

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Michael G. Nettles, Circuit Court Judge

MELVIN SAMUEL HOLMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001052

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

RUSTON NEELY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
-----) IN THE COURT OF
GENERAL SESSIONS
2013-GS-07-0204, 0207

THE STATE OF SC)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
MELVIN HOLMES,)
DEFENDANT)
-----)

DECEMBER 15, 2014
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EDGAR W. DICKSON

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

HUNTER SWANSON, ESQUIRE
ASSISTANT SOLICITOR

JARED NEWMAN, ESQUIRE
ATTORNEY FOR DEFENDANT

SHARON VIZER,
CIRCUIT COURT REPORTER

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I N D E X

PLEA HEARING . . . 3

* * * P R O C E E D I N G S * * *

THE COURT: All right. Ms. Swanson.

MS. SWANSON: Thank you. Good morning, Your Honor.

THE COURT: Yes, ma'am.

MS. SWANSON: Mr. Holmes is before you on two indictments, trafficking cocaine base 28-100 grams. That's indictment number 2013-GS-07-204, as well as possession of a weapon during the commission of a violent crime. That's 2013-207.

The State is nolle prosequing a possession of a stolen pistol from the same case due to the fact I do not believe that I can prove beyond a reasonable doubt that the defendant knew or should have known it to be stolen. That's indictment number 2013-206.

The defendant has been noticed for trial today. I have investigator Angie Boland standing up here with me. The State is ready to move forward. The defendant has decided to enter a guilty plea. This is a straight up plea without any State negotiations or recommendations. But I would like to be heard on sentencing at the appropriate time.

THE COURT: Okay.

THE CLERK: Raise your right hand, please.

MELVIN HOLMES, after having

1 been duly sworn, testified as follows:

2 THE COURT: All right. Mr. Newman, you represent
3 Mr. Holmes?

4 MR. NEWMAN: I do, Your Honor.

5 THE COURT: And it's my understanding he's
6 pleading guilty to trafficking cocaine base 28 to a 100
7 grams?

8 MR. NEWMAN: That's correct, Your Honor.

9 THE COURT: And also pleading guilty to possession
10 of a weapon during a violent crime?

11 MR. NEWMAN: Judge, that's correct. And I believe
12 there are no negotiations. That's straight up. But I
13 believe the -- I'm going to ask for concurrent
14 sentences.

15 MS. SWANSON: Right. And Mr. Newman is free to
16 argue for whatever he wishes.

17 THE COURT: Okay. All right. Okay. And, Mr.
18 Newman, you've had an opportunity to meet with Mr.
19 Holmes and review with him the evidence the State has
20 against him with these two charges?

21 MR. NEWMAN: I have, Your Honor.

22 THE COURT: And you have explained to him that
23 he's facing up to five years on the weapons charge and
24 from seven to 25 years on the trafficking charge?

25 MR. NEWMAN: I have, Your Honor.

1 THE COURT: Okay. And you have also advised him
2 of his constitutional rights?

3 MR. NEWMAN: I have, Your Honor.

4 THE COURT: Okay. He understands he has a right
5 to have a jury trial on either one or both of these
6 charges?

7 MR. NEWMAN: Yes, sir. We were prepared to go
8 forward this morning on that.

9 THE COURT: Okay. He has indicated to you that
10 rather than go forward with the jury trial, he wished
11 to plead guilty to these charges?

12 MR. NEWMAN: Yes, Your Honor.

13 THE COURT: Do you believe it's in his best
14 interest to do so?

15 MR. NEWMAN: I do.

16 THE COURT: Okay. All right. Mr. Holmes, my
17 sentencing sheet indicates that you are 30 years old;
18 is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. And, Mr. Holmes, how far did
21 you go in school?

22 THE DEFENDANT: I got my GED.

23 THE COURT: Okay. Where were you going to school?

24 THE DEFENDANT: Beaufort High.

25 THE COURT: Where?

1 THE DEFENDANT: Beaufort High.

2 MR. NEWMAN: Beaufort High School, sir.

3 THE COURT: All right, sir. And what grade did
4 you stop in?

5 THE DEFENDANT: Ninth.

6 THE COURT: Okay. Why did you stop in the ninth
7 grade?

8 THE DEFENDANT: I got expelled --

9 THE COURT: Why did you get expelled?

10 THE DEFENDANT: Being a class clown. Being a
11 class clown and missing too many days.

12 THE COURT: Okay. Other -- other than -- have you
13 gotten any other education or training past your GED?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Are you working somewhere now?

16 THE DEFENDANT: At the time, I was working with a
17 cleaning service in Hilton Head. Transtill (phonetic)
18 Home Care.

19 THE COURT: How long were you working with the
20 cleaning service?

21 THE DEFENDANT: Since October -- since October.

22 THE COURT: Of 2014?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So just two months?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Where were you working before
2 then?

3 THE DEFENDANT: I was not working. I was
4 incarcerated.

5 THE COURT: Okay. All right. All right. Mr.
6 Holmes, have you ever been treated for any mental
7 health issues?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you ever been treated for drug or
10 alcohol abuse?

11 THE DEFENDANT: No, sir.

12 THE COURT: Today, are you under the influence of
13 alcohol, illegal drugs, or medication?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. So you are thinking clearly
16 today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You know exactly what you're doing?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Tell me what you're doing here today?

21 THE DEFENDANT: Pleading guilty to trafficking.

22 THE COURT: And to...?

23 THE DEFENDANT: Possession of a weapon.

24 THE COURT: Okay. All right, sir. Has anybody
25 promised you anything to get you to plead guilty here

1 today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anyone threatened you or forced
4 you to get you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you doing this freely and
7 voluntarily?

8 THE DEFENDANT: Not really.

9 THE COURT: Well, if you're not doing it freely
10 and voluntarily, you're not going to have a plea.

11 THE DEFENDANT: I mean, yeah, I want to plead.
12 Because if I don't plead, then I'm going to have to be
13 forced to go to trial without a lawyer, so I'm
14 pleading.

15 THE COURT: Okay. And you -- what do you mean --
16 and you're facing up to 25 years if you go to trial?

17 THE DEFENDANT: Yeah.

18 THE COURT: Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So you want to go forward with the
21 plea?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And nobody is forcing you to do this;
24 are they?

25 THE DEFENDANT: No, sir.

1 THE COURT: It is your decision?

2 THE DEFENDANT: Right.

3 THE COURT: Okay. All right, sir. Now, Mr.
4 Newman has had an opportunity to meet with you and
5 review the evidence against you on both of these
6 charges; is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: He has explained to you the law that
9 applies to both of these situations?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You know you are facing up to five
12 years in one, and from seven to 25 years on the other
13 one?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Do you understand -- Mr. Newman has
16 also explained to you your constitutional rights; is
17 that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. And you understand you have a
20 right to remain silent and have the State prove their
21 case. You have the right to confront witnesses. You
22 have the right to present defenses for these charges;
23 do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand you give up all

1 those rights if you plead guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Do you want a jury trial on
4 either one of these charges?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you want to go forward with the
7 guilty plea?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Have you understood everything
10 your attorney has told you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you satisfied with his services as
13 your attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need any more time to talk with
16 him?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. All right. Ms. Swanson.

19 MS. SWANSON: Thank you, Your Honor. This charge
20 stems from a drug investigation that began in December
21 of 2012. The defendant, at that time, was on
22 electronic monitoring. And the drug task force
23 executed three controlled buys from Mr. Holmes and his
24 brother, Amad Holmes. Amad Holmes would meet the C.I.
25 and the undercover police officer at the Island Plaza

1 on St. Helena because Mr. Holmes couldn't leave his
2 house due to the electronic monitoring.

3 A search warrant was obtained on January 5th of
4 2013, and executed on January 11th. The Defendant was
5 located in bedroom one of the house, which was the only
6 functional bedroom. He was in bed at the time. It was
7 4:58 a.m.

8 His pants were on the floor. Beside his bed was
9 a night stand, on top of which a quantity of crack was
10 found, as well as a digital scale and some sandwich
11 bags. On the other dresser in the bedroom, his South
12 Carolina I. D., another quantity of crack and
13 miscellaneous paperwork belonging to Mr. Holmes. The
14 rest of the residents of the house were found in the
15 living room.

16 Your Honor, a total of 62.31 grams of crack were
17 found in Mr. Holmes' bedroom. Much of that had been
18 packaged for sale. One package, including 15 small
19 baggies, that had been, you know, twisted and possibly
20 eight ball weights for those.

21 We did perform DNA testing on the bags, as well
22 as a number of the other items of evidence that were
23 taken into custody. Melvin Holmes' DNA was found on
24 the 15 bags of crack, as well as on the scale located
25 next to the bed.

1 He did admit to living at [REDACTED] [REDACTED] [REDACTED] since
2 December 1st of 2012. I believe the residence belongs
3 to his sister.

4 As far as criminal history goes, his criminal
5 history begins about 12 years ago. His convictions do
6 not reflect what a problem he has been in Beaufort
7 County.

8 He's got starting in 2002, assault and battery;
9 2004 ABHAN as a result of striking someone with a
10 baseball bat; possession of a stolen vehicle; 2004
11 resisting arrest, P.D.C; 2005 resisting arrest; 2007
12 receiving stolen goods; 2009 another ABHAN which
13 involved a Grey Goose vodka bottle; 2009 failure to
14 stop for blue lights, for which he received probation.

15 He also has a history of domestic violence; one
16 conviction in 2012. And another case that I recently
17 had to dismiss due to the victim being in fear.

18 MR. NEWMAN: Your Honor, of course, we object to
19 any consideration of things Mr. Holmes was not
20 convicted of.

21 THE COURT: What was his convictions?

22 MS. SWANSON: 2004 ABHAN; possession of stolen
23 vehicle, resisting arrest.

24 THE COURT: Okay.

25 MS. SWANSON: A 2005 resisting arrest; 2007

1 receiving stolen goods; 2009 ABHAN, and failure to stop
2 for a blue light; 2012 CDV.

3 THE COURT: Okay.

4 MS. SWANSON: Investigator Angie Boland is
5 standing beside me for this recitation of facts. I
6 would just like to ask, with the court's permission, if
7 she would like to add anything.

8 THE COURT: Ms. Boland.

9 MS. BOLAND: No, Your Honor. The prosecutor has
10 covered his history and the problems that we've had
11 here in Beaufort County with Mr. Holmes. Thank you.

12 THE COURT: Okay.

13 MS. SWANSON: This is a straight up plea, Your
14 Honor. It is the State's position that the defendant
15 should receive substantial time in the double digit --
16 digits. Thank you.

17 THE COURT: All right. All right. Mr. Holmes,
18 you have heard what the solicitor has told me about the
19 circumstances that led to your arrest on these two
20 charges?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. The indictment --

23 (Pause.)

24 MR. NEWMAN: He just had to ask me a question, I
25 think we've covered it.

1 THE COURT: Okay. All right. Mr. Holmes, the
2 indictment I have, 2013-GS-7-204 is an indictment for
3 trafficking crack 28 to 100 grams, first offense. This
4 occurred in Beaufort County on or about January 11,
5 2013. And the allegations are that you did possess
6 crack in excess of 28 grams, less than 100 grams, in
7 violation of the laws of this state.

8 You've heard what the Solicitor told me about
9 the amount and weight of that; do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir. How do you plead to
12 the charge of trafficking in cocaine base 28 to 100
13 grams?

14 THE DEFENDANT: Guilty.

15 THE COURT: All right, sir. The next indictment I
16 have, 2013-GS-7-207 is possession of a weapon during a
17 violent crime. It occurs on the same date here in
18 Beaufort County, and it said that you had a gun in your
19 possession on that day. Again, in violation of the
20 laws of this state. Do you understand the allegations
21 contained in this indictment?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How do you plead to this charge of
24 possession of a weapon during a violent crime?

25 THE DEFENDANT: Guilty.

1 THE COURT: All right. So, Mr. Holmes, do you
2 understand if I accept your guilty pleas to these two
3 charges, they will be convictions on your record?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand the trafficking
6 charge is a violent and a serious offense?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Your attorney has explained that to
9 you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that counts as a
12 strike?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand two more serious
15 offenses, or a most serious offense, and you are facing
16 the possibility of life without parole?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Do you understand you have got
19 ten days to appeal my decision?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you want me to accept your guilty
22 plea to these two charges?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Holmes, I find that your decision
25 to pled guilty to these two charges is freely,

1 voluntarily, intelligently made. I find you've had the
2 advice of counsel, a competent lawyer. I find that
3 you're satisfied with the services of your lawyer. I
4 find that as a factual basis for you to plead guilty to
5 both the possession of a weapon and to the trafficking
6 charge, and I will accept your guilty plea to both of
7 these charges. Okay. All right, Mr. Newman.

8 MR. NEWMAN: If it pleases the court, Your Honor.

9 THE COURT: Yes, sir.

10 MR. NEWMAN: Melvin does have somewhat of a
11 record. I would ask the court to note that some of the
12 things are close to, if not over 10 years old. Melvin
13 has been a life long resident here in Beaufort County.
14 He's been -- since his arrest, he's been coming to
15 Court, meeting all his obligations that he was supposed
16 to do.

17 I would ask the Court to consider a sentence in
18 the range of seven to 10 years. As you know, this is
19 an 85 percent. It's a no parole -- it's a no parole
20 case whatsoever.

21 I would ask the Court to also give Melvin
22 credit -- he has approximately 11 or so months in --
23 the detention center tells me they have a calculation
24 that they -- they take to SCDC of approximately 11
25 months -- he served time on these charges, we'd asked

1 for that to be credited toward his sentence.

2 He has also been approximately 10 months on
3 house arrest and ankle monitoring. And I believe under
4 the statutes -- the new statutes, that you can consider
5 that as part of a -- a time served when sentencing.

6 In fact, I think Melvin is on his ankle
7 monitoring right now.

8 THE DEFENDANT: I just -- I just --

9 MR. NEWMAN: We just got it off. That's right.

10 THE DEFENDANT: In October.

11 MR. NEWMAN: In October.

12 THE COURT: He was arrested at his house while he
13 was doing this, right?

14 MR. NEWMAN: Yes, sir. And I will say to the
15 Court, he was where he was supposed to be, number one.
16 The allegations in this, and the defense would have
17 been his brother is charged with these same charges.
18 And his brother was the one that actually allegedly met
19 the three times with the undercover officers to make --
20 to make the sales. That would be part of our defense.

21 However, I would also ask the Court to consider
22 that Mr. Holmes, by his guilty plea, it is a benefit to
23 the State. This would have been approximately a two
24 and a half to three day trial.

25 He understands the seriousness of this. And I

1 think at 30 years old, a seven to 10 year sentence, by
2 the time he gets out, would be -- would not further be
3 a danger to society in any way. And we ask Your Honor
4 also to take into account that he has no drug offenses
5 whatsoever, and he is 30 years old.

6 THE COURT: Okay. All right. Mr. Holmes, on the
7 possession of a weapon charge, the sentence of this
8 court is you are committed to the State Department of
9 Corrections for a period of five years.

10 On the trafficking charge, the sentence of this
11 court is you are committed to the State Department of
12 Corrections for a period of 10 years. These sentences
13 are concurrent.

14 I will give you credit for the time you have
15 served. But, Mr. Holmes, I'm not giving you credit for
16 time you were under house arrest, because that's when
17 the crime was committed while you were on house arrest.
18 Okay.

19 MR. NEWMAN: Thank you, Your Honor.

20 THE COURT: Thank you, sir.

21 MS. SWANSON: Thank you, Your Honor.

22 THE COURT: I appreciate it.

23 (WHEREUPON, the hearing adjourned.)
24
25

1 CERTIFICATE OF REPORTER

2

3 I, SHARON D. JONES, CERTIFIED COURT
4 REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
7 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
8 GENERAL SESSIONS FOR BEAUFORT COUNTY, SOUTH CAROLINA ON
9 THE 15TH OF DECEMBER, 2014.

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

13

14

15

8.13.15.

16

Sharon D. Jones

17

18

SHARON D. JONES,
CERTIFIED COURT REPORTER

19

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STATE OF SOUTH CAROLINA)

County of BEAUFORT)MELVIN HOLMES 310276)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-07-1209

APPLICATION FOR

POST-CONVICTION RELIEF

2015 MAY 15 PM 3:00
CLERK OF COURT
BEAUFORT COUNTY, S.C.**INSTRUCTIONS - READ CAREFULLY**

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 RIDGELAND CORRECTIONAL INSTITUTION,
(RCI), GEORGETOWN, AL, ROOM 12 (GA-12) P.O.B. 2039
2. Name and location of Court which imposed sentence COURT OF GENERAL
SESSIONS FOR BEAUFORT COUNTY, P.O. DRAWER 1120
BEAUFORT, S.C. 29901
3. Name(s) of co-defendant(s) (if any) AHMAD HOLMES (Dismissed)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 GS0700204, TRAFFICKING IN COCAINE
 - (b) BASE
POSSESSORY OF WEAPON (HAND GUN)

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12-15-14, TEN (10) YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty GUILTY
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NA
- ii. NA
- iii. NA
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. NA
- iii. NA
- (c) the date of each such result:
- i. NA
- ii. NA
- iii. NA
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. NA
- iii. NA
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) APPLICANT WAS NEVER INFORMED OF THE RIGHT (DIRECT) APPEAL
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) DENIED THE ACTUAL EFFECTIVE ASSISTANCE OF
- (b) CRIMINAL DEFENSE COUNSEL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to challenge search warrant for residence; counsel failed to file motion to suppress
- (b) Counsel failed to investigate and reveal evidence of
- (c) sale of illicit drugs; Counsel failed to to prevent witness (brother); Counsel failed to seek
12. Prior to this application have you filed with respect to this conviction:
- (a) disqualification of government attorney based on conflict of interest
- (b) any petition in a State Court under South Carolina Law?
- (c) any petition in State or Federal Courts for habeas corpus or post-convictions relief?
- (d) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?
- (e) any other petitions, motions or applications in this or any other Court?
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) Failed to inform about direct appeal
- (b) Failed to request house arrest time, but should have asked for reconsideration of house arrest time.
- (c) NA Section 24-17-40 of the Code
- (d) NA
- (e) NA
- (f) NA
- (g) NA
- (h) NA
- (i) NA
- (j) NA
- (k) NA
- (l) NA
- (m) NA
- (n) NA
- (o) NA
- (p) NA
- (q) NA
- (r) NA
- (s) NA
- (t) NA
- (u) NA
- (v) NA
- (w) NA
- (x) NA
- (y) NA
- (z) NA

(c) the disposition thereof:

- i. NA
- ii. NA
- iii. NA
- iv. NA

(d) the date of each such disposition:

- i. NA
- ii. NA
- iii. NA
- iv. NA

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

- i. NA
- ii. NA
- iii. NA
- iv. NA

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?

NA - FIRST FILING

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

(a) which grounds have been presented:

- i. NA
- ii. NA
- iii. NA

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

- i. NA
- ii. NA
- iii. NA

24

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) ALL GROUND - FIRST FILING
 (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? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

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

(a) the name and address of each attorney who represented you:
 i. TABED S. NEWMAN, P.A.
TRIAL ATTORNEY
 ii. P.O. BOX 515
PORT. ROYAL, SOUTH CAROLINA 29935
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL CRIMINAL
 ii. _____
 iii. _____

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

APPLICANT PRAYS THAT THIS COURT GRANTS
THE RELIEF THAT HE IS ENTITLED TO IN
THIS PROCEED

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

NA

STATE OF SOUTH CAROLINA)

County of JASPER)

VERIFICATION

I, MELVIN S. HOLMES, 310276, 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.

Melvin S. Holmes

SWORN to and subscribed before me this 12
day of May, 2015.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

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

I, MELVIN HOLMES 310276, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Melvin D. Holmes
Applicant

SWORN or affirmed to and subscribed before me this

12 day of May, 2015.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

27

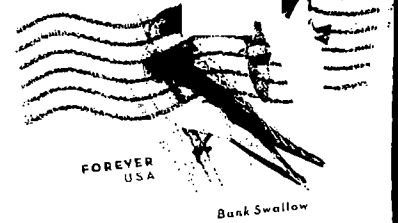
Melvin S. Holmes # 310276
R.C.I. GA/12
P.O. Box 2039
Ridgeland, S.C. 29936

RIDGELAND CORRECTIONAL
INSTITUTION

MAY 12 2015

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CHARLESTON SC 294
13 MAY 2015 PM 2 L



JERRI ANN ROSENEAU
CLERK of Court
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Beaufort, South Carolina
29901

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N.C. DEPARTMENT OF CORRECTIONS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	
Melvin Holmes, #310276,	)	2015-CP-07-1209
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed May 15, 2015, 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 Beaufort County Clerk of Court. The Applicant was indicted at the April 2013 term of the Beaufort County Grand Jury for one (1) count of Trafficking in Meth or Cocaine Base, 1st Offense and Possession of Weapon During the Commission of a Violent Crime (2013-GS-07-00204, -00207). Robert Hughes, Esquire, represented him. The Applicant plead guilty to both charges and was sentenced by the Honorable Edgar W. Dickson to incarceration for ten (10) years for Trafficking in Meth or Cocaine Base, 1st Offense and five (5) years for Possession of Weapon During the Commission of a Violent Crime, with the sentences to run concurrently. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina

Department of Corrections, the application, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel:
 - a. "Counsel failed to challenge search warrant for residence;"
 - b. "Counsel failed to file motion to suppress;"
 - c. "Counsel failed to investigate and reveal evidence of sale of illicit drug;"
 - d. "Counsel failed to seek disqualification of government attorney based on conflict of interest;"
 - e. "Guilty plea was not entered intelligently, knowingly, and voluntarily;"
 - f. "Failed to inform about direct appeal;"
 - g. "Failed to request house arrest time, should have asked for reconsideration of house arrest time."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent submits that Applicant's allegation of Ineffective Assistance of Counsel is without merit. In a post-conviction relief action, 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 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 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).

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

VI.

Applicant also alleges that he did not plead guilty freely and voluntarily. The State submits this allegation is without merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the plea was knowingly and voluntarily entered with a full understanding of the charge and consequence of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v.

State, 345 S.C. 16, 546 S.E.2d 417 (2001): Richardson v. State, 310 S.C 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should, therefore, be treated as such.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

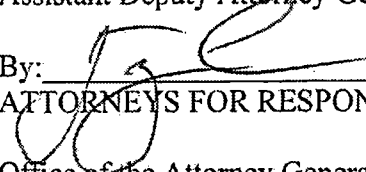
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

February 3, 2016.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MELVIN HOLMES, #310276

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

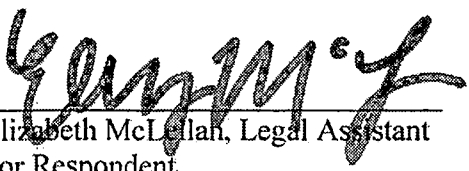
2015-CP-07-1209

AFFIDAVIT OF SERVICE BY MAIL

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

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

DATED this 3rd day of February, 2016.


 Elizabeth McLellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2015-CP-07-01209

MELVIN SAMUEL HOLMES

PETITIONER

VERSUS

OCTOBER 17, 2016

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. MICHAEL G. NETTLES, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PETITIONER
MELVIN SAMUEL HOLMES:

HON. JAMES K. FALK
FALK LAW FIRM, LLC
30 BROAD STREET, SUITE 350
POST OFFICE BOX 1058
CHARLESTON, SOUTH CAROLINA 29402-1058
843-606-6007
jfalklaw@gmail.com

ON BEHALF OF RESPONDENT
STATE OF SOUTH CAROLINA:

HON. RUSTON NEELY
ASSISTANT ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
803-734-3970
rneely@scag.gov

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10-17-16- HOLMES V STATE

BY THE COURT

1 BEGINNING 10:10 A.M.

2 BY THE COURT:

3 THE COURT: Madam Court Reporter, this is 2015-CP-
4 07-01209.

5 MR. NEELY: Your Honor, this is the case of Melvin
6 Holmes versus the State of South Carolina. As your
7 Honor brought out, this case is 2015-CP-07-01209. The
8 applicant is presently confined in the South Carolina
9 Department of Corrections, pursuant to orders of the
10 Beaufort County Clerk of Court. The applicant was
11 indicted the April 2013 term of the Beaufort County
12 Grand Jury for one count of trafficking in amphetamine
13 first offense, and possession of a weapon during the
14 commission of a violent crime. Those are Indictment
15 Numbers 2013-GS-07-00204 and 00207.

16 Mr. Robert Hughes represented the applicant. He
17 pled guilty to both charges on the day of trial, and was
18 sentenced by the Honorable Edward Dickson to
19 incarceration for ten years for trafficking in
20 amphetamine first offense, and five years for possession
21 of a weapon during the commission of a violent crime,
22 with the sentences to run concurrent.

23 The applicant did not appeal.

24 THE COURT: Pardon? The applicant did not appeal?

25 MR. NEELY: That's correct.

1 THE COURT: Bear with me just one moment. Mr.
2 Falk, you're recognized. I want to ask, if you could,
3 to summarize the grounds that you're pursuing for post-
4 conviction relief.

5 MR. FALK: Yes, your Honor. And I just consulted
6 with the Attorney General. Jared Newman was trial
7 counsel.

8 MR. NEELY: That's correct.

9 MR. FALK: Your Honor, this was a plea case,
10 there's certainly -- if you're reading through the
11 transcript of the pre-hearing, you know that there was
12 some -- my client certainly had concerns on the day
13 going forward in that he felt as though he was forced
14 into accepting a guilty plea because his lawyer was not
15 representing his best interests. It's his belief that
16 his lawyer failed to challenge the search warrant for
17 the residence that was the basis for the arrest. He
18 failed to pursue information that he had that somebody
19 else was going to take responsibility for the drugs that
20 were found at that location. And he had -- and without
21 interviewing that witness or doing anything to pursue a
22 third-party guilty, there again, he felt trapped.

23 And another issue that he has a serious concern
24 about is that he believes there was a conflict of
25 interest in that it was represented to him that Ian

10-17-16- HOLMES V STATE

BY THE COURT

1 Deysach and Mr. Newman were law partners. Mr. Deysach
2 had represented my client in the past. And it's my
3 client's -- I anticipate that'll be my client's
4 testimony that at least on one occasion on this case Mr.
5 Deysach spoke with Mr. Holmes. And I believe that Mr.
6 Deysach will testify that the solicitor in this case,
7 Hunter Swanson, was his wife.

8 THE COURT: All right.

9 MR. FALK: And one other item -

10 THE COURT: So, essentially, the grounds are he
11 felt like he was compelled to plea because trial counsel
12 failed to challenge the search warrant and to pursue a
13 third-person responsibility; he failed to interview a
14 given witness; and the conflict with regard to Ms.
15 Swanson Deysach and Mr. Newman?

16 MR. FALK: Yes, your Honor. And then, one other
17 point is that he had done a considerable amount of time
18 on house arrest, and he did not get credit for all of
19 his house arrest, and he believes that some of that
20 house arrest he should have gotten credit for, and that
21 his attorney should have lobbied for that.

22 THE COURT: All right. Very good. You may call
23 your first witness.

24 MR. NEELY: If I could, could I call Ian Deysach to
25 the stand.

1 THE COURT: Yes.

2 MADAM CLERK: Do you solemnly swear or affirm that
3 the testimony you give in this case shall be the truth
4 so help you God?

5 IAN DEYSACH: I do.

6 MADAM CLERK: You may be seated.

7 THE COURT: Get real close to that microphone.
8 Speak loudly, clearly, slow, so we can hear everything
9 you have to say.

10 MR. DEYSACH: Yes, sir.

11 IAN DEYSACH

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q Could you please state your name.

15 A Ian Deysach.

16 Q Mr. Deysach, can you explain to the Court your
17 relationship with Melvin Holmes, professional
18 relationship with Melvin Holmes.

19 A I represented, when I was a public defender, I
20 represented him on a couple different cases, but a
21 murder case and some other cases that were less serious.

22 Q He pled guilty to these charges in 2014. On this
23 particular case, do you have any kind of recollection of
24 when that might have been when you were representing him
25 on prior cases?

10-17-16 HOLMES V STATE

DEYSACH DIRECT FALK

1 A The trial I had with him was in 2009. There was
2 still some cases pending after that. But I had left the
3 public defender's office in 2013. I don't think I had
4 represented him for a while at that time. So it's been,
5 let's see, 2009. And then, maybe 2010 there was a left-
6 over charge that got resolved. That's the best of my
7 recollection. I don't have in front of me. The public
8 defender's office would have that information.

9 THE COURT: You left the Public Defenders Office
10 when?

11 A 2013, but I hadn't -- I hadn't represented Mr.
12 Holmes, I don't believe, for a while at that time.

13 BY MR. FALK:

14 Q Do you recall having any conversations about Mr.
15 Holmes about his current charges or the charges that are
16 the basis of this?

17 A I did. I met with Mr. Holmes, and I had to talk to
18 him at the jail and talk to -- ask him whether or not,
19 you know, his brother might be interested, who is
20 charged in the same case, whether or not his brother
21 might be interested in hiring me.

22 Q Okay. And where do you work now?

23 A I work for myself.

24 Q Where's your office.

25 A 1508 Paris Avenue.

1 Q Are there any other attorneys in that building?

2 A There is, Mr. Newman is there, and he's my -- my
3 landlord. I pay him rent for my office there.

4 Q Okay. Do you all have a receptionist?

5 A I don't have a receptionist.

6 Q When the phone dials for your office, who answers?

7 A I do.

8 Q Is there -- do you have any other separate
9 employees?

10 A I don't.

11 Q Do you use any of the employees at Mr. Newman's
12 office?

13 A I do not.

14 Q Who are you currently married to?

15 A Hunter Swanson.

16 Q And how long have you all been married?

17 A 2007. June 16, 2007. So, to do the math, nine
18 years.

19 Q One moment, please. And did you have a -- do you
20 recall having a conversation with him that he had gotten
21 indicted on these charges, or were you advised that he
22 had gotten indicted on these charges?

23 A I told him that he'd been indicted. That's the --
24 the question is that I had a conversation, and I told
25 him that he'd been indicted on the charges that are the

10-17-16 HOLMES V STATE

DEYSACH EXAM THE COURT

1 -- I don't remember that.

2 Q Well, is that what led up to the conversation about
3 his brother?

4 A That his brother had been indicted, or that Mr. --
5 your client had been indicted?

6 Q Well, I was assuming that they both got indicted
7 about the same time, and you said you got indicted on
8 these charges.

9 A I don't -- I don't particularly remember that. I
10 mean, whether or not -- I mean, I'm not disagreeing with
11 it. I don't have a particular memory of that.

12 MR. FALK: Okay. Thank you. I have no further
13 questions.

14 MR. NEELY: No questions.

15 THE COURT: No questions? I might have a few.
16 Just a second.

17 IAN DEYSACH

18 EXAMINATION

19 BY THE COURT:

20 THE COURT: Mr. Holmes has indicated there was some
21 conflict by the virtue of the fact that you are -- have
22 some relationship with Mr. Newman that you have
23 described as just you rent from him and you are his
24 tenant. All right. With regard to his allegation,
25 there's a conflict concerning your wife working at the

1 Solicitor's Office. What do you have to say about that?

2 A I don't -- I don't see it. I mean, if somebody
3 tried to -- I didn't take part in the case. I didn't
4 have, you know -- there was -- I don't -- I don't quite
5 understand. I don't -- if somebody's accusing me of
6 doing something wrong, other than just paying rent, you
7 know, if that were explained to me, maybe I could
8 respond to it. But you know, I don't -- I didn't
9 participate in the case. I didn't have anything to do
10 with the outcome of the case. I don't -- I'm not quite
11 sure what, you know, -- if somebody's saying I did
12 something unethical or wrong, they've never really come
13 out and said what that is. If somebody did bring that,
14 I don't see -- I don't perceive anything that I've done
15 unethical or wrong. And if somebody has something to
16 say about it, I'd be happy to listen to them and respond
17 to that. But I don't, you know, I don't think there's
18 any there there, to be honest with you.

19 THE COURT: Very good.

20 MR. FALK: Thank you.

21 THE COURT: Anything from anybody?

22 MR. NEELY: Just one question, your Honor.

23 IAN DEYSACH

24 CROSS-EXAMINATION

25 BY MR. NEELY:

10-17-16 HOLMES V STATE

DEYSACH CROSS NEELY

1 Q Did you speak with your wife about Mr. Morris' --
2 Mr. Holmes' case, the 2013 indictments?

3 A Did I talk to her about it? We probably did have
4 conversations about what the outcome was, you know; is
5 it coming up to trial, you know; if she's about to go,
6 you know, preparing for a trial; Mr. Newman's preparing
7 for a trial. I mean, was it something that we just
8 tiptoed around? Probably not.

9 Q Did you divulge any of your conversations to her
10 about --

11 A No. I never had an attorney/client relationship
12 with Mr. Holmes at the time, but there was nothing said
13 between us that -- that -- certainly I never said
14 anything that he said to me. And I don't really recall
15 him even talking to me about the substance of the case.

16 MR. NEELY: Thank you.

17 THE COURT: Just so I'm clear, Mr. Deysach, as I
18 understand, you represented him in the past on other
19 charges?

20 A Correct.

21 THE COURT: But at the time that this matter came
22 about, you did not represent him; nor did you have any
23 conversations with your wife about him; never divulges
24 any conversations or any privileged information about
25 other cases that would give her an advantage on this

1 case?

2 A Absolutely not.

3 THE COURT: You may step down.

4 Call your next witness.

5 MR. FALK: We'd call the applicant, Mr. Holmes, to
6 the stand.

7 THE COURT: Very good. Mr. Holmes, please come
8 forward. And we'll ask you, if you could, to place your
9 left hand on the *Bible*, and raise your right hand while
10 the clerk administers the oath.

11 MADAM CLERK: Do you solemnly swear or affirm that
12 testimony you give to the Court in this case shall be
13 the truth, so help you God?

14 MELVIN SAMUEL HOLMES: Yeah.

15 THE COURT: Mr. Holmes, I'm going to ask you to
16 have a seat in this chair. Pull real close to that
17 microphone. Speak loudly, clearly, and slowly in order
18 we can hear everything you have to say. Let's start
19 with your full name.

20 MELVIN SAMUEL HOLMES: Melvin Samuel Holmes, Jr.

21 THE COURT: Very good.

22 MELVIN SAMUEL HOLMES

23 DIRECT EXAMINATION

24 BY Mr. FALK:

25 Q Mr. Holmes, can you tell me your professional

10-17-16- HOLMES V STATE

HOLMES DIRECT FALK

1 relationship that you've had in the past with Mr.

2 Deysach?

3 A Mr. Deysach represented me on multiple cases. The
4 last cases that he had, he had to pass over to -- I
5 forgot the public defender's name, but he had to pass --
6 Ari Bax. He had to pass the case over to Ari Bax, which
7 was in 2013, right before he went to work in Mr.
8 Newman's office.

9 Q So you've just said he went to work in Mr. Newman's
10 office. What was your understanding of that
11 relationship between he and Mr. Newman?

12 A That they were business partners.

13 Q Okay. And why did you have that understanding?

14 A Cause, when I caught the trafficking charges in
15 April, Mr. Deysach came to see me. And he told me that
16 my case went in front of the grand jury today and I got
17 indicted. And we spoke about it, and he had -- he had
18 knowledge of certain -- certain stuff of the case. And
19 Mr. Newman was actually there that day, too. He was
20 seeing another client. And when he was done seeing his
21 client, he came into the same little booth that me and
22 Mr. Deysach was in.

23 Q So the two lawyers are on one side of the glass and
24 you were on the other?

25 A Right. No, no, no. When you got attorney/client

1 visit, you don't be on the other side of the glass.

2 Q Oh, okay.

3 A You be right there in front of each other.

4 Q So they were both behind the table.

5 A Correct.

6 Q And you were on the other side.

7 A Correct.

8 Q Okay. And when was that?

9 A April 2013.

10 Q And did you ever become aware that Mr. Deysach was
11 married to Ms. Swanson?

12 A Yes, sir.

13 Q When did you realize that Ms. Swanson was going to
14 be prosecuting your charges?

15 A I didn't actually know that Mrs. Swanson was
16 representing for the State on those charges, because I
17 had Meredith Bannon on my case. And far as my
18 knowledge, she was going to be an attorney. But Mr.
19 Newman told me -- last conversation me and Mr. Newman
20 had about Ms. Bannon, he told me that she let everybody
21 case go besides mine. So, as I went in 2014, October,
22 for my ankle bracelet hearing, that's when I found out
23 that Hunter Swanson was my prosecutor.

24 Q And your ankle bracelet hearing was when, you said?

25 A 2014, October.

10-17-16- HOLMES V STATE

HOLMES DIRECT FALK

1 Q October. And so, you made -- entered this guilty
2 plea in December of 2014?

3 A Yes, sir.

4 Q Okay. So I'm just saying, so it's a couple months
5 before that, that you realized Ms. Swanson was going to
6 be prosecuting your case?

7 A Yes, sir.

8 Q Did you express any concerns about that?

9 A Yes. When I found out that she was my prosecutor,
10 I went straight to Mr. Newman. I told him that he
11 needed to put in a motion to get off my case; that I
12 didn't feel comfortable because me and Mr. Deysach had
13 already spoken about the case.

14 Q Okay. What was the result of that conversation?

15 A He said he was going to get it done, but he never
16 got it done.

17 Q Now, you went in and pled guilty on December 15,
18 2014.

19 A Yes, sir.

20 MR. FALK: May I approach the witness?

21 THE COURT: Yes.

22 BY MR. FALK:

23 Q Do you recall that guilty plea?

24 A Yes, sir.

25 Q Do you recall the judge ever asking whether or not

1 you were pleading freely and voluntarily?

2 A Yes, sir.

3 Q And what was your response?

4 A My initial response was no.

5 Q Okay. And then, did the judge ask you to explain
6 that?

7 THE COURT: What page is that on in the transcript?

8 MR. FALK: Yes, your Honor, it's Page 8, Lines 6
9 through 14.

10 If I could, your Honor, I'm going to have him read
11 his response from the record, which are Lines 11 through
12 16, in response to the judge's query about him saying he
13 wasn't ready voluntarily pleading that day.

14 BY MR. FALK:

15 A I mean, yeah, I want to plead, because, if I don't
16 plead, then I'm going to have to be forced to go to
17 trial without a lawyer, so I'm pleading.

18 Q What did you mean by that?

19 A I was initially set up for trial that day, and I
20 noticed that Mr. Newman, he was not in my best
21 interests. So me and my father already came to the
22 agreement that I needed to fire him, because I went to
23 try to fire him, the judge, Judge Mullen, told me that,
24 if I fired him, I'd be forced to go to trial by myself
25 and she would revoke my bond. So I didn't have -- I

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1 felt like my back was against the wall. I didn't have a
2 choice. I'm not an attorney.

3 Q You said that you didn't believe that Mr. Newman
4 had your best interest at that time?

5 A No.

6 Q How did the -- your concerns about Ms. Swanson play
7 into that?

8 A Yeah, that's a big -- that's a big play, because
9 her husband works in the office with him, and I -- I
10 mean, it's common sense. Anybody -- anybody know a
11 husband wife, they talk. They talk about things. And I
12 know he done sat down and talk about my case.

13 Q And it's your testimony that, on that day, you were
14 going -- that case was called for trial.

15 A Yes, sir.

16 MR. FALK: Your Honor, if the Court would -- I
17 guess I should have articulated that better, is that
18 he's, in effect, also adding an involuntary guilty plea
19 in that he felt forced to plead, based on his testimony
20 just there. And I think that that ground is also
21 articulated in his application. I was just sort of
22 hitting the highlights that he felt forced to plead
23 guilty because -

24 BY MR. FALK:

25 Q And again, your answer why you felt forced to plead

1 guilty?

2 A Because the judge was going to make me go to trial
3 by myself, and I'm not -- I'm not an attorney.

4 Q Did you have -- who was your co-defendant in this
5 case?

6 A My brother, Ahmad Holmes.

7 Q Ahmad Holmes?

8 A Yes, sir.

9 Q And had you had any conversation with Ahmad Holmes
10 about the drugs that were found?

11 A When we got -- when we got in jail, Ahmad -- Ahmad
12 was mad because he didn't -- he didn't stepped up when
13 he was supposed to. When I was at the house, he was
14 supposed to man up to his own stuff. He got me in
15 trouble. I was already in trouble. So he wrote me
16 apology letter.

17 Q Okay.

18 A I initially gave that apology letter to Mr. Newman.
19 He took it and kept it. And then, Ahmad bonded out of
20 jail and went and got another letter and got it
21 notarized, and he went in and handed it to Mr. Newman.

22 Q And what was your understanding what the letter
23 said?

24 A That he was taking responsibility for the drugs and
25 the guns that was found in the house.

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HOLMES DIRECT FALK

1 Q Okay. Did you have any concerns about the search
2 warrant that was executed in this case?

3 A Yes, sir.

4 Q And what was those concerns?

5 A One being that this -- the address was not me or my
6 bother's address. And they supposedly came there
7 looking for me and my brother. When I spoke to Mr.
8 Newman about it, he told me that the search warrant was
9 no good, but he never tried to suppress it or he just
10 never attacked it.

11 Q But he indicated to you that it was his opinion
12 that the search warrant was invalid?

13 A Yes.

14 Q Did he suggest why he didn't try to move to
15 suppress the evidence from the search?

16 A No, sir.

17 Q Did he tell you that, if he went to trial that day
18 he was going to suppress the --

19 A No. The morning we was supposed to go to trial, I
20 basically had to kept running to him, what's going on
21 here. He didn't even speak to me.

22 Q Okay. You had said that, when you picked up these
23 charges, you already were in trouble. Is that correct?

24 A Yes, sir.

25 Q And what was that trouble?

1 A I had assault and battery first charge pending, and
2 a failure to stop for a blue light pending.

3 Q When were you arrested on those charges?

4 A 2000 -- 2011, I think, for the failure to stop for
5 a blue light. And 2012 for assault and battery first.

6 Q And that assault and battery first, were you then
7 put on -- did you make bond in that case?

8 A I made a bond. I think after that four months that
9 they put me on a ankle monitor.

10 Q They put you on an ankle monitor?

11 A Yes, sir.

12 Q And so, how long were you on an monitor?

13 A I was on the ankle monitor from -- for about seven
14 months, and then I -- I got the trafficking charges.

15 Q Then you got --

16 A I got locked back up for the trafficking charges.

17 Q These charges right here, the ones that you
18 brought?

19 A Yes, sir.

20 Q And did you bond out on that case?

21 A Yes, sir.

22 Q And were you on an ankle monitor on that case?

23 A Yes, sir.

24 Q Okay. Did you get any credit for your time served
25 on the ankle monitor following your arrest in 2012 up

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HOLMES DIRECT FALK

1 until your arrested on this case in 2013?

2 A No, sir.

3 Q Did you discuss that fact with your lawyer?

4 A I tried to discuss it. I tried to ask him after I
5 got sentenced to go back to put in a motion for
6 reconsider, because he didn't give the judge the correct
7 understanding when I took the plea. The judge told me
8 he wasn't going to give me my house arrest time because
9 I got in trouble --

10 Q Right.

11 A -- during -- during the time I was house arrest.
12 Okay. I did when I -- when I was on house arrest for
13 seven months, but when I bonded out of jail on the
14 trafficking charges, I been out eleven months and did
15 not get in one bit of trouble. So I feel like if he
16 would have stepped up and said something, the judge
17 would have gave me -- at least gave me those eleven
18 months that I didn't get in trouble.

19 Q And those eleven months are between when and when?

20 A December 23rd to October 23rd.

21 Q December 23rd what year?

22 A December 23, 2013.

23 Q To?

24 A 2014, October 23rd.

25 Q Okay. And October 23rd is when you were arrested

1 on this case?

2 A No. I was arrested on this trafficking case in
3 January 2013.

4 Q Okay. You said that you didn't feel like Mr.
5 Newman was protecting your best interest in this case.

6 A No, sir.

7 Q Is there any -- other than we discussed what you
8 believe is a conflict of interest; we discussed the
9 search warrant; and we discussed the issue on the
10 possible issue on the credit for time served on the
11 ankle monitoring? Are there other issues?

12 A Yes. I had -- I had two other witnesses, my sister
13 and her boyfriend. They was going to -- they was going
14 to testify to the fact that the State was trying to put
15 the -- they was trying to say that that room in the
16 house was mine.

17 Q Uh-huh.

18 A So this -- the house owner, which is my sister, was
19 going to come to court and testify that that was not my
20 room. I actually didn't ever stay there. Me and my
21 father had gotten to an argument, and I had to stay
22 there until -- because I had an ankle bracelet, so I had
23 to stay somewhere stationary until I found some place to
24 go.

25 Q And what is your sister's name?

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1 A Latoya Simpkins.

2 Q Okay. And is it your understanding did Mr. Newman
3 ever talk to Ms. Simpkins?

4 A No, he didn't.

5 Q He did not?

6 A He did not.

7 Q Is there anything else?

8 A Yes. Being that I'm -- Ahmad, being that Ahmad was
9 -- was like -- like he was going to take --

10 Q The third-party guilt.

11 A Right. He was the third-party guilt. I had the
12 charges for two years. He took that one, one day out of
13 two years to even go consult with the man.

14 Q And you're saying that he wrote you a letter to
15 that effect, and Mr. Newman became in possession of the
16 letter?

17 A Right. While -- while we was in jail, he wrote me
18 a letter, a handwritten letter he wrote me. Slid it to
19 me while I was in jail. I read it. I gave it to my
20 lawyer. When he went out -- when he got out of jail,
21 when he bonded out, he went and got another one
22 notarized and gave to the lawyer. I never had no
23 knowledge of that one. I just got a copy of it once I
24 find out he gave it to the lawyer.

25 MR. FALK: Okay. Your Honor, I believe we have no

1 further questions.

2 THE COURT: Cross-examination.

3 MR. NEELY: Thank you, your Honor.

4 MELVIN SAMUEL HOLMES

5 CROSS-EXAMINATION

6 BY MR. NEELY:

7 Q Mr. Holmes, you testified that you didn't speak
8 with Jared Newman. You did speak with him, right?
9 About this case?

10 A I did speak with him.

11 Q How many times did you speak with him?

12 A I can't recall, but it wasn't -- it wasn't too
13 many.

14 Q All right. So you're not sure?

15 A I'm not sure.

16 Q Okay. Do you know about how long those
17 conversations went just on average?

18 A The average when I go to -- when I go to his office
19 and try to talk to him, I be in there probably no -- no
20 longer than two -- I say in between two and five
21 minutes.

22 Q Two to five minutes. So you would drive to his
23 office and be there for two to five minutes?

24 A Yes.

25 Q Okay. And I think you testified earlier that you

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1 were actually on an ankle monitor when you picked up the
2 trafficking charge. Isn't that correct?

3 A Yes.

4 Q Okay. And what was the outcome of your trials with
5 Ian Deysach?

6 A Not guilty.

7 Q Not guilty. Was that the murder charge?

8 A Yes, sir.

9 Q Okay. And you said Newman told you the search
10 warrant was no good?

11 A Yes. When I -- when I initially called him to hire
12 him, he told me it was like, oh, yeah, I've read about
13 your case; I already know about the case. It was like,
14 yeah, search warrant no good, because the sale -- the
15 sale wasn't made at the house and this, that, and the
16 third. So that's what he said.

17 Q And it was based -- was it based on that that you
18 decided to go to trial?

19 A No. The drugs -- the drugs wasn't in mine. And
20 the man whose drugs it was, he was willing -- he was
21 willing to step up and say that they was his. And he --
22 he gave my lawyer the letter to prove that. My lawyer
23 never presented it.

24 Q All right. So you said the drugs weren't yours,
25 correct?

1 A Correct.

2 Q All right. You are aware that they did DNA
3 analysis on 15 baggies of crack cocaine, and all the DNA
4 came back to you?

5 A Yeah.

6 Q Okay. You're also aware that, when they execute a
7 search warrant, you were in the bedroom with the crack
8 cocaine, correct?

9 A Correct.

10 Q And there are two dressers in that bedroom where
11 they found crack cocaine, correct?

12 A Correct.

13 Q And your SCID was actually on that dresser with
14 that some of that crack cocaine on one of the dressers?

15 A Yes, along -- along -- along with other -- other
16 female stuff. If you look in the picture, you'll see a
17 purse on the dresser, too.

18 Q Okay. And then, on -- there's two dressers. And
19 on the other dresser it actually has some of your mail
20 on there with some more crack cocaine. Is that correct?

21 A Right. There was only one working room in the
22 house.

23 Q Okay. And you are aware of that, and the State
24 presented that evidence against you at your guilty plea,
25 correct?

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1 A To tell you the truth, no, I wasn't.

2 Q No, you weren't what?

3 A I never -- I never even I never even seen the
4 pictures, the pictures of the evidence that they found
5 in the house. I just seen that two weeks ago, when Mr.
6 Falk came to see me. Mr. Newman never showed me the
7 pictures.

8 Q All right. So you're saying he didn't go over
9 discovery with you at all?

10 A Not -- not that part. There's pieces of discovery
11 he didn't show me.

12 Q Okay. And you talked about how Mr. Newman did not
13 challenge the search warrant. You remember when the
14 guilty plea happened, you swore to tell the truth, the
15 whole truth, and nothing but the truth to the clerk --
16 the judge?

17 A Yes.

18 Q Did you tell the truth to them?

19 A How you mean did I tell the truth to them?

20 Q The day of the guilty plea, did you tell the truth?

21 A Yeah, I told them that I didn't want to plea.

22 Q I mean, just everything. Was everything that you
23 told them the truth?

24 A Yes.

25 Q Okay. Now, on Page 9 of the transcript, the judge

1 asked you if you are waiving your right to raise any
2 defenses to plead guilty, and you said, yes, you were.
3 Remember that?

4 A Yes.

5 Q Okay. And whenever you told the judge that you
6 were not going to -- not really when he asked if you
7 were pleading intelligently, knowingly, and voluntarily,
8 you said not really. Is that right?

9 A Yes.

10 Q And the judge said, well, I'm not going to take
11 your plea if that's the case. Remember that?

12 A Yes.

13 Q And then, he went over the next couple of pages.
14 The judge went over with you specifically how it needed
15 to be your decision and you needed to be not forced or
16 coerced into the decision. Remember that?

17 A Yes.

18 Q Okay. And you indicated that you still wanted to
19 go forward with the plea, on that next page, and that
20 nobody was forcing you and it was your decision. Do you
21 remember that?

22 A Yes.

23 Q And so, the house arrest time, on Page 17 of the
24 transcript, your attorney did ask for credit for the
25 house arrest time.

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1 A But he didn't give the judge a correct
2 understanding. The judge said I -- he wasn't going to
3 credit me the time because I caught the trafficking
4 charges on while I was on house arrest. He didn't -- he
5 didn't step up to say, oh, okay, well, he -- he was also
6 bond -- when he bonded out for the trafficking, he was
7 on house arrest for eleven months where he didn't get in
8 trouble.

9 Q Right. But the judge specifically addressed the
10 fact that you were on an ankle monitor whenever you got
11 the trafficking charges; didn't he?

12 A Yes.

13 Q And then, the trafficking charge, I believe,
14 carries seven to 25 years?

15 A Yes.

16 Q And you received ten?

17 A Yes.

18 MR. NEELY: Beg the Court's indulgence.

19 That's all the questions I have, your Honor.

20 THE COURT: Re-direct?

21 MR. FALK: No re-direct.

22 THE COURT: You may step down. All right, you may
23 call your next witness.

24 MR. FALK: We call Jared Newman.

25 THE COURT: Mr. Newman, please come forward. Ask

1 if you could place your left hand on the *Bible*. Raise
2 your right hand as the clerk administers the oath.

3 MADAM CLERK: Do you solemnly swear or affirm the
4 testimony you give to the Court in this case shall be
5 the truth, so help you God?

6 JARED SULLIVAN NEWMAN: Yes, ma'am, I do.

7 MADAM CLERK: You may be seated.

8 JARED SULLIVAN NEWMAN: May I get a glass of water.

9 THE COURT: You may.

10 Mr. Newman, pull over close to that microphone.
11 Speak loudly, clearly, and slowly, in order that we can
12 hear everything you have to say. Let's start with your
13 full name.

14 JARED S. NEWMAN: Yes, sir, my name is Jared
15 Sullivan Newman.

16 THE COURT: Yes, sir. Mr. Falk.

17 JARED SULLIVAN NEWMAN

18 DIRECT EXAMINATION

19 BY MR. FALK:

20 Q Mr. Newman, can you explain your relationship with
21 my client, professional relationship.

22 A Yes, Melvin was a client of mine.

23 Q And when did that begin?

24 A I don't know. I represented him for a number of
25 months, maybe 16 to 18 months before the guilty pleas.

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NEWMAN DIRECT FALK

1 Q Okay.

2 A I don't remember the date. I just don't remember.

3 Q But you were representing him on the day he pled
4 guilty.

5 A Absolutely, yes.

6 Q Okay. And did you ever have a conversation with
7 him about the search warrant in this case?

8 A I had a number of conversations with Mr. Holmes.

9 Q Do you have a recollection of a conversation about
10 the search warrant in this case?

11 A Yes.

12 Q And could you tell me what that recollection was.

13 A Melvin gave me some facts that his brother had made
14 some drugs sales, I think three of them, at a location
15 known as the Island Plaza out on Saint Helena's, which
16 is about a mile or so from where Melvin lived at

17 And I told him, well, if that's -- that's what
18 it's based on, then there may be some problems with the
19 search warrant, but I would have to get full discovery;
20 I'd have to look at the police reporters. Obviously, I
21 have to look at the law and have to look at the search
22 warrant. I hadn't even seen¹ the search warrant at that
23 point.

24 I filed a *Rule 5* motion for discovery. I got
25 discovery. I got the search warrant, and what I found

1 out from discovery was that calls were placed to a known
2 phone number of Mr. Holmes through a confidential
3 informant. The police surveilled and
4 watched Mr. Ahmad Holmes, his brother, leave shortly
5 after the phone call was made to the C.I. There were
6 video recordings of Ahmad making a sale of crack, I
7 believe it was, to a C.I. There were videos of Ahmad
8 coming back to , and that happened on
9 three occasions.

10 And it was my opinion -- and I told Melvin this
11 after looking at it -- they presented a search warrant
12 that I think it was in 72 hours of the last sale -- I
13 think there were three of them -- for the residents of

14 I told him, in my opinion, after based on the full
15 discover, and the fact that you were at the house and
16 they knew you were at the house when the phone calls
17 were made, because he was on ankle monitoring and the
18 police had the records of that, that, in my opinion,
19 that the search warrant was absolutely valid and we
20 weren't going to be able to break through it.

21 Q Did you ever bring the discovery to him at the jail
22 and go over this with him?

23 A I believe I did. I've had a number of
24 conversations, as I said, with Melvin. He was in jail
25 at some point in my representation and he was out of

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1 jail. He came to my office a number of times. He never
2 asked me to see any of the videos or anything like that.
3 Had he asked me to do that, I have a common procedure.
4 I don't like to give discs out. I would have set him up
5 with a laptop, and he could have watched any videos he
6 wanted. There were three very short videos of his
7 brother making what appeared to be a drug sale in the
8 parking lot of Island Plaza.

9 Q And his brother is Ahmad Holmes?

10 A That's correct.

11 Q And did he ever -- did he ever show you a letter
12 that Ahmad Holmes wrote him?

13 A He did.

14 Q And what was your recollection of the letter?

15 A Basically, a poorly written, one- or two-sentence
16 letter that says the drugs was mine.

17 Q And that being?

18 A Ahmad.

19 Q Ahmad. And did you ever go any further with that?
20 Did you ever send an investigator to talk with him; get
21 a statement from him; talk to his attorney?

22 A I did not. I think I made an attempt or asked.
23 Ahmad had, I believe, a public defender. He was
24 represented by counsel. And as you well know, under the
25 ethical rules, I can't interview a witness that I know

1 is represented by counsel without counsel's approval.

2 Q Had you subpoenaed him or made any arrangements for
3 his transport to come to trial the date of the plea?

4 A I did not.

5 Q Because you all -- that was -- had he not plead,
6 you were prepared to pick a jury that day. Is that
7 correct?

8 A We were prepared to pick a jury, but you must
9 understand that Melvin and I met on Friday before the
10 Monday of the term of court. We had a longer than a
11 three-to-five-minute conversation. We went over
12 everything. And I said told Melvin that, here's the
13 deal, you're facing seven to 25, okay; the State is
14 recommending, I believe, it was 14 years. And I said, I
15 think I could do a little better; I know who the trial
16 judges are that are coming up. And we discussed his
17 options. And I told him, with the overwhelming amount
18 of evidence, that, in my opinion, it would be best to
19 enter into a plea.

20 Melvin and I discussed that on Friday, and he
21 basically told me, he said, I think that's our only
22 opinion; I don't want to be looking at 25 years or, you
23 know, a very long sentence. So our plan at that point
24 was to go forward with the guilty plea.

25 Q You hadn't subpoenaed any witnesses for the trial.

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NEWMAN DIRECT FALK

1 A That's correct.

2 Q Okay. Had he ever expressed to you any concerns he
3 had about the solicitor on his case?

4 A No. The solicitor on his case for most of the time
5 was -- Mr. Holmes is correct -- was Meredith Bannon. I
6 forget when it was; she went into private practice at
7 some point during that, and Ms. Swanson got the case.

8 Q But once Ms. Swanson got the case, did he ever have
9 any conversation with you about his concern?

10 A No.

11 Q Was there ever a time -- you heard Mr. Holmes
12 testify that -- you were here when he testified.

13 A Yes, sir.

14 Q Okay. And you heard him say that there was one
15 time when, presumably in the Allendale Detention Center,
16 that both you and Mr. Deysach were in there at the same
17 time speaking with him?

18 A It would have been the Beaufort County Detention
19 Center.

20 Q I'm sorry. I'm sorry.

21 A I don't recall that. I'm not denying that. I do
22 know that Ian, I think, had some conversation about
23 wanting to represent -- or Ahmad wanting Ian to
24 represent him. I told -- the only conversation I had
25 about Ahmad with Mr. Holmes is I couldn't represent both

1 of them because, that, I believe would have been a
2 conflict of interest.

3 However, I wanted to point out one of the things
4 that was testified to in asking me about subpoenaing Mr.
5 Ahmad. Were we to go to trial, I would not have called
6 Ahmad as a witness. Mr. Holmes was charged with
7 trafficking, and that carries conspiracy to traffic. I
8 think that the State would have been able to slaughter
9 Ahmad, even if he came up and said the drugs were all
10 mine; Melvin had nothing to do with it. Because the
11 conspiracy alleged was between Ahmad and Melvin. And I
12 think Ahmad would have ended up proving the State's case
13 for them.

14 Q But getting back to my prior question. You don't
15 deny that that may have happened; you just don't have a
16 recollection of it?

17 A That's correct.

18 MR. FALK: I have no further questions.

19 THE COURT: Cross-examination.

20 JARED SULLIVAN NEWMAN

21 CROSS-EXAMINATION

22 BY MR. NEELY:

23 Q Mr. Holmes testified to the length of your
24 conversations on the multiple visits that he had with
25 you was two to five minutes. Is that your recollection?

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NEWMAN CROSS NEELY

1 A It is not. I mean, we had several conversations
2 that may have lasted that long when he'd come in the
3 office to check when's my next court date, what's going
4 on. Some things like that. But when we actually talked
5 about the discovery and talked about the case, we had
6 indepth conversations. And we had a very indepth
7 conversation on the Friday before his plea when Melvin
8 came into my office. And that's when, in my opinion, he
9 came to realization that his back was against the wall
10 and that we needed to get the best plea deal that we
11 could.

12 Q And just kind of -- and speaking of your office,
13 your office in the same building as Mr. Deysach's
14 building -- Mr. Deysach's office?

15 A I have a small office building/house in Port Royal,
16 and we have an extra office in it, and Mr. Deysach pays
17 me rent. He rents there. We don't share any Internet,
18 any telephone, any expenses, any staff, any files. He
19 has his own complete file system. And in fact, his
20 office door even has a lock on it if he chooses to lock
21 it. But we don't do -- we have represented co-
22 defendants occasionally, but other than that, we do not
23 have any business interests. We're not a partnership.
24 We're not a corporation. He's his own LLC. I'm my own
25 LLC.

1 Q So, in this case, even if Ahmad had hired Mr.
2 Deysach, you wouldn't have -- there wouldn't be any
3 conflict in this case.

4 A No, I wouldn't believe so. The only thing that
5 would have happened, had Ahmad -- if they were going to
6 try them together, obviously, Ms. Swanson would have to
7 recuse herself from the case.

8 Q Certainly. But that was not the case, was it?

9 A That was not the case. I don't know who
10 represented Ahmad. I think it was somebody out of the
11 P.D.'s Office.

12 Q And you said earlier something that was not
13 actually in the transcript. Let me to over. You said
14 the State was going to recommend 14 years?

15 A They started out at 18, and through the process of
16 going back and forth, the best I could get out of Ms.
17 Bannon was 14 years. Ms. Swanson told me that per their
18 policy that's what the deputy solicitor recommended, and
19 that's what it was.

20 We met in chambers with the -- with Judge Dickson;
21 told him the facts of the case. I let the judge know
22 that my client is wanting to -- or has made some noise
23 about wanting to fire me, so that may be an issue when
24 we come out there. Of course, you've got to remember
25 this is the day of trial, and it's not unusual for

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NEWMAN CROSS NEELY

1 defendants to want to try and get a continuance by
2 trying to fire their lawyer and get another one. But
3 the judge indicated that he would do better than what
4 the State was recommending. And in fact, he did by the
5 four years.

6 Q And is that why you went straight up on those
7 charges?

8 A That's correct. I could have had a negotiated 14
9 or just the straight up. I discussed that with Melvin
10 and thought we would be -- based on the conversation
11 with the judge, with the solicitor present, of course,
12 that I felt it would be better not to take a negotiated,
13 and just do a straight-up plea.

14 Q And Melvin trusted your advice, and did, in fact,
15 go straight up?

16 A He did.

17 Q Now, you said that you spoke in depth on Friday,
18 and that you had many other conversations with Melvin
19 throughout his time after he's indicted until the trial
20 date. Was there any time during the time you
21 represented him that he made noise about firing you, or
22 was that strictly at the trial date?

23 A That was -- when we talked on Friday, I thought,
24 you know, everything's okay, you know. I felt bad for
25 Melvin. You know, the day of reckoning's coming. It's

1 going to be Monday. You know, we're out of time; we're
2 out of choices. And the first I heard about him wanting
3 to fire me was when we were in the courthouse said tell
4 that judge that I want to fire you. So I let the
5 solicitor and Judge Dickson know that.

6 Q Okay. But that was the first time you heard that?

7 A That's correct.

8 Q And in the transcript, Mr. Holmes does indicate
9 that he's satisfied with your representation?

10 A To create reference to the transcript, but that's
11 in there. I mean, I'd have to look at the transcript.
12 I don't have an exact reference.

13 Q For the record, it's Page 10, Line 14.

14 THE COURT: We're going to make the plea transcript
15 a part of the record.

16 ITEM IDENTIFIED AS PLEA TRANSCRIPT

17 MARKED COURT'S EXHIBIT NUMBER 1.

18 BY MR. NEELY:

19 Q What was your theory under trial, If you had been
20 forced to go forward on Monday?

21 A To make a motion to attack the search warrant. I
22 believe that would have been futile, but we still would
23 have raised it and preserved the -- preserved the issue.
24 It's hard to say what the tactic would be. I mean, the
25 evidence against him is overwhelming, and Melvin was

1 going to get slaughtered at trial.

2 Q And you told him that.

3 A Yes. I mean, that's one of the rare cases that
4 I've had where they found drugs that they actually did a
5 DNA test on 14 or 15 different baggies, and Melvin's
6 match was 1 in 2.9 quintillion. That number there judge
7 with all those zeros behind it. And it was done by our
8 DNA lab. I looked at the records. They're certified
9 lab. We wouldn't have break through the DNA.

10 I also explained to Melvin that Ahmad could claim
11 all the drugs he wanted, but Melvin was in actual
12 possession of those drugs that were found in the house.
13 And I also told him the problem about what joint
14 possession is, more than one person can possess drugs.
15 And we discussed that.

16 Q And during your discussions with Mr. Holmes, did he
17 indicate to you that he felt forced to plead based on
18 the weight of evidence and your advice?

19 A He felt that it was his best option. You know,
20 sometimes you run out of all good options. And this was
21 the best bad option that could happened. I mean, he's
22 been through the system before. I think he made a
23 calculated choice that, if he went to trial, he was
24 probably going to get a 20-year sentence.

25 Q And just going back over in the transcript again,

1 when Mr. Holmes said that, in response to the judge's
2 question whether it was intelligent, knowing, and
3 voluntary plea, *not really*, I believe there was a
4 conversation between you and Mr. Holmes that took place
5 after that. Do you remember what was in the
6 conversation?

7 A Yeah, it was basically that, look, Melvin, if you
8 don't want to plead, don't plead. But if you -- if you
9 equivocate, the judge can't take your guilty plea. You
10 say, you know, like the judge is going to ask are you
11 pleading guilty because you are guilty, if you say,
12 well, I'm pleading -- I'm not guilty, but I am pleading
13 guilty anyway, the judge can't take your plea. And as I
14 said, I think Melvin is intelligent enough that he
15 understood all of that. I mean, was he hesitant?
16 Probably. I would be, too. I'm sure anybody that
17 pleads guilty is going to get jail time. You know, it's
18 a hard decision.

19 Q And just some background questions I forgot to go
20 over earlier. How long have you been barred in the
21 State of South Carolina as an attorney?

22 A I was admitted to practice in 1989. I've been in
23 good standing continuously since that time. I'm a
24 member of the United States District Court for South
25 Carolina; the Fourth Circuit Court of Appeals; and the

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NEWMAN RE-DIRECT FALK

1 United States Supreme Court, all in good standing and
2 continuously.

3 Q So how long since 1989, how much of that time would
4 you say has been spent as a defense attorney?

5 A I as with the solicitor's office from '89 to '93.
6 So that's four years. '93 until now.

7 Q And you've done many trials and guilty pleas over
8 that time?

9 A Oh, yeah, a bunch. Probably -- I think I've been
10 in private practice what's it make? 23, 24 years? I
11 can't do the math. Probably about 70 percent of my law
12 practice is criminal law.

13 Q And despite the overwhelming evidence that you
14 stated earlier, you were ready to go to trial that day
15 if Mr. Holmes decided that was the case.

16 A I was.

17 MR. NEELY: That's all the State has.

18 THE COURT: Anything further.

19 MR. FALK: One question on re-direct.

20 THE COURT: Yes.

21 JARED SULLIVAN NEWMAN

22 RE-DIRECT EXAMINATION

23 BY MR. FALK:

24 Q You were ready to go to trial, but you had not
25 subpoenaed his sister. Is that correct?

1 A That is correct. I didn't know anything about his
2 sister. And if we -- if it was a sister, I'm sure we
3 could have got her there. But in a case like this, I
4 would have advised Melvin not to call any witnesses and
5 save last argument.

6 MR. FALK: Thank you. No further re-direct.

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

8 A Thank you, your Honor.

9 THE COURT: Anything further?

10 MR. FALK: I call, briefly, my witness -- my
11 client.

12 THE COURT: Pardon?

13 MR. FALK: May I call my client as a rebuttal
14 witness?

15 THE COURT: Yes.

16 MR. FALK: Call Mr. Holmes.

17 THE COURT: Remind you that you're still under
18 oath. Actually, probably, the State needs to -- do you
19 have any evidence that you would like to present?

20 MR. NEELY: No, sir, your Honor. I was just
21 discussing that. I'm not sure you would call it
22 rebuttal witness without the State presenting a case.

23 MR. FALK: I'm sorry.

24 MR. NEELY: But the State is not presenting a case,
25 your Honor.

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HOLMES RE-DIRECT FALK

1 THE COURT: Now it's time for you to call a --
2 recall a witness.

3 MR. FALK: Thank you, your Honor.

4 THE COURT: You may have a seat.

5 MELVIN SAMUEL HOLMES

6 RE-DIRECT

7 BY MR. FALK:

8 Q Mr. Holmes, you heard Mr. Newman testify about the
9 conversations you had on a Friday before you went in to
10 plead on that Monday, correct?

11 A Correct.

12 Q And you heard him characterize the length of that
13 conversation?

14 A Correct.

15 Q What is your recollection of that conversation?

16 A None of it is actually true. On that Friday right
17 before that Monday, I actually went down there to pay
18 Mr. Newman his last \$150.00 when my girlfriend, Natasha,
19 was sitting right outside waiting on me. I wasn't in
20 there no longer than drop some money off and got a
21 receipt.

22 Q When you left there, did you think that you were
23 going to be pleading on Monday?

24 A No.

25 Q You also heard Mr. Newman testify about a

1 conversation that happened on the day the plea, sort of
2 after you were equivocating about whether or not you
3 wanted to plead guilty. Is that correct?

4 A No, sir.

5 Q No. I'm sorry. Did you hear him testify about
6 there was -

7 COURT REPORTER: I'm sorry. I'm sorry. Your
8 question, please.

9 Q My question. I asked him whether or not he
10 recalled that conversation.

11 A Yes, sir.

12 Q And what is your recollection of that conversation?

13 A It was -- it never happened. When the judge asked
14 me was I taking a plea, I said, no, not really. Then
15 the judge went on to proceed and told me what he told
16 me. And I went on to say, yeah, I'm going go ahead and
17 take the plea and I was taking it. I told him I was
18 taking it because I wanted to take it, but really, I
19 wasn't. I was just taking it to avoid going to trial by
20 myself.

21 Q Okay. And again, in case the record got confused,
22 we're talking about a conversation that happened between
23 you and Mr. Newman after you had told the judge that you
24 did really want to plea.

25 A The conversation Mr. Newman talking about never

10-17-16 HOLMES V STATE

BY THE COURT

1 happened. The last conversation me and Mr. Newman had
2 without taking a plea was when Judge Mullen told me I
3 had five minutes to do something. And we was right back
4 then in that little office back there, and that's when
5 he told me I had to go -- I had to go over there and
6 take a plea. He was going to try and get a plea, but he
7 came back with this 7-25 thing. I ain't had a choice
8 but to do 7-25.

9 MR. FALK: No further questions.

10 MR. NEELY: Nothing from the State, your Honor.

11 THE COURT: You may step down. Anything further
12 from the applicant?

13 MR. FALK: No, your Honor.

14 THE COURT: I think I'm going to take just one
15 moment and recess.

16 OFF THE RECORD 11:08 A.M.

17 BACK ON THE RECORD 11:34 A.M.

18 BY THE COURT:

19 BAILIFF: All rise. This court is back in
20 session.

21 THE COURT: Please be seated. I've reviewed the
22 transcript, the application, and the return. I've
23 listened to the testimony. If the parties feel
24 compelled to give comments and summary, I'd be happy to
25 hear that. I think I have a good understanding of the

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BY THE COURT

1 issues. I'm not going to make a decision on it right
2 now. I'm going to take it under consideration and
3 provide to the Attorney General and applicant's counsel,
4 a memo with regard to my finding and instructions on how
5 to draft an order. Anything further?

6 MR. NEELY: Nothing from the State, your Honor.

7 THE COURT: Anything from the Defense?

8 MR. FALK: Nothing from the respondent, your Honor.

9 THE COURT: Very good.

END PROCEEDING 11:35 A.M.

10-17-16 HOLMES V STATECERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

OCTOBER 17, 2016 TRANSCRIPT OF PCR HEARING

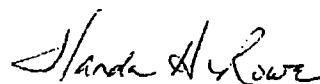
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 17, 2016 Transcript of PCR Hearing is a true, accurate, and complete record of the proceedings had and exhibits admitted on said dates, in the case of Melvin Samuel Holmes versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2015-CP-07-01209; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/ mailing is prohibited.

Witness my signature July 20, 2017.



Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
Melvin Holmes, #310276,	)	Case No. 2015-CP-07-1209
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This Court convened an evidentiary hearing into the matter on October 17, 2016, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel Robert Hughes, Esquire (hereinafter "plea counsel") was present and testified. Testimony was elicited from Applicant. The Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Applicant was indicted at the April 2013 term of the Beaufort County Grand Jury for one (1) count of Trafficking in Meth or Cocaine Base, 1st Offense and Possession of a Weapon During the Commission of a Violent Crime (2013-GS-07-00204, -00207). Robert Hughes, Esquire, represented him. Applicant plead guilty to both charges and was sentenced by the Honorable Edgar W. Dickson to incarceration

for ten (10) years for Trafficking in Meth or Cocaine Base, 1st Offense and five (5) years for Possession of a Weapon During the Commission of a Violent Crime, with the sentences to run concurrently. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

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

1. Guilty plea was involuntary.
2. Plea counsel failed to request credit for time served while on an ankle monitor.
3. Plea counsel failed to challenge search warrant.
4. Plea counsel had a conflict of interest.
5. Third party guilt issue was not raised by plea counsel.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). A defendant

who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Applicant has not presented valid reasons why his statements during the guilty plea or shown plea counsel's representation fell below professional norms. Applicant has not met his burden.

A. Voluntariness of the Plea

This Court finds the plea was entered into freely and voluntarily. The transcript of the plea and the testimony at the evidentiary hearing establishes Applicant understood the charges, his conversations with his attorney, and his constitutional rights. The plea transcript further establishes the decision to plead guilty was his own decision and Applicant was satisfied with his attorney. This Court finds Applicant's testimony not credible regarding his lack of voluntariness to plead guilty. This Court finds Applicant's allegation is without merit. Therefore, this allegation is dismissed.

B. Ankle Monitor

Applicant contends plea counsel failed to request credit for time served while Applicant was on an ankle monitor. This contention is unfounded. The transcript reflects that plea counsel specifically asked the judge to give Applicant credit for the time he served with the ankle monitor. The plea judge considered the request and denied it, as is within his discretion. This Court finds Applicant's allegation without merit. Therefore, this allegation is dismissed.

C. Failure to Challenge the Search Warrant

The plea transcript reflects Applicant understood that he forfeited his defenses by entering into the guilty plea. Plea counsel credibly testified the search warrant issues were discussed with Applicant in detail. Therefore, he voluntarily waived his right to challenge the search warrant. This Court finds Applicant's allegation without merit. Therefore, this allegation is dismissed.

D. Conflict of Interest

The Court finds the fact that plea counsel and Ian Deysach, Esquire, share an office building is not a conflict of interest. Further, plea counsel was not involved in this case nor did he represent the codefendant. The allegation Mr. Deysach was married to the prosecutor is of no consequence. Mr. Deysach credibly testified they did not discuss the case. The Court finds there was no conflict given the facts and circumstances of this case. Therefore, this allegation is dismissed.

E. Issue of Third Party Guilt

There is no merit to this allegation. Applicant was in actual possession of the drugs and his DNA was found on the baggies containing the drugs. Additionally, the Court finds plea counsel spent adequate time preparing, investigating, and discussing the elements of the offense and potential defenses with the Applicant. Applicant knowingly and intelligently waived these defenses at his plea. Therefore, this allegation is dismissed.

F. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any

evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes 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.

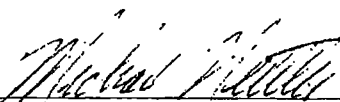
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of December, 2016.



MICHAEL G. NETTLES
Presiding Judge
Fourteenth Judicial Circuit

Holence, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0701209

Melvin Holmes

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order

☐ Statement of Judgment by the Court:

Order of Dismissal

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

For Clerk of Court Office Use Only

This judgment was entered on **December 28, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **December 29, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Melvin Holmes #310276 Ridgeland Corr. Inst. Ga/12 Post
Office Box 2039 Ridgeland, SC 29936

Ruston Wesley Neely PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melissa Kilby

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
Melvin Holmes,

Plaintiff(s),

-vs-

South Carolina State Of,
Defendant(s).

IN THE COURT OF COMMON PLEAS

14th JUDICIAL CIRCUIT

CASE NO.: 2015CP0701209

APPOINTMENT OF COUNSEL

(Select one.)

2015 JUN 15 AM 8:43

☒ ORDER

☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING (Check one.)

- ☒ Post-Conviction Relief (PCR)/habeas case ☐ Adoption ☐ Juvenile
☐ SVP case ☐ Custody and/or Visitation ☐ Abuse and Neglect
☐ Minor Name Change ☐ Other: Post Convict Rel 500

It appears Melvin Holmes, who is a litigant in this case, is entitled to court-appointed counsel.

It further appears that: (Select only one.)

- ☒ counsel has not yet been appointed by the court; therefore, an appointment for counsel is necessary.
☐ counsel was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel based on:
☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
☐ court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
☐ Other: .

Therefore, it is ordered that James Falk, Esq hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
June 11, 2015



☐ Circuit Judge

☒ Clerk of Court

Plaintiff Attorney:

Plaintiff:

James Falk, Esq	Melvin Holmes #310276
3 Broad Street, Ste 450	Ridgeland Corr. Inst. GA/12
Charleston, SC 29401	PO Box 2039
	Ridgeland, SC 29936

Defendant Attorney:

James Rutledge Johnson	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
SCCA/267 (03/07)

WITNESSES

A. Boland-BCSO

ARREST WARRANT NUMBER

2013A0710400009

ACTION OF GRAND JURY

True Bill

Bob
Foreperson of Grand Jury
Date:

APR 18 2013

VERDICT

Foreperson of Petit Jury
Date:

INDICT

60

DOCKET NO. 2013GS0700204

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

April Term 2013

THE STATE

vs.

Melvin Holmes

Indictment for

**Drugs / Trafficking in meth. or cocaine base –
28 to 100 g, 1st Offense**

SC Code: 44-53-0375(C)(2)(A)
CDR Code:0392

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I _____
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2013GS0700204

At a Court of General Sessions, convened on April 18, 2013 the Grand Jurors of Beaufort County present upon their oath:

Drugs / Trafficking in meth. or cocaine base -28 to 100g, 1st Offense

That in Beaufort County, South Carolina, on or about January 11, 2013, the Defendant, Melvin Holmes, knowingly did sell, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine base, in excess of 28g but less than 100g; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


 Solicitor

1 to 25 yrs
\$50,000COUNTY OF Beaufort
STATE VS.
Melvin Holmes

AKA:

Race: AFRICAN AME Sex: M Age: 30

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Cocaine Base 28 to 100g

INDICTMENT/CASE#: 2013GS0700204

A/W#: 2013A0710400009 ✓✓

Date of Offense: 1/11/2013

S.C. Code § : 44-53-0375(C)

CDR Code #: 0392

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375(C)(2)(A) of the S.C. Code of Laws, bearing CDR Code # 0392

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Swanson, Hunter #72934 y Melvin Holmes 17930
SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12/15/14
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

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

PTUP

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

Clerk of Court/ Deputy Clerk

Court Reporter: SHARON L. VIZOR

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2153Sentence Date: 12/15/14

9
9
A. Boland-BCSO

WITNESSES

ARREST WARRANT NUMBER

2013A0710400012

ACTION OF GRAND JURY

True Bill

B. J. C.
Foreperson of Grand Jury
Date: APR 18 2013

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2013GS0700207

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

April Term 2013

THE STATE

vs.

Melvin Holmes

Indictment for

Weapons / Poss. weapon during violent crime

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

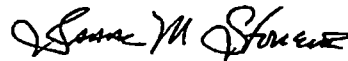
INDICTMENT
2013GS0700207

At a Court of General Sessions, convened on April 18, 2013, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime

That in Beaufort County, South Carolina, on or about January 11, 2013, the Defendant, Melvin Holmes, did possess a gun or visibly display what appeared to be a gun during the commission, or attempted commission, of Trafficking Cocaine Base, 28 to 100 grams, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



Solicitor

COUNTY OF Beaufort
STATE VS.
Melvin Holmes

AKA: _____

Race: AFRICAN AME Sex: M Age: 30

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Poss. weapon during violent crime

INDICTMENT/CASE#: 2013GS0700207

A/W#: 2013A0710400012 ✓✓

Date of Offense: 1/11/2013

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Swanson, Hunter #72934 SC Bar# 12930 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12/15/14
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk KD Boone

Court Reporter: SHARON L VIZOR

SCCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: 2153

Sentence Date: 12/15/14