 being presented to me as a non-negotiated plea you do

1 understand that I could sentence you up to thirty (30) years
2 on the trafficking and powder cocaine charge and also I could
3 sentence you up to twenty (20) years on the trafficking of
4 marijuana charge?

5 A. Yes, sir.

6 Q. Sir, you do understand that as well that the possession
7 of a firearm during the commission of a violent crime that
8 that's also being presented to me as a negotiated plea ---

9 A. Yes, sir.

10 Q. --- so I have to impose the 5-year sentence that was
11 announced?

12 A. Yes, sir.

13 Q. That's what you want me to do?

14 A. Yes, sir.

15 Q. Now, sir, are you in fact guilty of trafficking in
16 marijuana ten (10) to one hundred (100) pounds second drug
17 offense?

18 A. Yes, sir.

19 Q. Are you also guilty of trafficking in powder cocaine
20 twenty-eight (28) to one hundred (100) grams second offense?

21 A. Yes, sir.

22 Q. Sir, are you also guilty of possession of firearm during
23 the commission of a violent crime?

24 A. Yes, sir.

25 Q. Have you been able to hear all of my questions?

1 A. Yes, sir.

2 Q. Have all of your answers been truthful and honest?

3 A. Yes, sir.

4 THE COURT: Discovery's been shared with the defense?

5 MR. MCCARTY: It has, Your Honor.

6 THE COURT: Prior record?

7 MR. MCCARTY: Your Honor, from 1998 he had a driving
8 without a license charge, from 2002 what's before you it's the
9 possession of crack cocaine first charge, Your Honor, then in
10 2004 it appears to be a simple possession of marijuana charge.

11 THE COURT: Anything else from the State?

12 MR. MCCARTY: Your Honor, I will ar -- or will offer too
13 that at the time of this execution there was a forfeiture
14 order, there was a car that was signed over to the sheriff's
15 was office and there was approximately a hundred and nine
16 thousand dollars in cash that was turned over as well.

17 THE COURT: Okay. Did you mean for the copy of the prior
18 conviction for possession of crack cocaine first offense from
19 2003 to be marked as an exhibit to this proceeding?

20 MR. MCCARTY: No, sir, it's on record in the clerk of
21 court's office. I just offered it for your view.

22 THE COURT: Alright. Thank you, sir.

23 MR. MCCARTY: Yes, sir.

24 THE COURT: Anything else from the State?

25 MR. MCCARTY: Nothing, Your Honor. Thank you.

1 THE COURT: Yes, sir, Mr. Swarat.

2 MR. SWARAT: Thank you, Your Honor. As Mr. Vaughn told
3 ya he's 38 years of age, he has four children, one grandchild
4 and, Your Honor, he's lived in this area his entire life.
5 Many of his family members are here in support of him and,
6 Your Honor, the entire first row here (indicating) and some of
7 the second and third row. Your Honor, they wanted to speak on
8 his behalf. I explained to them the nature of this plea is a
9 negotiated plea and as such they just wanted to be recognized
10 that that they were here to support him. And, Your Honor,
11 upon being arrested Mr. Vaughn immediately took ownership of
12 all of these drugs, admitted his illegal conduct. There were
13 a number of people in the household some of which they also
14 considered arresting, he took full responsibility. As the
15 prosecutor mentioned he he signed over a vehicle, also a
16 tremendous amount of cash, he agreed to do that initially.
17 From that day forward it's really been us goin' back and forth
18 with the State trying to negotiate a plea on his behalf. Your
19 Honor, he knew this day would come, he was gonna take
20 responsibility, it was always going to be a plea. Your Honor,
21 he spent a a large amount of his time since arrest at the
22 county jail. There was a period of time when he was on house
23 arrest with GPS monitoring, I believe it's the highest level
24 of supervision they have available here in Spartanburg County.
25 Part of the reason he was on the GPS monitor was to obtain

1 some back surgery that he was going to have to have. Had he
2 received that at the county it would have been a great expense
3 to the county as far as his follow-up care would have been
4 very extensive if he were in in jail as well. Your Honor, he
5 did have insurance, was able to do that on his own and spent
6 part of his time while he was on GPS monitor and recovering
7 from that surgery. Your Honor, we're ask asking that he
8 receive credit since his arrest date of February 19th 2007.
9 Your Honor, it's a total of 1,079 days. We're asking that he
10 be given credit for that as time served. Your Honor, there
11 are also a few other charges that were associated with the
12 sentence them being dismissed, I don't believe we put those
13 warrants on the record but I believe three charges total that
14 are being dismissed as a result of this plea and ---

15 MR. MCCARTY: It -- I'm sorry to interrupt.

16 MR. SWARAT: Go ahead.

17 MR. MCCARTY: If you'd like, Your Honor, I can announce
18 'em, it's actually gonna be four warrant or four indictments
19 outta this, under this case, it's gonna be 2007-1444 an
20 indictment for trafficking in cocaine, 07-1447 an indictment
21 for trafficking in cocaine, 07-1456, Your Honor, trafficking
22 crack cocaine and 07-1556 an indictment for trafficking in
23 crack cocaine, Your Honor.

24 MR. SWARAT: Your Honor, I've explained to Mr. Vaughn
25 that this is essentially his last chance. I've explained the

1 two strikes, three strikes implications to these pleas and
2 that should he engage in this conduct when he's released from
3 prison he's lookin' at a life sentence and he understands
4 that. He's very embarrassed for his own conduct and also
5 embarrassed for his family. He he hates that he's put them
6 through this and I think he would like to address the Court at
7 this time.

8 THE COURT: Were you able to hear what your lawyer just
9 said?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you agree with those statements?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Vaughn, I'll be more than happy to hear
14 anything you'd like to tell me I just want you to be sure that
15 you speak up loud enough so that both the court reporter and I
16 can hear you.

17 THE DEFENDANT: I just wanna apologize to the community,
18 to my family, my kids, just wanna ask God forgive me and throw
19 myself on the mercy of the Court, sir.

20 THE COURT: Thank you, sir. I'll find that there's a
21 substantial factual basis for the plea. I'll find that the
22 defendant's decision to enter the plea has been made freely,
23 voluntarily, knowingly and intellectually by him. I'll find
24 that he has received the services from a very competent and
25 able legal counsel, services he has indicated to the Court

1 he's satisfied with and has relied on in reaching the
2 decisions that he's made, therefore I will accept the plea.
3 Mr. Vaughn, the fact that your family is here speaks very
4 highly of you. I want to acknowledge your presence. It is
5 comforting to the Court as well as I'm sure you to know that
6 despite the fact you have these charges that you're pleading
7 to your family still stands with you and obviously they love
8 you very much, ---

9 THE DEFENDANT: Thank you.

10 THE COURT: --- should be, should be commended for that,
11 sir, and I tell you that so that you don't lose sight of that
12 as well, okay?

13 THE DEFENDANT: Okay. Thank you.

14 THE COURT: On Indictment 2007-1446, sentence of the
15 Court is that the defendant will be confined to the State
16 Department of Corrections for a period of eighteen (18) years,
17 an 18-year sentence also in 2007-1445 and a 5-year sentence
18 under 2007-1445A. Those sentences will run concurrent with
19 each other. I've indicated on the sentencing sheet my
20 instruction that Department of Corrections will give him
21 credit since February the 19th 2007 or 1,079 days against
22 these sentences. Good luck to you, sir.

23 THE DEFENDANT: Thank you.

24 MR. SWARAT: Thank you, Your Honor.

25 MR. MCCARTY: Thank you, Your Honor.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on February 3, 2010 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 18, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

January 10, 2011

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

ORIGINAL

FORM 5

2011-CP-42-0206

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of SPARTANBURG)CHRISTOPHER M. VAUGHN 00339181)

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 BROAD RIVER CORRECTIONAL INSTITUTION,
4460 BROAD RIVER ROAD, COLUMBIA, SC 29210

2. Name and location of Court which imposed sentence SPARTANBURG GENERAL
SESSIONS COURT, 180 MAGNOLIA STREET, SPARTANBURG, SC

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

18 18 5 to run concurrent

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SPARTANBURG COUNTY
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M. JOE BLACKLEY

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) FEBRUARY 3, 2010
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty xx
- (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 Ayes@ 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 Ano@ to (7), state your reasons for not so appealing:
- (a) Lawyer failed to file an appeal

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SPARTANBURG COUNTY
2011 JAN 19 AM 9:45
M. HOPE BLACKLEY

- (b) _____
- (c) _____

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

- (a) ineffective assistanec of counsel
- (b) the search warrant was improperly issed and my
attroney failed to advise me or challenge its
- (c) unconstitutional

11. State concisely and in the same order the facts which support each of the grounds set out in (10): d) also failed to get copies of tape on conversation
of and never challenged false statement in affidavit
from search warrant

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

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

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

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion 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. _____

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SPARTANBURG COUNTY
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HOPE BLACKLEY

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. _____

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SPARTANBURG COUNTY
2011 JAN 19 AM 9:45
M. HOPE BLACKLEY

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) ~~TRIAL ATTORNEY FAILED TO INVESTIGATE OR CHALLENGE~~
~~THE SEARCH BASED ON UNCONSTITUTIONAL SEARCH WARRANT~~

(b) _____

(c) _____

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

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

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

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

i. AUGUST G. SWARAT, II
P.O. BOX 8086
COLUMBIA, SC 29202

ii. _____

iii. _____

- (b) the proceedings at which each such attorney represented you:
 i. arraignment and plea

ii. _____

iii. _____

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 SPARTANBURG COUNTY
 2011 JAN 19 AM 9:46
 M. HOPE BLACKLEY

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

New trial

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Richard H. Wender, Attorney for Christopher M. Vaughn, 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.

Richard H. Wender

SWORN to and subscribed before me this 18th day of January, 2011.

Dina Collins (L.S.)
Notary Public

My Commission Expires: 10-31-13

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JAN 19 AM 9:46
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Christopher M. Vaughn, #339181,	)	2011-CP-42-0206
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 19, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the April 2007 term of the Spartanburg County Grand Jury for trafficking in cocaine, 400+ grams and possession of a firearm during the commission of a violent crime (07-GS-42-1445, count 1 & count 2) and trafficking in marijuana, 100+ lbs (07-GS-42-1446). Applicant was represented by August G. Swarat II, Esquire. On February 3, 2010, the Applicant pled guilty to the lesser-included offenses of trafficking in cocaine, 28-100 grams – 2nd offense and trafficking in marijuana, 10-100 lbs – 2nd offense¹. Applicant was sentenced by the Honorable J. Mark Hayes II to confinement for eighteen years on each charge of trafficking and five years for possession of a firearm during commission of a violent crime, each set to run concurrently, pursuant to a negotiated sentence. The Applicant did not appeal his conviction or sentence.

¹ In accordance with the plea agreement, four additional indictments were dismissed, including two trafficking in cocaine, (07-GS-42-1444, -1447), and two trafficking in crack cocaine (07-GS-42-1456, -1556).

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- I. Ineffective assistance of counsel, in that;
 - a. Counsel failed to file an appeal,
 - b. Counsel failed to challenge the search warrant, including, challenging the false statement in the affidavit from the search warrant,
 - c. Counsel failed to get copies of conversation on tape.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: Mary Williams
ATTORNEYS FOR RESPONDENT

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Dec-7, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Christopher M. Vaughn,

2011-CP-42-0206

Applicant,

v.

CERTIFICATE 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Richard H. Warder, Esquire
Law Firm of Richard H. Warder
P.O. Box 26133
Greenville, South Carolina 29616


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 7th day of December, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS
2011-CP-42-00206

CHRISTOPHER VAUGHN,

-VS-

THE STATE of SOUTH CAROLINA,
Defendant.

TRANSCRIPT OF RECORD

January 30, 2012
Spartanburg, South Carolina

Ordered: May 5, 2012

Delivered: July 5, 2012

B E F O R E:

THE HONORABLE FRANK R. ADDY, Presiding Judge.

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

MS. SUZANNE H. WHITE, Esquire
Assistant Attorney General Appearing for the State

MR. RICHARD WARDER, Esquire
Attorney Appearing for the Applicant

Pamela Faucette
Circuit Court Reporter

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E X H I B I T S

Applicant's Exhibits:	Marked:	Received:
1 - (Search Warrant)	7	7

Respondent's Exhibits:	Marked:	Received:
(None)		

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(None)		

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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

1 January 30, 2012

9:40 A.M.

2 (Brief pause while Mr. Green is brought into the
3 courtroom.)

4 (Off-the-Record Comments)

5 THE COURT: Ms. Elliott, what is our first case?

6 MS. WHITE: Your Honor, It will be Christopher
7 Vaughn. And the packets are up there for you.

8 THE COURT: Okay. Thank you.

9 MS. WHITE: And Ms. Elliott is my boss. I'm Ms.
10 White ---

11 THE COURT: I'm sorry.

12 MS. WHITE: That's okay.

13 THE COURT: I'm sorry, Ms. White.

14 MS. WHITE: And I know -- you've got the packets. I
15 didn't know how much procedural history you wanted me to
16 read or if you just wanted me do call the case for you.

17 THE COURT: If you don't mind, go ahead and give me
18 skinny; the nature of the conviction. And we'll take it
19 from there.

20 MS. WHITE: Okay. This is the case of Christopher
21 Vaughn vs. The State. It's case number 2011-CP-42-0206.
22 He's represented today by Mr. Richard Warder.

23 Mr. Vaughn was indicted in April of '07 for
24 trafficking in cocaine; four hundred (400) and more
25 grams; trafficking in marijuana, a hundred (100) pounds

1 or more; and possession of a firearm doing the commission
2 of a violent crime.

3 He ultimately pled pursuant to a negotiated
4 sentence. Both of the trafficking charges, the amounts
5 were reduced and two --four additional indictments -- two
6 for trafficking crack and two for trafficking cocaine
7 were dismissed as part of the plea negotiations.

8 So, he received a negotiated sentence of eighteen
9 (18) years.

10 No appeal was filed. And he filed this PCR January
11 19, two thousand and seven (2007) -- two thousand, eleven
12 (2011), excuse me, alleging various claims of ineffective
13 assistance of counsel.

14 And I'll turn it over to Mr. Warder at this time.

15 THE COURT: Mr. Warder, are -- are you and your
16 client ready to proceed at this point in time?

17 MR. WARDER: We are, Your Honor.

18 THE COURT: All right. Very good. Go right ahead.

19 MR. WARDER: Thank you. Your Honor, if it pleases
20 the Court, I would call my client, Christopher Vaughn.

21 THE COURT: Mr. Vaughn, if you would, come up -- up
22 here and have a seat, please.

23 (The witness complied with the Court's request.)

24 (Whereupon,

25 CHRISTOPHER VAUGHN

1 having been duly sworn, testified as follows:)

2 (Off-the-Record Comments)

3 THE COURT: Mr. Warder?

4 DIRECT EXAMINATION by MR. WARDER:

9:44 a.m.

5 Q. Mister ❖- Mr. Vaughn, where are you presently
6 incarcerated at?

7 A. Broad River.

8 Q. Okay. And you're serving an eighteen (18) year
9 sentence?

10 A. Yes, sir.

11 Q. And I even think there are three (3) of those and
12 they run concurrent?

13 A. Yes, sir.

14 Q. Okay. Now, you had me bring a ❖- a post-conviction
15 relief for you alleging that your counsel should have
16 challenged the search warrant?

17 A. Yes, sir.

18 (Law clerk steps into the courtroom.)

19 THE COURT: This is my law clerk here. I'm sorry.
20 They'll show you how to -- I made the same mistake, Josh.
21 They'll show you how to get back here.

22 LAW CLERK: Okay.

23 THE COURT: I apologize, Mr. Warder. You can
24 continue.

25 Q. (By Mr. Warder) Tell His Honor why you felt the

1 search warrant should be challenged?

2 A. Because, when they came in, they didn't have a
3 search warrant to me. And everything that was on the
4 affidavit was talking about my old address.

5 They -- they didn't have probable cause for them to
6 even come to [REDACTED] (phonetic).

7 Q. Okay.

8 (Documents handed to the witness.)

9 Q. Okay. Is this -- is this a copy of the search
10 warrant that was ultimately served upon you sometime later?

11 A. No, sir. That's not the copy that I gave to -- to
12 my lawyer. That's not -- that's not the copy they gave me.

13 Q. Okay. But did you get this one served upon you at
14 some time?

15 A. Yes, sir. After I had -- well, I asked -- asked for
16 -- asked for a copy of the search warrant, that's what they
17 sent me back. But that's not what I gave them when they --
18 when I got there. That's not the one.

19 Q. Okay. Now ---

20 MR. WARDER: First of all, I'd move -- move to make
21 this an exhibit, Your Honor.

22 THE COURT: Without objection, Ms. White?

23 MS. WHITE: If I could just glance at it real quick?

24 THE COURT: All right.

25 (Brief pause while Ms. White examines document.)

1 MS. WHITE: Without objection, Your Honor.

2 (Whereupon, Applicant's Exhibit Number 1 was marked
3 for identification and entered into evidence without
4 objection.)

5 Q. (By Mr. Warder) Now, Mister -- Mr. Vaughn, you said
6 that wasn't the -- the first search warrant that was served
7 upon you?

8 A. No, sir.

9 Q. Okay. Now, you were charged with -- with making a
10 sale earlier that day with a search warrant?

11 A. Yes, sir.

12 Q. And -- and what location was that sale supposed to
13 be made at?

14 A. At -- at the mini mart on John Dodd Road.

15 Q. Okay. And you were, then, followed from that
16 residence to your house -- to another house?

17 A. Yes, sir.

18 Q. Okay. And that -- that house was search?

19 A. Excuse me. Can you repeat it again?

20 Q. That house that they followed you to was the one
21 they searched?

22 A. Yes, sir.

23 Q. All right. The affidavit in the -- the search
24 warrant doesn't state any reason to believe there was
25 narcotics at the place where -- where they followed you to?

1 A. No, sir.

2 Q. In fact, the affidavit says that the residence --
3 your residence was the place the sale was made?

4 A. Yes, sir.

5 Q. And neither the informant nor the police had ever
6 seen you at the residence they searched?

7 A. No, sir, not at [REDACTED]. It as always been [REDACTED]. That's
8 where the buyers came, [REDACTED] (phonetic).

9 Q. And the search warrant contains ---

10 THE COURT: Mr. Warder, would you ask him to repeat
11 that last question -- or his answer?

12 MR. WARDER: I'm sorry.

13 Q. (By Mr. Warder) Can you tell us the -- the -- the
14 answer to the question?

15 A. I said the only -- the sales were made at [REDACTED]
16 [REDACTED]. There never was any sells made at the address
17 they searched, [REDACTED] (phonetic).

18 Q. Okay. And the -- the search warrant contains no
19 reason for them to believe the drugs were at the house that
20 they searched?

21 A. No, sir, all the surveillance was done at [REDACTED]
22 [REDACTED]. All buys was at [REDACTED].
23 Nothing was ever done at [REDACTED]. That was the first time they
24 ever even came to me and caught me at it.

25 Q. Okay. Tell us about when the police came to the --

1 the house that they searched that was at -- at [REDACTED]?

2 A. No, at [REDACTED].

3 Q. Three, twelve [REDACTED]?

4 A. Yes, sir.

5 Q. Tell us what happened, when -- when you first became
6 aware the police were there.

7 A. They knocked at -- they came through the garage,
8 knocked at the back door. I opened the back door. And they
9 asked me was I Christopher Marcus Vaughn (phonetic).

10 And I said, "Yes." And they said they an arrest
11 warrant for my -- for my arrest. I said, "Okay."

12 And, so, I came out. I was coming out the door.
13 And I had my hands up willingly; I wasn't -- I wasn't fighting
14 or anything. I wasn't refusing.

15 And I stepped out. And he pushed me back; asked me
16 to step back in. He pushed me back in.

17 Q. And you stepped out on, I guess, a stoop or the --
18 the step?

19 A. Yeah, the first step, right.

20 Q. Okay. And they pushed you back in the house?

21 A. Yeah, they pushed me back and told me to step back
22 in the house.

23 Q. Okay. And did they, then, give you the papers on
24 the arrest?

25 A. No, sir.

1 Q. Did they give you the search papers?

2 A. No, sir.

3 Q. What happened?

4 A. They handcuffed me. And, then, they handcuffed one
5 of my friends who was in the next room. They handcuffed him
6 and they started going through the house.

7 Q. Okay. Did you ask about a search warrant?

8 A. Yes, I sure did.

9 Q. Okay. And what did they tell you?

10 A. They told me that had one like some -- they acted
11 like someone else had the search warrant. And I told them, I
12 said, "You know, you had an arrest warrant. You never did
13 even tell me about no search warrant." I didn't never see
14 neither one.

15 Q. Okay. Did there ever come a time when you saw a
16 search warrant?

17 A. I saw a search warrant after the fact that they done
18 did the search and I've been -- you know, been arrested and
19 protective -- took to the county.

20 Q. Okay. And is that search warrant different from the
21 one that ---

22 A. He showed me?

23 Q. Yes, sir.

24 A. Yes, it was different. It had a copy with the [REDACTED]
25 [REDACTED] scratched out. And they handwrote the [REDACTED]

1 in. And I gave it to my -- to Mr. Swarat -- I mean, Mr. Thad
2 Myers (phonetic).

3 Q. Okay. You gave that search warrant to who?

4 A. To Thad Myers.

5 Q. Okay. And -- and who's that?

6 A. That was my lawyer at first who I had retained
7 before August started taking over -- Mr. Swarat started taking
8 over.

9 Q. Okay. Now, was he in the same firm as Mister ---

10 A. Yes, sir.

11 Q. And where were you at when you -- you -- you saw Mr.
12 Swarat -- or Thad?

13 A. Thad? I was still at the Spartanburg County
14 Detention Center.

15 Q. Okay. Did he come up there and visit you?

16 A. Yes.

17 Q. Okay. And is that when you gave him the search
18 warrant?

19 A. Yes, sir.

20 Q. You've never seen that search warrant since then?

21 A. No, sir.

22 Q. Okay. And you -- you pled guilty to three (3)
23 charges; is that right?

24 A. Yes, sir.

25 Q. And one of those charges is the one that pertains to

1 the bad search warrant?

2 A. Yes, sir. All three of them went to the search
3 warrant.

4 Q. Okay. Out at your house at that time they got a --
5 a large sum of money?

6 A. Yes, sir.

7 Q. They got some other drugs?

8 A. Yes, sir.

9 Q. Do you feel you could have made a -- a more
10 effective plea bargain if that -- that search warrant had been
11 challenged and that -- that stuff had been suppressed?

12 A. Yes, sir. I would -- I would have insisted on going
13 to trial.

14 Q. Okay. And did you tell your attorney that you
15 thought the search was bad?

16 A. Yes, yes, sir. I told him that from the beginning
17 when I showed him the paper when I came -- when -- when he
18 came to see me that first time.

19 Q. Did anybody ever file a motion on your behalf?

20 A. No, sir.

21 Q. If a pre-trial motion had -- had been filed, you
22 certainly could have challenged that search warrant before you
23 had completed the plea bargaining, wouldn't you?

24 A. Yes, sir.

25 Q. And do you believe it would have been suppressed?

1 A. I would; I would think so, yes, sir.

2 Q. Did your attorney ever tell you why he wouldn't do
3 that?

4 A. No, sir.

5 (Brief Pause)

6 Q. You also in your PCR say that you never were
7 furnished any of the conversations, the recorded
8 conversations?

9 A. That's correct, sir, I never seen any audio, videos.
10 I hadn't seen any video of it, no car audio or video.

11 Q. Did you ever go over all of the discovery with your
12 attorneys?

13 A. I didn't get to see all the evidence against me, no,
14 sir. I didn't get to see everything.

15 Q. Okay. Did you specifically ask for the tapes?

16 A. Yes, sir.

17 Q. Why did you want those tapes?

18 A. Because I wanted to see if it -- if it -- if it was
19 me on the tapes.

20 Q. Was that to see if the State had a strong enough
21 case -

22 A. Yes, sir.

23 (Brief Pause)

24 MR. WARDER: Okay. Would you answer any questions
25 that the State might have?

1 MR. VAUGHN: Yes, sir.

2 THE COURT: Ms. White?

3 MS. WHITE: Thank you, Your Honor.

4 CROSS EXAMINATION by MS. WHITE:

9:56 A.M.

5 Q. Mr. Vaughn, before the search happened at your
6 house, when they showed up with the arrest warrant, were those
7 for the four additional indictments that were dropped?

8 A. They ❖- they never did show me any arrest warrants.
9 I didn't ❖- when I opened the door, they said they had a
10 warrant for my arrest.

11 Q. Okay.

12 A. I didn't receive any paper from no one.

13 Q. But the four in ❖- indictments that were dropped
14 against you, as part of the plea negotiations ❖

15 A. Uh-huh (affirmative).

16 Q. ❖- were those from charges that had occurred prior
17 to the search of your home?

18 A. No. They was for the [REDACTED].

19 Q. So, all four of those indictments that were
20 dropped ❖

21 A. Was for [REDACTED] and for the one at
22 the John ❖- the mini mart on John Dodd Road.

23 Q. Okay. So, what you were arrested for and what they
24 had the arrest warrant for ---

25 A. Uh-huh (affirmative).

1 Q. --- you're alleging you were never charged with?

2 A. Excuse me, I don't understand what you're saying.

3 Q. Okay. What I'm trying to ask is, you were -- you
4 were being arrested for a charge initially ---

5 A. Uh-huh (affirmative).

6 Q. --- when they showed up at your house?

7 A. Yes, ma'am.

8 Q. What were you being arrested for? Do you know?

9 A. They just said they had an arrest warrant for my
10 arrest. I mean, I didn't ---

11 Q. Okay.

12 A. They didn't tell me why.

13 Q. Okay.

14 A. They said they had a warrant for my arrest.

15 Q. Did you attorneys ever talked with you about what
16 you were being arrested for that day and what you were charged
17 with?

18 A. I didn't have an attorney at -- at that time when I
19 got arrested.

20 Q. Right, but when you did have an attorney?

21 A. Yes.

22 Q. Did you talk about, in addition to what they found
23 at the house, what the police were arresting you for on the
24 day they showed up with a warrant?

25 A. I received the arrest warrants from the -- from the

1 officer when he stopped me up front. And I just gave
2 everything ❖- when Thad came to see me for the first time, I
3 gave all ❖- all the warrants they had gave me, I gave to him.

4 Q. And had you read the arrest warrants?

5 A. Yes.

6 Q. And what were they arresting you for?

7 A. For -- I can't remember exactly how many ❖- which
8 sales and all it was, but it was sales for twenty (20) -- for
9 ❖- I mean, I don't recall.

10 I can't remember; it's been five (5) years. I can't
11 remember exactly what it was.

12 Q. Okay. But those were additional charges that they
13 were already charging you for, for some kind of trafficking or
14 distribution of crack or cocaine?

15 A. Yes, ma'am.

16 Q. And that was separate from the charges for the drugs
17 they found in your house?

18 A. Yes, ma'am.

19 Q. Okay. Now, you are arguing against the search
20 warrant, but you pled guilty, didn't you?

21 A. Yes, I did.

22 Q. Okay. And do you recall the judge going over with
23 you your rights and the fact that you were giving up the right
24 to -- to attack any or provide any defenses?

25 A. Yes.

1 Q. Okay. And you said that, that was fine that, that's
2 what you wanted to do?

3 A. Yes, ma'am.

4 Q. Okay. And you also agreed that you wanted to give
5 up your right to a jury trial at the time?

6 A. Yes.

7 Q. All right. And were you not being honest at the
8 time?

9 A. I was going through -- I was doing what the advice I
10 had received from my attorney, ma'am.

11 Q. All right. And at X- at the time, you agreed with
12 the fact that an eighteen (18) year negotiated sentence was
13 better than possibly receiving minimum twenty-five (25) for
14 the trafficking charges; is that right?

15 A. That's not what my lawyer told me. He told me, if I
16 didn't take the plea of eighteen (18), I was getting X- facing
17 up to ninety (90) years. So, I took the advice that he had
18 told me.

19 Q. And is that not correct? You were facing minimums
20 of some of those charges for at least twenty-five (25) years
21 for some of those; is that correct?

22 A. I think so, yes.

23 Q. Okay. And the judge had the ability to run those
24 consecutive, didn't he, if you had just pled straight up or if
25 you had gone to trial and been found guilty?

1 A. I mean, it was on ❖- up to the judge when ❖-
2 when ❖

3 Q. So, the fact that you were facing up to ninety (90)
4 years, the option of pleading guilty to eighteen (18) years
5 sounded reasonable at the time, didn't it?

6 A. Through the advice of my attorney, he told me that
7 was the best thing for me.

8 Q. Okay.

9 A. I'm going on what he told me to do.

10 Q. But you pled guilty because you wanted eighteen (18)
11 years compared to risking up to ninety (90)?

12 A. I pled guilty because my attorney told me it was the
13 best thing for me to do.

14 Q. You were the one facing jail time. Did you want to
15 risk ninety (90) years or did you want to take a guaranteed
16 eighteen (18)?

17 A. I took the eighteen (18) years. Like I just said,
18 ma'am, I took it because my lawyer told me to take the
19 eighteen (18). He said it was the best thing for me to do.

20 So, I didn't know anything about the law. I took
21 the advice of my attorney. I thought he had my best interest
22 in it. So, I did what my lawyer asked me to do.

23 Q. And you were sworn to tell the truth that day,
24 didn't you?

25 A. Yes, ma'am.

1 Q. Okay. And did you tell the truth?

2 A. Yes, ma'am.

3 Q. Okay. So, when the Judge ask you if you were
4 pleading freely and voluntarily, and you said, "Yes, sir?"

5 A. Yes.

6 Q. "You want to give up your rights?" "Yes, sir." You
7 agreed with the fact that you said you had, had enough time to
8 talk with him, about the counsel, and were there any possible
9 defenses you had and you said, "Yes, sir?"

10 A. Yes.

11 Q. Then they said, "Are you satisfied with the work
12 that he's done," and you agreed?

13 A. Yes.

14 Q. You also agreed that you gave up your right to
15 establish any defense to these charges. And you [sic] said
16 "Are you sure you want to give up these rights and go ahead
17 and enter the plea," and you said, "Yes, sir?"

18 A. Yes.

19 Q. So, are you disagreeing with that now?

20 A. Yes, because since -- every since that I have been
21 convicted of it I started doing research on it and -- and seen
22 what we could have -- other options that I had.

23 Because I felt like my lawyer wasn't being truthful
24 with me too.

25 Q. So, you were telling the truth then, but now you're

1 saying your don't agree with what you did; you don't like the
2 time you got?

3 A. No, I'm not saying that. I said was X- like I did
4 the research on my own. And with my attorney I seen that X- I
5 feel that he, if would have did his own investigation and did
6 suppress the evidence, tried to get the evidence suppressed, I
7 wouldn't never even took the plea.

8 Q. So, you would rather go to trial and be facing up to
9 ninety (90) years instead of getting the guaranteed eighteen
10 (18) is what you're saying today?

11 A. I feel X- yes, I do. From the evidence that I had,
12 I felt like, if the evidence on the search warrant would have
13 been suppressed, yes, I would have took my chance on going to
14 trial.

15 Q. And ---

16 A. I saw the evidence X- the -- the evidence X- some of
17 the evidence would have been dismissed.

18 Q. Okay. And, on the four charges that were dismissed,
19 those would come back. And you're willing to take that as
20 well?

21 A. Yes, because I never even seen the audio or video on
22 them. So, they might not even have me on the audio or videos.

23 Q. Okay.

24 A. All right, ma'am.

25 Q. All right. And even though you pled guilty and you

1 told the judge that you were guilty at that time?

2 A. Yes.

3 Q. Are you disagreeing with that too?

4 A. I'm not here today to say if ~~if~~ if I'm guilty or
5 not. I'm here to show that my attorney was ineffective. I'm
6 not here trying to say I'm guilty or not guilty.

7 Q. But you did swear to tell the truth that day. And
8 you did tell them that you were guilty that day of doing that;
9 is that right?

10 A. I took the advice of my attorney and pled to it,
11 yes.

12 Q. Okay.

13 A. All right.

14 MS. WHITE: All right. Thank you, Your Honor.
15 That's all I have.

16 THE COURT: Anything on redirect?

17 MR. WARDER: No, Your Honor.

18 THE COURT: Mr. Vaughn, please step down. Thank
19 you, sir.

20 (The witness complied with the Court's request.)

21 THE COURT: Mr. Warder?

22 MR. WARDER: If Your Honor please, that would be
23 the Applicant's case.

24 THE COURT: Ms. White, anything on your complaint?

25 MS. WHITE: Yes, Your Honor. The State would call

Mr. August Swarat, Esquire - Direct by Ms. White Page 22

1 Thad Swarat.

2 (The witness stepped forward to be sworn.)

3 THE WITNESS: Good morning, Your Honor.

4 THE COURT: Good morning.

5 (Off-the-Record Comments)

6 (Whereupon,

7 AUGUST (THAD) SWARAT

8 having been previously duly sworn, testified as
9 follows:)

10 THE COURT: Ms. White?

11 MS. WHITE: Thank you.

12 DIRECT EXAMINATION by MS. WHITE: 10:04 A.M.

13 Q. If you could, please, state your name for the
14 record.

15 A. My first name is August, just like the month. The
16 last name is Swarat, S-w-a-r-a-t. And I go by Thad which you
17 called me I believe.

18 Q. Okay. And, Mr. Swarat, can you tell us how you got
19 involved with Mr. Vaughn's case initially?

20 A. I can't tell you the exact timing of it. I joined
21 Weston, Myers, Perkins, and Young (phonetic), the law firm
22 that Mr. Myers, who Mr. Vaughn mentioned early, Thad Myers, is
23 a partner of.

24 Also working on Mr. Vaughn's case with Sara McMahon,
25 that's Judge McMahon's daughter. And she had been with the

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1 firm for a number of years before I joined.

2 Sometime during her representation of Mr. Vaughn,
3 she decided to go back into public service. And she is now an
4 assistant solicitor.

5 Once she decided to leave the firm, I was brought in
6 to help out on the case.

7 Q. Okay. And, if you could, just give me a little
8 background on your history; when were you sworn in to the
9 South Carolina Bar?

10 A. I was sworn in, I believe, November 21st, 1994.

11 Q. Okay. And what type of law have you practiced since
12 you were beginning in South Carolina?

13 A. I was a state prosecutor in different capacities. I
14 was an assistant solicitor in the Fifth Circuit.

15 I became a deputy solicitor in the Eleventh Circuit
16 and later on I went to the Attorney General's Office.

17 After leaving the Attorney General's Office, which I
18 believe was in two thousand and six (2006), I went into
19 private practice.

20 And I joined the firm that I mentioned previously
21 sometime in the summer of two thousand, seven (2007), I
22 believe.

23 Q. And what percentage of your practice is ☒- is
24 criminal now?

25 A. Oh, it's probably sixty (60) percent, somewhere in

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1 that range.

2 Q. Did you handle all types of cases? Do you
3 specialize in anything?

4 A. I ~~Q~~- I handle all types of criminal cases. But, as
5 a prosecutor, I handled drug cases, probably thousands of drug
6 cases.

7 Q. Now, you mentioned you kind of got into the case
8 once you joined the firm and Thad and Sarah had been working
9 on it. To your understanding, what was the case situation?
10 Was it a case that was going to trial? Was this
11 already a plea? Where were you -- where was the case when you
12 joined in?

13 A. Well, when I first got involved in the case, I went
14 through the file and -- and looked at all the evidence. It --
15 it was my understanding that Mr. Vaughn was charged with a
16 number of separate incidents involving the trafficking of
17 drugs.

18 There was an incident, I believe, with a
19 confidential informant in early February of two thousand and
20 seven (2007). I believe it was February 6th where a
21 controlled buy took place which was audio taped; I believe
22 also maybe video taped.

23 Those warrants were outstanding. Then, later there
24 was a drug buy done with either the same informant or a
25 different informant, on February the 19th of two thousand and

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1 seven (2007) for a large amount of drugs that would have been
2 a trafficking level amount.

3 Then, once that buy took place, law enforcement
4 followed Mr. Vaughn back to a residence that he had. From my
5 understanding of reading the file and -- and going through
6 everything with Thad and Sarah, Mr. Vaughn had two separate
7 residences.

8 I believe there was some attempt to get a search
9 warrant of his first residence. And, then, there was search
10 warrant which was procured the day of this last drug buy,
11 maybe some two (2) hours after the buy was pro -- procured for
12 this other residence that was ultimately searched.

13 Q. And, so -- he's mentioned conversations and concerns
14 about the search warrant. Do you recall talking with him or
15 any conversations with him about whether or not the search
16 warrant was something that you all felt that you could attack?

17 A. We did talk about the search warrant. And there
18 were some issues with it. It was poorly drafted.

19 There was some issue with the timing of the search
20 warrant. However, we explained to Mr. Vaughn, all three of us
21 did, that the issue he would face is even if the search
22 warrant were successfully attacked and much of the evidence
23 that was seized from his home was suppressed, he was still
24 facing trafficking level charges from the previous drug buys
25 with the confidential informant that were on audio tape;

1 That were monitored by law enforcement. I believe
2 one or more of those were done on video tape. It -- it was a
3 daunting case even if the search warrant were successfully
4 attacked and all that evidence was suppresses.

5 I'd -- I had heard you mentioned previously he was
6 looking at some -- in the range of ninety (90) years. Those
7 are only the charges he actually pled to.

8 If you add in the charges that were dismissed, as a
9 result of the plea, he was looking at close to two hundred
10 (200) years in prison.

11 Q. And once you -- I'm sorry.

12 A. What we explained to Mr. Vaughn is we could attack
13 the search warrant. We could bring a motion to attack the
14 search warrant.

15 If we were successful, he could still be looking at
16 separate trials on each one of these trafficking level
17 offenses. And Mr. Vaughan's prior record would have put him
18 in a situation where he'd be looking at thirty (30) or more
19 years on each one of those charges.

20 So, not only did he have to dodge the bullet of the
21 search warrant, which the judge could rule, it could either be
22 it gets thrown out or if it's upheld, that the search was
23 proper, he would, then, have to face separate juries on these
24 other drug buys. Just the odds of him being successful
25 weren't very good.

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1 Q. After you talked with him about these options and
2 that ☒- and what he was facing, what was the general consensus
3 what was Mr. Vaughn's decision, I guess, on this?

4 A. His instructions to us was to try to approach law
5 enforcement, to try to be cooperative, which he already had
6 done at the time of the search warrant.

7 Let me back up. At the time he was served with the
8 arrest warrants and was placed under arrest on the 19th, he
9 immediately cooperated, gave them a full confession.

10 That was also a big consideration because, even if
11 the search warrant were thrown out and the evidence that they
12 seized as a result of the search warrant was thrown out, he
13 still gave a confession, which was not likely to be thrown out
14 because it could be tied to the arrest warrants for the
15 previous drugs transactions that they had on him.

16 So, we explained to him that, even though he might
17 get a large amount of this evidence suppressed if the search
18 warrant were successfully challenged, the confession was
19 likely to come in.

20 And ☒- and, then, strategically, if we went to trial
21 on any one of those other drug buys, there was no way to put
22 him on the stand because, if he opened the door somehow by
23 making a statement, just for instance, you know, ☒I'm not a
24 drug dealer,☒ or something along those lines, then, even the
25 suppressed evidence could be brought in against him if he

1 opened the door somehow.

2 We went through everything, every scenario, with Mr.
3 Vaughn in trying to do the best job we could to get him the
4 best result.

5 Q. And ultimately were you able to negotiate with the
6 State or with law enforcement?

7 A. We were, but they were very reluctant to do so.
8 They ❖- they looked at Mr. Vaughn's case as one of the biggest
9 cases that ever ❖- the biggest drug bust in the history of
10 Spartanburg County.

11 So they were very reluctant to do anything for Mr.
12 Vaughn regardless of what he was able to provide to them.

13 But we chipped away at it over approximately three
14 (3) years and we were able to convince them to work with Mr.
15 Vaughn and to reduce his charges, drop a number of charges,
16 and to negotiate an exact sentence.

17 In addition, they were willing to give him credit
18 for time served going back to his arrest on February the 19th
19 of two thousand, seven (2007), even though he was not actually
20 in jail during that whole time frame.

21 He was given almost three (3) years of credit, much
22 of which was spent on home detention, which we were able to
23 negotiate as well.

24 Q. At the time, in your discussions with Mr. Vaughn,
25 did you feel that this was a decision that he came to and it

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1 was freely and voluntarily accepting wanting to plea guilty to
2 this negotiated sentence?

3 A. Well, it was a process. Once Mr. Vaughn asked us to
4 approach law enforcement to see if they'd be willing to work
5 with him and potentially give him a break on these charges, we
6 went through a series of meetings with law enforcement, with
7 the solicitor's office, with Mr. Vaughn.

8 Mr. Vaughn participated in those meetings. It ✕- it
9 was -- we almost had to build a certain level of trust between
10 Mr. Vaughn and the solicitor's office and law enforcement.

11 Everybody participated. And that went on for
12 probably more than a year. Then ultimately we were ✕- we were
13 able to arrive at a number as far as a negotiated sentence and
14 also the stipulations about his time served.

15 MS. WHITE: Your Honor, just a second, please.

16 (Brief Pause)

17 Q. In regards to discovery, one quick thing: He had
18 mentioned that he had never seen the audio/video tapes or much
19 of the evidence that the State had against him.

20 Do you recall during shared discovery or if you had
21 any of the information about these controlled buys?

22 A. We did have information. The tapes are in the file
23 from the controlled buys from February 6th of two thousand and
24 seven (2007).

25 The controlled buy that he mentioned on February the

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1 19th of two thousand and seven (2007), there's an audio
2 recording in here.

3 All of this information was released to Sara McMahon
4 back when she first became involved in the case. And, from
5 the records in here that I have, I ❖- I was able to piece
6 together that she would have received most of this information
7 in May of two thousand, seven (2007) which was before I joined
8 the firm.

9 And I have no way of telling you whether or not she
10 went over each one of those tapes with Mr. Vaughn or not. But
11 we met with him at the jail. We met with him here in
12 Spartanburg.

13 And also he came to our offices in Columbia and met
14 with us on numerous occasions.

15 Q. Okay. Did he ever in those meetings to you
16 specifically ask to see those?

17 A. (No Response)

18 Q. Do you recall?

19 A. I don't ❖- I don't recall sitting down with him and
20 going over those tapes with him specifically. However, Ms.
21 McMahon or Mr. Myers could have done so. I'm not sure.

22 MS. WHITE: Okay. All right. I think that's all I
23 have at this time, Your Honor.

24 THE COURT: Mr. Warder, cross?

25 MR. WARDER: Thank you, Your Honor.

1 CROSS EXAMINATION by MR. WARDER:

10:12 A.M.

2 Q. Do you have those tapes in the file?

3 A. Yes, sir.

4 Q. Okay They furnished you the audio and the video?

5 A. I believe they furnished those to Ms. McMahon. They
6 -- they make you sign a form when you get the discovery up
7 here. Every county does it differently.

8 And they were signed out to her sometime. It's got
9 to be before I joined the firm.

10 Q. Okay. Did -- did you check the -- the -- the buy
11 for them or other -- or was there other discovery?

12 A. There was other discovery. There are several tapes
13 of buys involving Mr. Vaughn. There's also a video tape.

14 I'm -- I'm sure I went over it. It's just I don't
15 -- I don't remember the timing and if Mr. Vaughn was present
16 when we did.

17 Q. Drawing your attention back to the search
18 warrant ---

19 A. Yes, sir.

20 Q. --- there probably was a very good reason to believe
21 that at least a -- a search of the residence could be
22 suppressed, wasn't there?

23 A. I thought there was some arguments that could have
24 been made.

1 Q. Well, what ---

2 A. I mean it -- it was kind of a three (3) prong issue
3 with the search. They had arrest warrants for Mr. Vaughn.

4 According to the incident report, they smelled
5 burning marijuana when they arrived at the residence when he
6 opened the door. That would have been another reason for them
7 to be able to search the residence.

8 And, then, you had the search warrant. So, it -- it
9 wasn't -- there was no way to effectively kill the entire
10 search based on just suppressing the search warrant.

11 Q. Well, if they had burning marijuana, that was never
12 told to a magistrate, never in the affidavits.

13 A. It's in the incident report. I don't know if it's
14 in the affidavit.

15 Q. I guess the -- the judge would have issued a search
16 warrant on the affidavit?

17 A. That's how it usually works. That and the oral
18 history that's given by the -- the officer that would have
19 been present requesting the search warrant.

20 Q. Well, there was never evidence that there was any
21 oral testimony to supplement that, was there?

22 A. I don't know if there was or not.

23 Q. But you didn't check that?

24 A. We met with all the officers involved in Mr.
25 Vaughn's case.

1 Q. Did you ask them if there was an oral search warrant
2 affidavit supplementing ---

3 A. I don't recall. Most of the decision was whether or
4 not they could trust Mr. Vaughn to be on the street and
5 cooperate in their investigation.

6 That was the ❖- the main focus of meeting with law
7 enforcement.

8 Q. There was a large amount of money that was obtained
9 from ---

10 A. Yes, sir.

11 Q. --- the search on [REDACTED] ---

12 A. That's correct.

13 Q. And certainly if that ❖- if the search warrant could
14 have been attacked, that disposition of the money would be
15 more in doubt?

16 A. I ❖- I don't ❖- I don't know that I follow you.

17 Q. Well, you would have had a better bargaining
18 position if you would have suppressed the search warrant?

19 A. Well, the issue would have been this: If we went to
20 court and challenged the search warrant, on this particular
21 body of evidence against him, I don't know that they would
22 have been willing to work with us on the other cases.

23 So, it would have been out of the frying ❖- frying
24 pan and into the fire. I ❖- I don't know that, that would
25 have served Mr. Vaughn very well.

1 Q. Well, I guess my [REDACTED] my point is, if you had the [REDACTED]
2 the one case that had the most of the seized stuff that I take
3 it the government wanted, you would have a stronger bargaining
4 position?

5 A. Right. And Mr. Vaughn signed over I believe a [REDACTED] a
6 Lexus automobile and also the monies to law enforcement before
7 we were even involved in the case.

8 Q. And I guess we're [REDACTED] had -- well, strike that. Had
9 you talked with them about [REDACTED] about the threat of [REDACTED] of
10 challenging the search warrant in your negotiations?

11 A. Who is [REDACTED] them [REDACTED]?

12 Q. Had you talked to the [REDACTED] the [REDACTED] the assistant
13 solicitor that was dealing with this case?

14 A. We [REDACTED] we talked with them about it. But myself, Mr.
15 Myers, and Ms. McMahon were all former prosecutors.

16 I know, if [REDACTED] if I have three (3) cases on an
17 individual and you want to take me into court on one (1), on
18 my weakest case and I lose that weakest case, I'm [REDACTED] I'm not
19 likely to bargain with you very well on my strong ones.

20 It [REDACTED] it didn't seem to make a lot of sense to poke
21 the hornet's nest if we've got to try to get a deal out of the
22 Plaintiff.

23 I don't know that they would have given us the deal
24 we ended up with if we made them look bad in court on one (1)
25 case.

1 Q. So, you kind of made a tactical decision not to do
2 that?

3 A. Well, we discussed that with Mr. Vaughn, yes.
4 Ultimately he made the decision about how we proceeded.

5 We ❖- we would have been fine to fight all three (3)
6 cases. I just don't know that it would have served him very
7 well.

8 Q. Well, did ❖- did you discuss that and tell him that?
9 That you would either attack or not, however he wanted? Go to
10 trial or not; however he wanted?

11 A. Absolutely. It was his decision how to proceed.

12 Q. Did you prepare it for trial?

13 A. He made the decision based on the conversations we
14 had with him that he wanted to cooperate and try to get the
15 best deal he could. And that's how we proceeded from there.

16 Q. Okay. And the best deal was eighteen (18) years?

17 A. We tried to get them lower, but they wouldn't go any
18 lower.

19 MR. WARDER: That's all the questions I have.

20 MS. WHITE: Nothing further, Your Honor.

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

22 MR. SWARAT: Thank you.

23 (The witness complied with the request.)

24 MS. WHITE: The State would rest.

25 MR. SWARAT: Your Honor, may ❖- may I be excused?

1 THE COURT: No objection to releasing this witness?

2 MS. WHITE: No objection.

3 THE COURT: All right. Very good. Good to see
4 you, Mr. Swarat.

5 (Whereupon, the witness was excused.)

6 THE COURT: Any argument, brief, or anything you
7 want to present Mr. Warder in summation?

8 MR. WARDER: Your Honor, just briefly by argument I
9 guess.

10 THE COURT: Yes, sir.

11 MR. WARDER: The X- the search warrant that we put
12 into evidence, there's X- it contains absolutely no basis
13 to search [REDACTED], which is the place they got.

14 That was a house they weren't aware of. They
15 followed him to it. There was no one that said that he
16 was connected with it.

17 In fact, the informant had said that his residence
18 was the one that they were dealing out of. In other
19 words, they followed him to a residence and got a search
20 warrant with no reason to believe there was anything in
21 the house;

22 No real reason to believe that it was even his
23 residence. It was a X- a residence occupied by another
24 individual with a car in the driveway.

25 And they just got a search warrant and searched it.

26 Now, I guess it's -- there's an argument that you

1 shouldn't attack it. But I would think that a reasonably
2 prudent attorney would have at least attacked or at least
3 filed a motion to attack that search warrant, so, that
4 the bargaining position could be as strong as it possibly
5 could.

6 There was a huge amount of money that come out of
7 there. There was other evidence that, that case would
8 have one that would've had X- had a big chip to be used
9 in a bargaining game.

10 And it only would have been available had you been
11 successful on a motion to suppress. And it seems to me
12 like a strategy that a reasonably prudent attorney would
13 have followed would have been to file that motion and
14 properly argue that motion.

15 I X- I think that the X- the strategy that has been
16 su X- suggested is that X- that we not make any waves and
17 we not play our strongest hand in hopes that they'll
18 rewards us because we wont' make them mad.

19 And, so, I think that, that in itself, Your Honor,
20 is sufficient grounds to grant a new trial.

21 THE COURT: Thank you, Mr. Warder.

22 MS. WHITE: Just briefly, Your Honor. Obviously,
23 the State would argue that, that strategy was successful
24 in the fact that he received a minimum that was much
25 lower than he was facing on even just one (1) of the

1 charges.

2 He met with his attorneys, took their advice, looked
3 at his options, and pled freely and voluntarily.

4 We would argue that, looking at the record, he was
5 sworn to tell the truth. He agreed that he was pleading
6 and giving up all defenses at the time that he pled to
7 these charges.

8 And, at that time, he received the benefit of the
9 bargain. And they reduced the two (2) charges.

10 He also had four (4) indictments that were
11 completely dismissed. And only now he's trying to come
12 back and attack the defenses that he freely waived when
13 he pled guilty.

14 So, we would argue that the application should be
15 dismissed.

16 (Brief Pause)

17 THE COURT: May I see the search warrant at issue
18 that was introduced into evidence by counsel?

19 (Document handed up to the Court.)

20 (Brief pause while the Court examines document.)

21 THE COURT: Thank you.

22 (Document handed back to Counsel.)

23 THE COURT: All right. Anything further from
24 anyone in this case?

25 MR. WARDER: No, Your Honor.

1 MS. WHITE: No, Your Honor.

2 COURT'S RULING

3 THE COURT: I've -- I've heard the testimony. And
4 I've reviewed the record, the transcript as well as the
5 search warrant at issue here.

6 And of course the Applicant, Mr. Vaughn, bears
7 burden of proving ineffective of counsel and also for its
8 prejudice.

9 Based upon a -- a review of the record as a whole, I
10 -- I cannot find that Counsel was ineffective based upon
11 the -- the total number of charges that Mr. Vaughn was
12 facing and the overall situation that he found himself in
13 looking at in excess of ninety (90) to two (2) hundred
14 years, somewhere in that range.

15 And I -- I do have -- upon review of the trial
16 transcript, the transcript of record, complete with a
17 statement by Judge Hayes, I would find that Mr. Vaughn
18 clearly waived his right, knowingly waived his right, to
19 challenge the -- the search warrant.

20 So, for those reasons, I'm going to deny the PCR. I
21 -- I cannot find that there was any prejudice either.

22 So, that would be my ruling. If you'll prepare me
23 an order, Ms. White?

24 MS. WHITE: Thank you, Your Honor.

25 (Whereupon, the proceeding concluded at 10:28 a.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 39, were transcribed by me or at my direction and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

July 3, 2012

A handwritten signature in cursive script, appearing to read 'Pamela S. Faucette', written over a horizontal line.

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Christopher M. Vaughn, #339181,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-0206

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 19, 2011. The Respondent made its Return on or about December 12, 2011. An evidentiary hearing into the matter was convened on January 30, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Richard H. Warder, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was August C. Swarat II, Esquire ("Counsel"). This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the guilty plea transcript, and Applicant's Exhibit #1, a copy of the search warrant from his case.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the April 2007 term of the Spartanburg County Grand Jury for trafficking in cocaine, 400+ grams and possession of a firearm during the commission of a violent crime (02, G.S. § 17-242).

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1445, count 1 & count 2) and trafficking in marijuana, 100+ lbs (07-GS-42-1446). Applicant was represented by August G. Swarat II, Esquire. On February 3, 2010, the Applicant pled guilty to the lesser-included offenses of trafficking in cocaine, 28-100 grams – 2nd offense and trafficking in marijuana, 10-100 lbs – 2nd offense¹. Applicant was sentenced by the Honorable J. Mark Hayes II to confinement for eighteen years on each charge of trafficking and five years for possession of a firearm during commission of a violent crime, each set to run concurrently, pursuant to a negotiated sentence. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to file an appeal,
 - b. Counsel failed to challenge the search warrant, including, challenging the false statement in the affidavit from the search warrant,
 - c. Counsel failed to get copies of conversation on tape.

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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

The Applicant alleges he received ineffective assistance of counsel. In a

¹ In accordance with the plea agreement, four additional indictments were dismissed, including two trafficking in cocaine, (07-GS-42-1444, -1447), and two trafficking in crack cocaine (07-GS-42-1456, -1556).

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"[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), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "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).

The Applicant claims that Counsel was ineffective for failing to challenge the search warrant used to enter his home. The Applicant testified that the affidavit used for the search warrant referenced his old address, so he believes there was no probable cause for the search.

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warrant. Applicant acknowledged that he was involved in a drug sale on John Dodd Rd., but then he stated that he was followed to his house and that house was searched. Applicant argued that the warrant referenced [REDACTED] and the house that was searched was [REDACTED]. However, he acknowledged that the police approached him at [REDACTED] and told him that they had an arrest warrant for him and then searched the home after they had handcuffed Applicant and his friend, where they found drugs and a large sum of money. Applicant alleged that he would have insisted on going to trial because of the bad search warrant.

Counsel testified that the Applicant had been charged as a result of a number of incidents, including trafficking charges unrelated to the search warrant. Counsel testified that the warrant was poorly drawn and could have been attacked had they proceeded to trial, but even if it had been thrown out; the Applicant would still have been facing at least two trafficking charges. Counsel also testified that even if the search warrant had been attacked, the police still had the fact that they had the arrest warrant and had reported smelling burning marijuana at the home. Additionally, Counsel testified that the charges relating to the search warrant would have been a separate trial from the other charges, which would also affect his prior record. The Applicant had confessed on the night of his arrest and signed over his car and the money before Counsel or any other attorneys were involved. Counsel also testified that the Applicant instructed Counsel to approach law enforcement and inform them that he wanted to cooperate, so Counsel met with the Applicant and the Solicitor's office and was able to negotiate a very favorable plea agreement.

Applicant also alleged that Counsel was ineffective for failing to get copies of the audio and video tape evidence that would be used against Applicant had he gone to trial.

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alleged that he specifically asked Counsel to be able to see the tapes regarding the confidential buys. Counsel testified that in a review of his file, the tapes of the February 6th confidential informant buy and the February 19th trafficking buy were in the file. Counsel testified that he feels confident that the Applicant was clearly on the tapes.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. In regards to these claims, this Court finds Counsel's testimony to be more credible than Applicant's testimony. Counsel is an experienced trial attorney who has spent over ten years as a prosecutor, predominantly prosecuting drug cases and was prepared for and effectively represented Applicant at his guilty plea. It is clear from a review of the record as well, that the Applicant was pleased with his attorney (Tr. p. 7) and was aware that as a result of the plea negotiations, the State was dismissing four additional trafficking charges (Tr. p. 16). Additionally, the Court advised the Applicant of and he freely and voluntarily waived his rights to raise any defenses at a jury trial and acknowledged his guilt (Tr. 8-9, 13). This Court finds that the Applicant has failed to meet his burden of proof as to this claim; therefore, this claim is denied and dismissed.

Applicant also alleged in his application that Counsel failed to file an appeal on his behalf. At the hearing, the Applicant failed to present any testimony or evidence in support of this claim. Therefore, this Court finds that the Applicant has failed to meet his burden of proof and this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, Counsel's testimony is credible. This Court further finds counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

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

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 302 So.2d 53 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate

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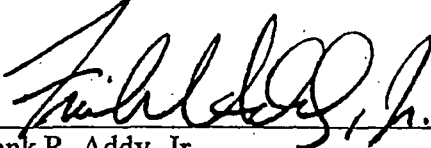
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review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27th day of March, 2012.


 Frank R. Addy, Jr.
 Presiding Judge

Greenwood, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

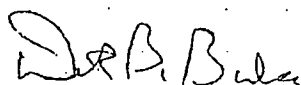
INDICTMENT

At a Court of General Sessions, convened on APR 05 2007, the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN MARIJUANA

That Christopher Marcus Vaughn did in Spartanburg County on or about February 19, 2007, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (100) one hundred pounds of Marijuana, a schedule I controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

3 CO SHERIFF'S OFFICE

1. SENTENCE MADE

2. DETENTION

Spartanburg County Sheriff's Office

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

7. ASSESSMENT

FINE CARD

223651 TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

person of Grand Jury

VERDICT

person of Petit Jury

01-03-42-1446

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

APR 09 2007

TERM

THE STATE
VS.

CHRISTOPHER MARCUS VAUGHN

Indictment for
TRAFFICKING IN MARIJUANA

SC Code: 44-53-370

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MARC KITCHENS

*has been arrested by
The FBI for stealing evidence*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

APR 05 2007

At a Court of General Sessions, convened on _____, the
 Grand Jurors of Spartanburg County present upon their oath:

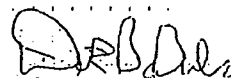
COUNT ONE- TRAFFICKING IN COCAINE

That Christopher Marcus Vaughn did in Spartanburg County on or about February 19, 2007, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (400) four hundred grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
 COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Christopher Marcus Vaughn did in Spartanburg County on or about February 19, 2007, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: TRAFFICKING IN COCAINE, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

WITNESSES

Spartanburg Sheriff's Office

1. REPORT ENTERED

3. CARD FILED

4. INDEXED
Spartanburg County Sheriff's Office

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT NUMBER
7. ASSESSED FINE CARD

8. TRAFFIC VIOLATION COPY

23650 AND DIRECT INDICTMENT

ACTION OF GRAND JURY

person of Grand Jury

VERDICT

person of Petit Jury

DOCKET NO. 07-GS-42-1445(A)

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

APR 09 2007

TERM

THE STATE
vs.

CHRISTOPHER MARCUS VAUGHN

Indictment for

TRAFFICKING IN COCAINE;
POSSESSION OF FIREARM DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: 44-53-370; 16-23-490

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MARC KITCHENS