

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

DEC 27 2017

Certiorari to Williamsburg County

S.C. SUPREME COURT

Honorable D. Craig Brown, Circuit Court Judge

ROGER LEON FORTUNE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001302

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

JULIE COLEMAN
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT DATED OCTOBER 13, 20141

APPLICATION FOR POST-CONVICTION RELIEF FILED JULY 17, 2015.....64

RETURN DATED OCTOBER 28, 201572

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 27, 201778

MOTION TO SUPPRESS DEFENDANT’S STATEMENTS FILED OCTOBER 13, 2014.....121

ORDER OF DISMISSAL FILED MAY 4, 2017122

NOTICE OF APPOINTMENT OF LEGAL COUNSEL DATED SEPTEMBER 9, 2015132

INDICTMENTS AND SENTENCING SHEETS133

ARREST WARRANTS.....141

STATE OF SOUTH CAROLINA)
) GENERAL SESSIONS COURT
COUNTY OF WILLIAMSBURG)

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
14-GS-45-210

v.)

ROGER FORTUNE,)

DEFENDANT.)

October 13, 2014
Kingstree, South Carolina

BEFORE :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE

APPEARANCES :

TYLER BROWN, ESQ.
Assistant Solicitor

MARSHALL S. WEAVER, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

INDEX

	Page
Pretrial motions	3
Guilty plea	23
Sentencing	41

(There were no exhibits submitted.)

1 MR. BROWN: Your Honor, may it please the
2 Court. Your Honor, Mr. Marshall Weaver and I have
3 been in discussions for the past couple of weeks
4 regarding the State of South Carolina versus Roger
5 Leon Fortune. Your Honor, this is for indictment
6 2014-GS-45-210. Your Honor, Mr. Fortune has been
7 indicted under a five count indictment. That
8 indictment includes one count of trafficking crack
9 cocaine third or subsequent offense or 28/100 grams
10 trafficking cocaine, 10 to 28-grams third or
11 subsequent offense, possession with intent to
12 distribute heroine third or subsequent offense,
13 possession with intent to distribute marijuana first
14 offense, and possession with intent to distribute
15 controlled substances, specifically Alprazolam, I
16 think Oxycodone and Xanax first offense.

17 Your Honor, Mr. Weaver over the course of the
18 weekend emailed me a list of motions that he would
19 like heard pretrial on this particular case and so
20 we're here to address his particular motions.

21 THE COURT: All right, Mr. Weaver.

22 MR. WEAVER: Yes, Your Honor. Your Honor,
23 just to advise the Court, I have a total of six
24 motions, Your Honor, and I also would like to have a
25 Jackson v. Denno hearing heard in the matter. Your

1 Honor, I will be starting with a motion in limine to
2 exclude physical presence of drugs.

3 THE COURT: Prior to admission? Prior to
4 them being admitted into evidence, if they are
5 admitted?

6 MR. WEAVER: Yes, Your Honor. I want to
7 exclude the physical presence of the drugs in the
8 courtroom itself.

9 THE COURT: You don't want the — if
10 they're not in evidence you don't want the jury to
11 see them.

12 MR. WEAVER: That's correct, Your Honor.

13 THE COURT: What do you say about that,
14 Mr. Solicitor?

15 MR. BROWN: And Your Honor, just so I can
16 perfectly understand, is the request by the Defense
17 that they at no point in the trial are present or
18 only that they are not present up and until the
19 point where they're admitted into evidence?

20 MR. WEAVER: Your Honor, I would say not
21 present at any point in front of the jury, Your
22 Honor; and the reason for that, Your Honor, would be
23 a 403 argument. The State is going to call a
24 chemist, a marijuana analyst and a chemist to
25 testify as to the weight and quantity of the drugs.

1 I just don't see the purpose for having the actual
2 drugs physically in the courtroom in front of the
3 jury because it's just gonna be more prejudicial
4 than probative, far more prejudicial than probative.

5 THE COURT: All right, Mr. Brown.

6 MR. BROWN: Your Honor, we would certainly
7 argue against the points being made by the Defense
8 counsel. The position of the State is that this is
9 a drug case and this is an essential part of the
10 drug case proving not only the existence of the
11 drugs, but also the actual or constructive
12 possession of said drugs; and because this is a
13 trafficking case, the quantity of said drugs. While
14 there is a prejudicial effect of having those in
15 there, most of the things that the State is going to
16 do in trial will have a prejudicial effect. The
17 important thing is the probative value of what we're
18 offering; and in this particular case, the jury
19 being able to look and see the controlled substances
20 as the chemist, whether it be lieutenant with the
21 sheriff's department testifying about marijuana, or
22 Joseph Powell who is Sumter County Sheriff's
23 Department testifying about the crack, the powder,
24 marijuana, the heroine, or the pills. For them to
25 be able to see that, that will help them understand

1 the quantities that they're dealing with in this
2 particular case and this being a trafficking case.
3 I think that would be highly relevant to helping the
4 jury which in this case ---

5 THE COURT: Mr. Weaver, do you have any
6 case authority that the jury should not be allowed
7 to view evidence?

8 MR. WEAVER: No, Your Honor, I do not have
9 any case authority on that; however, I do rely on
10 Rule 403. And once again, Your Honor, in the
11 State's argument I didn't hear any probative value
12 whatsoever. He did not mention one -- he didn't
13 mention probative value. He mentioned the word
14 probative value, the words probative value, but he
15 didn't say how. Having the physical presence of
16 drugs in the courtroom when you have individuals who
17 are going to testify as to the weight and as to the
18 quantity, they're gonna testify that they did meet
19 the statutory requirement for the trafficking
20 offenses. There's simply no reason to have the
21 drugs here except for the shock and awe of the jury.

22 THE COURT: All right. Do you have
23 written copies of the motions for the Court?

24 MR. WEAVER: Yes, Your Honor, I do. May I
25 approach, Your Honor.

1 THE COURT: Yes, sir. You know, the thing
2 about motions in limine, you know, I come, I sit
3 here, I know nothing about this case and have no
4 idea about what evidence will be offered in a case
5 and I'm asked to exclude evidence from the case and
6 exclude it from the jury without knowing anything
7 about the case. I do not favor motions in limine in
8 general because of that precise reason. In order
9 for the Court to be in a position to determine
10 whether something is more prejudicial than
11 probative, I have to observe it in action in order
12 for me to make an advance call prior to the trial
13 that this will be unfair to the defendant, is not
14 something I'm willing to do. Typically, once
15 something is admitted into evidence the purpose of
16 admitting it into evidence is for the jury's use and
17 benefit as the jury is evaluating the case. And
18 certainly, when the jury goes back to the jury, the
19 jury takes — we take to the jury room all the
20 evidence in the case. If it's admitted into
21 evidence, then it's submitted to the jury. That's
22 the meaning of admitting something into evidence. I
23 deny the motion as a motion in limine. If during
24 the course of the trial it appears that anything is
25 occurring that prejudices the right to the ju— of

1 the defendant, it can be brought to the attention of
2 the Court at that time; but as a motion in limine I
3 deny the motion.

4 MR. WEAVER: Thank you, Your Honor. Your
5 Honor, my next motion is a motion to keep the
6 State's offer open.

7 THE COURT: All right, and what is that
8 offer?

9 MR. WEAVER: The offer itself, Your Honor,
10 was an offer of, offer to negotiate 15 year sentence
11 reducing the traffic and cocaine base 28 to 100
12 grams third offense down to 28 to 100 grams second
13 offense, reducing the cocaine from 10 to 28-grams
14 third offense down to 10 to 28-grams second offense.
15 And that's the full extent of the offer, Your Honor.

16 THE COURT: All right, Mr. Brown.

17 MR. BROWN: Your Honor, as pertains to
18 that particular motion we, the State's position
19 would be —

20 THE COURT: As it pertains to confirming,
21 that that is — we haven't heard the argument or the
22 motion, but as it pertains to what the offer is.

23 MR. BROWN: Yes, Your Honor, I apologize.
24 That was the offer and that was made during prior to
25 last term of court, about a month prior with the

1 indications that when Judge Cothran left the bench
2 from last term of court the offer would go with him
3 so that's the basis of that.

4 THE COURT: All right.

5 MR. WEAVER: Your Honor.

6 THE COURT: Yes, sir.

7 MR. WEAVER: The issue that I have with
8 this offer and the fact that -- the reason I'm
9 asking for the extension, if Your Honor would beg my
10 indulgence for just a moment. May I approach, Your
11 Honor.

12 THE COURT: Yes, sir. As far as this case
13 is concerned what is the defendant facing? How much
14 time is he facing?

15 MR. BROWN: 25 to 30 years on each one of
16 the trafficking cases. I think 0 to 15 on the PWID,
17 actually maybe more on heroine. One second, Your
18 Honor.

19 THE COURT: Is that a minimum of 25?

20 MR. BROWN: Mandatory minimum 25 years,
21 Your Honor.

22 THE COURT: Mandatory minimum of 25 years,
23 maximum 30 years for the charge of what?

24 MR. BROWN: Of trafficking crack cocaine
25 28 to 100 grams third or subsequent offense, 25 to

1 30 years on trafficking 10 to 28-grams third or
2 subsequent offense. He is also facing a 10 to 30
3 year sentence on PWID heroine case, also a third or
4 subsequent offense. The marijuana is a possession
5 with intent to distribute first offense. That is a
6 five year sentence that he's facing. And the
7 possession intent to distribute controlled
8 substance, if I remember correctly that is up to 15
9 year sentence.

10 THE COURT: And what was the plea offer?

11 MR. BROWN: I'd offered him a negotiated
12 15 year plea offer to two trafficking, would have
13 been brought down to second offense to be able to
14 open up a window for that.

15 THE COURT: And those plea offers were
16 rejected?

17 MR. BROWN: Yes, Your Honor.

18 THE COURT: And at this moment in time is
19 there a plea offer?

20 MR. BROWN: Your Honor, I think that's the
21 next motion to be heard. I did tell him that I
22 would put a negotiated 20 on the table; but once I
23 start getting into Jackson v. Denno and suppression
24 hearings, I try 90 percent of the case, I'm not
25 going to keep it out there after I try actually my

1 case.

2 THE COURT: All right.

3 MR. WEAVER: May I approach, Your Honor.

4 THE COURT: Let me just ask the defendant,
5 I mean -- well, first Mr. Weaver, is that correct
6 what the defendant is facing and what the plea
7 offers are and have been?

8 MR. WEAVER: Your Honor, that is correct;
9 however, we argue that the plea offer was never
10 officially closed and --

11 THE COURT: Okay, I understand.

12 MR. WEAVER: Yes, Your Honor.

13 THE COURT: But Mr. Fortune, I'm going to
14 ask you a couple of questions right now.

15 If you will swear him please.

16 You can stand right there.

17 WHEREUPON,

18 **ROGER FORTUNE,**

19 was duly sworn by the Clerk of Court.

20 THE COURT: Mr. Fortune, you understand
21 that the, what the solicitor says at least, and that
22 is that with the charges that you have of
23 trafficking third or subsequent offenses you're
24 facing a mandatory minimum of 25 years in prison on
25 various charges? You understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And according to the Solicitor
3 you are un-- you have been unwilling or you were
4 unwilling to plead to the plea offer of a negotiated
5 sentence of 15 years; is that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And he says that after court
8 was over with Judge Cothran his most recent plea
9 offer is that, is for you to plead to 20 years; is
10 that your understanding?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you rejected that as well?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Very good, thank
15 you.

16 You may proceed, Mr. Weaver.

17 MR. WEAVER: May I approach, Your Honor.

18 THE COURT: Yes, sir.

19 (Documents tendered to the Court.)

20 MR. WEAVER: Your Honor, there's a video
21 in this case, and this is the main issue behind me
22 requesting that the plea offer remain open. There's
23 video in this case which depicts my client in the
24 back of a patrol car discussing the drugs that were
25 found when he was arrested on May 1st. This plea

1 offer closed on September the 18th. On September
2 the 17th, the day before the plea offer closed, I
3 came up here and met with Mr. Fortune and met with
4 Tyler Brown and with Officer Scott Seth and viewed
5 the DVD, well, viewed the video with my client. I
6 never received a copy of the video itself until the
7 offer had already been closed. If the Court will
8 notice, I handed the Court a memorandum issued by
9 Chief Justice Toal on March 1st, 2004. This
10 memorandum states that I believe it is unethical to
11 premise a plea agreement on defendant relinquishing
12 the right to discovery in criminal cases. The
13 purpose of this memorandum, Your Honor, is this: It
14 is to protect defense attorneys. And the reason to
15 protect defense attorneys is because the prosecutor
16 cannot wait until the very last moment, a day before
17 the plea offer expires, and give you discovery which
18 is so material to the case. This is the reason I'm
19 requesting that the motion remain open, Your Honor.

20 THE COURT: What is it that you want to
21 remain open?

22 MR. WEAVER: The plea offer which is dated
23 September 3rd, 2014.

24 THE COURT: And you want it to remain open
25 until when?

1 MR. WEAVER: I will leave that in
2 discretion of the Court, Your Honor. My client of
3 course, if he were to enter a plea he would have to
4 get family here and things of that nature. And Your
5 Honor, just to make the Court aware, I am not one
6 hundred percent convinced that my client will plead;
7 however, I felt that it was necessary to make the
8 motion in case my client does decide he wants to
9 plead.

10 THE COURT: All right, Mr. Brown.

11 MR. BROWN: Your Honor, if I can before I
12 start getting direct on case law, I'd also like to
13 begin by laying a little background of this case a
14 little bit better on that. Candidly, before
15 September 17th the incident report didn't indicate
16 to me that there was a video; but Mr. Weaver brought
17 to my attention that it existed because candidly, he
18 took better notice at prelim than I did, where it
19 was outlined that the video would provide what his
20 client was doing in the back of the car and things
21 of that nature. I believe Officer Seth Scott is
22 present here today. He testified to it at prelim.
23 When that plea offer was made it was made 15 to 20
24 days before, before the expiration of it. No point
25 prior to that did Mr. Weaver raise to my attention

1 that he had a video that he wanted to see before he
2 make a competent acceptance or refusal to the plea
3 offer. As soon as he brought it to my attention I
4 had them bring the video over. I let him and his
5 client sit in our jury room about two hours watching
6 that video and then he also took off a spot on the
7 van coming over from the jail the next day, sat
8 another two hours. The plea offer'd been up there
9 sometime. It's important to note that that is not
10 the State's only evidence. There's also a full
11 confession by Mr. Fortune where he admitted to
12 stealing drugs out of Marion County from a guy named
13 Jordan to bring them down here and intending to sell
14 them. You know, this is —

15 THE COURT: I missed the last thing you
16 said.

17 MR. BROWN: He's given a full confession,
18 a written confession that we'll get to in the
19 Jackson v. Denno hearing in a minute where he
20 admitted that he stole the drugs along with his
21 co-defendant and a third party; and they, the two of
22 them would bring them down to Williamsburg County to
23 sell them. You know, he had — he was going to
24 accept the 15 year plea offer. There was more than
25 enough evidence out there for him to have done that,

1 and at this point I think we're dealing more buyers
2 remorse than any other issue. On the 18th when they
3 left having rejected a plea offer, I asked Mr.
4 Weaver if he wanted to put it on the record that he
5 would reject it. Mr. Weaver indicated that wouldn't
6 be necessary. He also indicated that he understood
7 the plea offer was coming off, and at no point at
8 that point did he give me any indication that he had
9 any trouble with what was going on. That plea offer
10 was out in plenty of time.

11 I would point out to the Court that case law
12 was clear that defendant does not have a
13 constitutional right to a plea offer. That's State
14 v. Chisholm and State v. Beckham. I would also
15 point out that contractual principles and each party
16 shall receive benefit of the bargain, also a guilty
17 plea. That's Thrift versus State. Based on basic
18 contractual principals I'm allowed to withdraw the
19 plea offer prior to acceptance. And at this
20 particular point in time that offer had been out
21 there sometime. We've been jerked around for some
22 good amount of time, and we've been getting ready
23 for trial now. It was his decision to reject the
24 plea offer and the State is ready to proceed at
25 trial.

1 THE COURT: Mr. Weaver.

2 MR. WEAVER: Your Honor, the State argued
3 that client has no right to plea offer. To be
4 candid, Your Honor, it would put me in a better
5 option state didn't offer one, gave me all the
6 discovery and set a trial date. But once you offer,
7 once you made the plea offer, you put a deadline on
8 the plea offer, now you have to give me all the
9 discovery and you have to give me the opportunity to
10 review the discovery so I can sit with my client and
11 tell him if he has a defense. To hold evidence —
12 my initial motion for discovery was filed, Your
13 Honor, on May 9th. To hold this video until
14 September 17th with the plea offer expiring on
15 September 18th is wrong and unethical, Your Honor.

16 THE COURT: Well, at this point in time —
17 and we're at, what's today's date? We're way over
18 into October 13th so this discovery, has discovery
19 been provided? Is it complete at this moment in
20 time?

21 MR. WEAVER: The discovery was completed,
22 Your Honor, on September 17th when I viewed it and
23 then the documents I just sent up to the Court, show
24 that the actual video was mailed to my office and is
25 post-dated September 9th which is after the plea

1 offer expired.

2 THE COURT: All right, and assuming all of
3 that is correct and now we're into October, and
4 the — and assuming that the State still has an
5 offer or they're still bound by and bound by the
6 offer beyond the term they said it should expire,
7 does your client accept the offer, does he want to
8 accept the offer, or what are you — or is it your
9 contention that we should proceed with the trial,
10 the motions and everything, and whenever he says he
11 accepts them he accepts, if he ever accepts?

12 MR. WEAVER: No, Your Honor, that is not
13 my contention.

14 THE COURT: So that's why, therefore I ask
15 you, well, the offer should be left open until when,
16 until, I mean, does he want to take the plea or not
17 or?

18 MR. WEAVER: Your Honor, my answer to that
19 question is if you give 21 days to accept or deny a
20 plea offer, then you should have all material
21 evidence turned over to you that can be turned over
22 to you that the State has in its possession. This
23 is, this was a camera inside the patrol car. This
24 couldn't have been that hard to get their hands on,
25 Your Honor. If you have that evidence, then once

1 that evidence is submitted, that's when that clock
2 should start running. You can't run the clock and
3 hold evidence till the last minute and then give you
4 evidence because it puts us, it puts the defense
5 attorney in a situation where the client has a right
6 to PCR the defense attorney, Your Honor.

7 THE COURT: All right, I understand your,
8 everything you said and I understand everything the
9 State has said. I just need to know where we are.
10 We're wasting time. Does he want to plead guilty?
11 If he wants to plead guilty to the 15 years the
12 State, will the State accept it. If he wants to
13 continue trying to see if he wins some motions and
14 then still hold this plea open, what is it that,
15 what is that he's, that y'all are trying to
16 accomplish here this morning, if anything?

17 MR. WEAVER: Your Honor, I would have to
18 discuss with my client to see if he would be open to
19 taking the plea agreement.

20 THE COURT: All right.

21 MR. WEAVER: In prior to discussions, Your
22 Honor, in prior discussions my client did indicate
23 to me that he would prefer if he could plead
24 straight up to, instead of a negotiated plea. That
25 would be the only change to want to be ---

1 THE COURT: To plead straight up to the 25
2 year mandatory minimum or?

3 MR. WEAVER: No, Your Honor, straight up
4 to the trafficking second as opposed to trafficking
5 third. The plea agreement reduced the trafficking
6 thirds down to trafficking seconds and was for
7 negotiated 15.

8 THE COURT: What's the — trafficking
9 second carries what?

10 MR. WEAVER: Trafficking second carries 5
11 to —

12 THE COURT: 5 to 30.

13 MR. WEAVER: 5 to 30, Your Honor. That
14 would be trafficking second for the cocaine.
15 Trafficking second for the crack would be 5 to 30 as
16 well because that was 10 to 28-grams that he had in
17 his possession.

18 THE COURT: Trafficking in crack is less
19 than distribution?

20 MR. BROWN: Actually, Your Honor, just to
21 correct that, it would be 7 to 30 because he is
22 facing 28 to 100 grams on crack cocaine.

23 THE COURT: All right.

24 MR. WEAVER: And the heroine as well, Your
25 Honor.

1 MR. BROWN: For the record there was never
2 a discussion about bringing that down to a third,
3 beyond a third.

4 MR. WEAVER: Would also be 5 to 30, Your
5 Honor.

6 MR. BROWN: And Your Honor, if I can just
7 clarify that last one. There was never discussion
8 about bringing heroine down below a third because we
9 didn't need to go beyond 15 year so that would
10 actually be a 10 to 30 year sentence as a third or
11 subsequent offense.

12 THE COURT: Well, is there any point in
13 y'all having further plea discussions prior to us
14 proceeding with these motions? Obviously it appears
15 that the Defense would like to have some discussions
16 with the State.

17 MR. BROWN: I was told yesterday they
18 weren't, and I was getting ready for trial. If he
19 wants to discuss with his client exactly where he's
20 at on a guilty plea, he needs to do it before we do
21 a suppression hearing because at that point it's off
22 the table.

23 MR. WEAVER: If I may, Your Honor, just
24 clarify the conversation yesterday. The
25 conversation yesterday was a plea to 20 which I've

1 had issue from, which I've had issue with since
2 September 18th when I believe the initial plea came
3 off the table.

4 THE COURT: All right. Well, I just ask
5 Mr. Wilson whether the probation department had
6 anything 'cause Ms. Barr is not here yet, right?

7 MR. BROWN: I'm not sure I had up here, I
8 know I have at least one individual back there,
9 Douglas Adams, ready to plea. I've been candidly
10 working on this a lot more this morning than
11 anything else, but.

12 THE COURT: I understand. But it appears
13 that you all need to confer a little bit more. He
14 needs to talk with his client and just have — y'all
15 see if anything can be resolved; and if it can be,
16 then fine; if it can't be, then I understand. I'll
17 rule as I go. I certainly understand Mr. Weaver's
18 point of view and I agree with everything that's
19 been presented on the issue of being, conditioning
20 any plea on foregoing the opportunity to view
21 discovery. Of course, I am certain as you pointed
22 out that was never the intent of the State, but it
23 appears that things did sort of cross in that
24 respect so his, the deadline that he referenced,
25 would have put him in a compromising position

1 because he didn't have opportunity to have a
2 discovery. Now whether how long that pertained
3 beyond that date, I don't know so I think it's all
4 worth you all having a discussion about it to see if
5 anything can be resolved; and if not, then we press
6 on.

7 MR. BROWN: Thank you, Your Honor.

8 MR. WEAVER: Yes, sir.

9 MR. BROWN: I'll let him talk with his
10 client.

11 (WHEREUPON, a recess was taken from the
12 proceedings.)

13 THE CLERK OF COURT: Place your left hand
14 on the Bible raise your right hand.

15 WHEREUPON,

16 **ROGER FORTUNE,**

17 having been duly sworn by the Clerk of Court,
18 testified as follows:

19 MR. BROWN: May it please the Court, Your
20 Honor, before you is Mr. Roger Leon Fortune, Your
21 Honor, under indictment 2014-GS-45-210. There's a
22 true bill indictment. He is charged with
23 trafficking crack cocaine 28 to 100-grams, third or
24 subsequent offense; trafficking cocaine, 10 to
25 28-grams, third or subsequent offense; possession

1 with intent to distribute heroine, third or
2 subsequent offense; possession with intent to
3 distribute marijuana, first offense; and possession
4 with intent to distribute schedule I to IV
5 controlled substances, third or subsequent offense.
6 May have only been indicted as first offense on that
7 last one, my apologies, Your Honor. With that being
8 said, he's here before you today. And of course
9 Your Honor is aware that we had some hearings this
10 morning for some pretrial motions. During the
11 course of that, plea negotiations I guess re-started
12 back up and he is now here before the Court to plead
13 guilty.

14 He'll plead guilty to the heroine charge, the
15 marijuana charge, and the controlled substance
16 charge which specifically are pills as indicted
17 without recommendation or negotiation. He'll plead
18 guilty to the trafficking crack and trafficking
19 powder as indicted except for it will be second
20 offenses. He is represented by attorney Marshall
21 Weaver.

22 I think there is one matter of law Mr. Weaver
23 wanted to briefly take up with the Court clarifying
24 second versus third or subsequent offense. We'll be
25 prepared to address that, but he's — we're ready

1 for a guilty plea.

2 THE COURT: Is that right, Mr. Weaver?
3 Mr. Fortune has indicated that he wants to plead
4 guilty on these 1, 2, 3, 4, 5 indictments?

5 MR. WEAVER: Yes, Your Honor, he has.
6 Your Honor, I just remind the Court there are two
7 issues. One is that he's only going to be entering
8 this plead today, but he'll be getting sentenced on
9 Wednesday. And the second is the interpretation of
10 the trafficking statute for Mr. Fortune prior to him
11 entering the guilty plea.

12 THE COURT: All right. What's the issue
13 with the trafficking statute?

14 MR. WEAVER: Your Honor, on April 26,
15 2004, Mr. Fortune was convicted for trafficking
16 first. On April — I mean, on January 19th, 2010,
17 Mr. Fortune was convicted for possession of crack;
18 and of course, on May 1st, 2014, Mr. Fortune was
19 arrested on these charges. I have explained to Mr.
20 Fortune the enhancement statutes; however, he would
21 feel more comfortable hearing that this does enhance
22 his trafficking to a trafficking third from the
23 Court.

24 THE COURT: All right. And the
25 enhancement statute is 44-53 —

1 MR. WEAVER: I believe it's 470, Your
2 Honor.

3 MR. BROWN: 470.

4 THE COURT: 470, let me look at that.
5 Title 44.

6 MR. WEAVER: May I approach, Your Honor.

7 THE COURT: Yes, sir. I have the statute
8 here. Sir, it's under second or subsequent offense
9 defined under Section 44-53-470, it says that an
10 offense is considered a second or subsequent offense
11 for in the subparagraph three, for an offense
12 involving a controlled substance other than
13 marijuana the person has been convicted within the
14 previous ten years of the first violation of the
15 controlled substance offense other than marijuana.
16 For an offense involving a controlled substance
17 other than marijuana the offender has at any time
18 been convicted of a second or subsequent offense of
19 a controlled substance other than marijuana or any
20 other state or federal statute relating to
21 narcotics, drugs, depressants, stimulants, or
22 hallucinogenic drugs. If a person is sentenced to
23 confinement as a result of a conviction pursuant to
24 this article, the time period specified in this
25 section begins on the date of the conviction or on

1 the date the person is released from confinement
2 imposed for the conviction, whichever is later. In
3 this case the prior conviction dates, Mr. Brown,
4 were, prior dates were?

5 MR. BROWN: Yes, Your Honor. On
6 April 26th, 2014, he was convicted of trafficking
7 crack first offense, as well as I believe it was
8 distribution of PWID cocaine first offense. It was
9 for a concurrent five year sentence. I also have
10 the dates he paroled out if it please the Court.

11 THE COURT: He was paroled out when?

12 MR. BROWN: I spoke with Tameka Johnson,
13 SCDC general counsel. She provided to me on
14 June 2nd, 2005, he paroled out on that sentence.
15 Then on June 15th, 2006, he was revoked on that and
16 then he officially maxed out on December 29th, 2006,
17 but I believe the controlling date would be June
18 2nd, 2005.

19 THE COURT: So the statute says that if a
20 person is sentenced as a result of conviction, time
21 period specified for this ten years is the date the
22 person is released from confinement for the
23 conviction. The date of conviction or the date the
24 person released from confinement, whichever is
25 later. Mr. Fortune, any question in your mind that

1 you've had more than at least two cases within the
2 past ten years?

3 THE DEFENDANT: No, sir. I'm just —

4 THE COURT: I'm just saying, okay. So
5 it's clear if your record is correct it's clear that
6 this is a second or subsequent offenses and under
7 the statute if you are convicted of a second or
8 subsequent offense, it involves anything other than
9 marijuana, the penalty is what's called the enhanced
10 penalty. The penalty is greater than it would be
11 for a first offense. And so the statute itself for
12 drug offenses for trafficking second offense of
13 cocaine is a minimum of 5 years, a maximum of 30
14 years if it's less than 28-grams; cocaine base 5
15 years, 30, and a fine of fifty thousand dollars; and
16 trafficking in heroine is 7 to 25; and trafficking
17 in heroine second offense is a minimum of 25. Which
18 offense of heroine is this for him?

19 MR. BROWN: It would be listed as a third
20 offense as a distribution. Also, that should be a
21 10 to 30 year sentence to this plea too, Your Honor.

22 THE COURT: Distribution of heroine third
23 offense?

24 MR. BROWN: Yes, Your Honor, based on
25 prior traffic convictions they elevate each other.

1 THE COURT: This says -- the chart I'm
2 looking at for distribution of heroine third offense
3 would be 15 to 30, CDR 185.

4 MR. BROWN: Court's indulgence. I'm
5 looking at the one that's sent out by the
6 prosecutor's association. It's listed as 10 to 30
7 and or \$50,000 fine, but let me go to the red book
8 and see what it has to say. Based on the red book,
9 unless there's been a change in the law since 2011
10 that should be a 10 year to 30 year sentence and/or
11 not more than \$50,000 fine, this being a serious
12 offense, which cannot be suspended to probation
13 unless all prior convictions are possession. And
14 I'm also looking directly at the statute. I'm
15 looking at the 2014 law manual which also provides
16 the same 10 years to 30 years, not more than \$50,000
17 or both.

18 THE COURT: Okay. 44-53-370(b)(1), person
19 who violates this subsection with respect to: One,
20 a controlled substance classified as schedule 1(b)
21 and (c) which is a narcotic drug LSD or LSD; and
22 schedule II, which is a narcotic drug, is guilty of
23 felony upon conviction for a second offense. Or if
24 in the case of first offense violation of any
25 provision the offender has previously been

1 convicted, must be in prison not less than 5, nor
2 more than 30 years second. For a third offense not
3 less than 10, no more than 30 years, and confined or
4 fined not more than \$50, notwithstanding any other
5 provision of the law a person convicted and
6 sentenced pursuant to this item for first offense or
7 second offense may have the sentence suspended and
8 probation be granted. Notwithstanding any other
9 provision a person convicted and sentenced for a
10 third or subsequent offense in which all prior
11 offenses were for possession of controlled substance
12 pursuant to this subsection (c) and (c) may have the
13 sentence suspended, probation granted, if it's for
14 possession offense. In all other cases the sentence
15 must not be suspended, nor probation granted. In
16 this instance this is a third or subsequent offense

17 ---

18 MR. BROWN: On the heroine charge, yes,
19 sir.

20 THE COURT: ---on the heroine charge. And
21 the prior offenses were not for possession, they
22 were for?

23 MR. BROWN: One was for possession and
24 then -- I don't think they count as two because they
25 were sentenced at the same time with 2004 was for a

1 trafficking and a distribution. They probably only
2 counted one because they were sentenced at the same
3 time. I believe that's the way it's supposed to be
4 looked at, but at least one was not for possession.

5 THE COURT: So if all prior offenses were
6 for possession, then the one statute applied; but
7 since one is for trafficking, then it's the no
8 parole, no probation offense.

9 MR. BROWN: Right, that is my
10 understanding, yes, sir, Your Honor.

11 THE COURT: All right, Mr. Weaver.

12 MR. WEAVER: Your Honor, I have nothing to
13 offer in way of mitigation. I do agree with Tyler's
14 interpretation of the statute. That's the same
15 thing that I thought was ten, minimum ten.

16 THE COURT: Well, it seems to be clear. I
17 know, of course, you have to read through it to make
18 sure the prior offenses are for this or that. But
19 if he has a prior trafficking, plus other prior
20 non-marijuana drug convictions within the past ten
21 years, this would be a third offense and the minimum
22 would be as specified by the State for that offense
23 and for the other offenses for trafficking and
24 cocaine second or subsequent offense less than 100
25 grams, sentence is 7 to 30; trafficking 10 to

1 28-grams is 5 to 30; the heroine charge is 10 to 30.
2 This other drug charge, possession of schedule V,
3 what's that?

4 MR. BROWN: That was — is it 0 to 5
5 years?

6 THE COURT: One year.

7 MR. BROWN: That would be the pills he was
8 found with.

9 THE COURT: Pills, one year. Other drug
10 schedule 1, 2, 3 of Nytropam (ph) or analog with
11 intent to distribute 0 to 5. What kind of drugs are
12 those?

13 MR. BROWN: I believe that's the marijuana
14 charge, Your Honor. That's the CDR code for
15 marijuana.

16 THE COURT: All right. So these offenses,
17 these penalties as written, possible penalties
18 except for the fines are written on these sentencing
19 sheets and 10 to 30 for the heroine, 7 to 30 for the
20 trafficking in cocaine over 28-grams, less than a
21 hundred; 5 to 30 for trafficking 10 to 28; 0 to 5
22 for the other possession with intent to distribute
23 except for the pills which is up to one. Any
24 question about any of that, Mr. Fortune?

25 THE DEFENDANT: I just don't understand

1 how can I, how can I be charged with trafficking
2 third and I only had one trafficking?

3 THE COURT: Third or subsequent drug
4 offense. It's not third or subsequent trafficking
5 offense.

6 THE DEFENDANT: The trafficking third
7 guidelines carry 25/30, but all other third offenses
8 don't carry nowhere near that.

9 THE COURT: Well.

10 THE DEFENDANT: Trafficking goes by weight
11 and the other ones just go by dependency, the need
12 of the drug.

13 THE COURT: This offense is a trafficking
14 offense, and you've had a previous conviction for
15 something other than possession, which is a previous
16 trafficking. All of them don't have to be
17 trafficking, at least as long as all of them were
18 not possession, then this one can be a third offense
19 for trafficking. That's the way the statute is
20 written. You know, they — the people who write the
21 statutes in Columbia, they write them in a certain
22 way for a purpose. The legislative intent of the
23 statute is that a person who continues to deal in
24 drugs and who is dealing in drugs more than
25 possession, simple possession, but they're either

1 dealing in distribution or trafficking. The intent
2 is for the penalty to be more severe and that's what
3 it is in this case. But understanding that to be
4 the case, do you want to plead guilty to these
5 charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And are you guilty of these
8 charges?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now your lawyer Mr. Weaver has
11 done a lot of work and done a lot of — filed a lot
12 of papers and made some arguments and have more
13 arguments to go in raising defenses and various
14 things to try to assist you with regard to these
15 charges. Do you want to give up your right to
16 pursue any further arguments or defenses regarding
17 the evidence against you and plead guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And as you stand before me at
20 this moment you're presumed to be not guilty. We
21 have a jury coming in, at what time?

22 MR. BROWN: 2:30.

23 THE COURT: 2:30. Your case is the first
24 up. You have the right to have a jury trial and the
25 State would have to prove to each and every juror

1 beyond a reasonable doubt that you're guilty;
2 otherwise, they'd have to find you not guilty. You
3 understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And your lawyer, Mr. Weaver,
6 would have a right to cross-examine any witnesses
7 against you, challenge any evidence they might have
8 against you, present any defense you might have,
9 bring in any witnesses you may have, and to try to
10 convince the jury that you're not guilty. You
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you want to give up your
14 right to a jury trial?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you also have the right to
17 remain silent and in pleading guilty you give up
18 that right to remain silent. You understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has anyone promised you
21 anything to get you to plead guilty?

22 THE DEFENDANT: No, sir.

23 THE COURT: And have you had enough time
24 to make up your mind that that's, that you want to
25 plead guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: So understanding the nature of
3 the charges and the possible punishment, how do you
4 plead to these five charges?

5 THE DEFENDANT: Guilty.

6 THE COURT: All right.

7 MR. BROWN: May it please the Court. Your
8 Honor, this all arose out of May 1st, 2014.
9 Officer, now Investigator Seth Scott with the
10 Williamsburg County Sheriff's Department was running
11 patrol in Hemingway. As he was running patrol on
12 Highway 41 North, right at the county line road he
13 observed a vehicle approach a stop sign right beside
14 where he was. He observed neither the passenger,
15 nor the driver wearing seat belts. He also observed
16 other activities including him sitting back in their
17 chair like they were trying to avoid visibility from
18 law enforcement. Based on the failure to have their
19 seatbelts on he made a traffic stop. What would
20 have normally been about a five minute stop he walks
21 up to the car and smells an overwhelming odor of
22 marijuana. He asked them specifically put in there
23 a smelled of green marijuana coming from inside the
24 vehicle. Based on this he started talking to both
25 the driver and the passenger. He noticed they

1 appeared incredibly nervous. He noticed that they
2 were shaking, that they were giving very short
3 answers, all the things that you would anticipate
4 seeing as a narcotics officer, things that might
5 give probable cause to be a little suspicious.

6 At that point just by happenstance Chief Todd
7 of Hemingway Police Department driving by. I think
8 he was off duty, but he stopped just to check on
9 Sergeant Scott and make sure everything was okay.
10 That was around the same time Sergeant Scott was
11 asking the passenger who was Mr. Fortune to step out
12 of the vehicle. Officer Scott, of course, as Your
13 Honor is aware is a canine officer or has a canine
14 officer with him. He was going to do a free air
15 sniff based on his smelling of marijuana and all the
16 other extenuating circumstances. He noticed around
17 that time he had the two individuals step out of the
18 car. He talked with one who gave one story about
19 where they were headed and what was going on. And
20 then when he went over to talk to Mr. Fortune he
21 noticed Mr. Fortune repeatedly reaching toward his
22 back waistband area. This was also noticed by Chief
23 Todd so they began to terry frisk him and felt a
24 digital scale, what was found to be a digital scale
25 in his left front pocket, and then found a pill

1 bottle in his waistband, the back of his waistband.
2 Based on this, based on everything they had seen, at
3 that point law enforcement began to search the
4 vehicle. Tucked underneath the passenger seat was a
5 black in color bag. Inside of it was what they
6 field estimated to be about 3 pounds of marijuana,
7 then large quantities of crack, powder cocaine, what
8 they believed to be heroine, as well as of course, a
9 pill bottle that was found that had a large quantity
10 of controlled substances. They, of course, seized
11 all this. And during the process of waiting for
12 them to inventory everything they put both the
13 passenger and drivers, Roger Fortune along with his
14 codefendant Nicholas Turner, into the back seat of
15 Officer Larry King of the Hemingway Police
16 Department's car. Unbeknownst to Mr. Fortune and
17 Mr. Turner the in-car camera was turned on, and he
18 actually turned it to be facing two individuals.
19 This is the video that was mentioned earlier. What
20 was noteworthy in there was you saw Mr. Fortune
21 candidly begging Mr. Turner to take the fall for
22 this, to take the rap, stating you go ahead and
23 claim all the drugs and I will come back and then
24 hire you a good lawyer, I'll go and get out;
25 otherwise, I'm going to fed, I'm gonna, I'm look out

1 for you, I won't let you go to jail, essentially
2 trying to get Mr. Turner who has no criminal history
3 to take the rap for all of this. Mr. Turner, of
4 course, wasn't really having any of that and never
5 did claim —

6 THE COURT: What was he saying?

7 MR. BROWN: Mr. Turner remained quiet
8 through most of it and then finally Roger Fortune
9 made some kind of comment along the lines of, you
10 know, this is what I did with so and so, and
11 Nicholas Turner said, yeah, that puts you in prison
12 right now. It was comical but for the fact that
13 what you realize who you're dealing with in this
14 case. Eventually they arrested him; they took him
15 into the County. Roger Fortune after being
16 mirandized, did give a statement where he indicated
17 that he, along with Nicholas Turner, and then one
18 other person who was ultimately not charged in this,
19 had gone to a dealer's house in the Marion County
20 area. They extracted him with a card game. They
21 went in, stole these drugs, were bringing them down
22 with intent to sell them. They were planning on
23 selling these drugs as one big buy as I believe how
24 the statement indicates so they can make a big pay
25 day essentially. As Your Honor is I'm sure well

1 aware, these drugs were sent off for testing off to
2 Louis Timmons with the Williamsburg County Sheriff's
3 Department, tested the marijuana. It came out to be
4 ultimately 1.1 pounds of marijuana. The — all
5 other controlled substances were sent to Sumter
6 County Sheriff's Department. We have an agreement
7 with them now where Officer Joe Powell who used to
8 work with SLED, now works with the Sheriff's
9 Department in Sumter, does all of our testing for
10 us. He's a great chemist. I've dealt with him
11 plenty of times as prosecution over in Sumter County
12 cases. He tested all the controlled substances.
13 There were, just to go and give the Court a full
14 count, 24-and-a-half oxycodone pills in a container;
15 157-and-a-half Xanax pills. There were eight
16 Alprazolams, which is of course, I believe is a
17 generic version of Xanax. And then there were eight
18 more Clonazepam. As it pertains to the heroine
19 there was 3.43-grams. This was in, I believe, 180
20 different individual packets. And that originally
21 was charged as trafficking. I think that was lot of
22 field weight and a lot of packaging weight but it
23 tested to 3.43-grams. In powder cocaine it tested
24 positive, and it came out to 23.84-grams of powder
25 cocaine. And then in crack cocaine, it tested

1 positive crack cocaine. It came back as 70.19-grams
2 of crack cocaine. So based on this he was indicted
3 for charges he's before you today on, and that is
4 the reason the State's not making any further
5 recommendations.

6 THE COURT: All right. Do you dispute any
7 of the evidence the State has against you or what
8 the Solicitor said, Mr. Fortune?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. I will accept the
11 guilty plea.

12 MR. BROWN: Yes, sir, Your Honor. Your
13 Honor, he does have a criminal history. Do you want
14 to deal with that when we do sentencing?

15 THE COURT: We can do all of that when we
16 do the sentencing. Anything further for today then,
17 Mr. Weaver?

18 MR. WEAVER: No, Your Honor.

19 THE COURT: I'll accept the guilty plea
20 and we'll set the sentencing for Wednesday morning.

21 MR. BROWN: Thank you, Your Honor.

22 MR. WEAVER: Thank you, Your Honor.

23 (Plea was adjourned and continued on October 15,
24 2014.)

25 MR. BROWN: May it please the Court, Your

1 Honor, we are going back on the record with State
2 versus Mr. Roger Leon Fortune, 2014-GS-45-210. Your
3 Honor, Monday afternoon, or Monday morning, a guilty
4 plea was entered by Mr. Fortune in which he pled
5 guilty to trafficking in cocaine base 28 to 100
6 grams, second offense; trafficking in powder
7 cocaine, 10 to 28-grams, second offense; possession
8 with intent to distribute heroine, third or
9 subsequent offense; possession with distribute,
10 possession with intent to distribute marijuana,
11 first offense; and possession with intent to
12 distribute controlled substance, first offense. At
13 the request of Defense and consent by the State we
14 withheld sentencing until today so he'd have
15 opportunity to get his family here. We're here
16 today to go back on record with sentencing.

17 THE COURT: All right. Mr. Weaver.

18 MR. WEAVER: Your Honor, I — we'd request
19 the Court give his family the opportunity to come up
20 and stand beside Mr. Fortune.

21 THE COURT: All right.

22 MR. WEAVER: Your Honor, may it please the
23 Court.

24 THE COURT: Yes, sir.

25 MR. WEAVER: Marshall Weaver here today

1 representing Mr. Roger Fortune for the purpose of
2 this sentencing. Here today in his support is his
3 father and his sister. Your Honor, my client is 31
4 years old, has three children, was raised in
5 Johnsonville. He says that he does landscaping and
6 anything else that someone will call him to do, wash
7 cars, help move from one place to another, things of
8 that nature. I do believe that there are several
9 circumstances under which the Court could mitigate
10 the sentencing, Your Honor.

11 The first circumstance, Your Honor, I believe
12 is arrest record. My client last was arrested for
13 trafficking in 2001. From 2001 until 2014, the only
14 conviction that my client has had for drugs has been
15 a possession of crack, which leads me into the next
16 issue for mitigation, Your Honor, which is going to
17 be his cooperation in this case. My client was
18 arrested on May 1st, Your Honor, and twenty-four
19 hours later on May 2nd actually wrote a confession
20 which I believe saved the law enforcement a lot of
21 hours, a lot of work that they would have had to do.

22 I will say this, Your Honor, in my
23 communications with him I believe that he is a very
24 well-mannered young man. I think he can be
25 rehabilitated. I think that he can be a asset to

1 society. I would ask that the Court be as lenient
2 as possible given the fact that from 2001 until 2014
3 the only drug conviction that he has had has been
4 for a possession, for a possession of crack. Also,
5 Your Honor, in this instance when he wrote this
6 confession he states that these drugs were stolen,
7 is what he states in the statement. He didn't even
8 know how much drugs he had under his seat, Your
9 Honor, and that's in the confession that he wrote.
10 He really didn't know exactly that it's going to be
11 this much that have him with these types of charges.
12 I would just ask the Court to take all these things
13 in consideration and just be as lenient with him as
14 possible, Your Honor.

15 THE COURT: All right. Mr. Fortune.

16 THE DEFENDANT: Yes. First of all, I want
17 to apologize for wasting the Court's time. It's
18 just a hard pill to —

19 THE COURT: You're not wasting our time.
20 You created a job. If it wasn't for you we'd be
21 unemployed so you're not wasting our time.

22 THE DEFENDANT: I'm talking about as far
23 as the trial.

24 THE COURT: We're getting paid to be here.

25 THE DEFENDANT: Yes, I'm talking about as

1 far as the trial, like, it was just a hard pill for
2 me to swallow because the actually — the person who
3 actually stole the drugs, really, my role after he
4 stole the drugs was actually try to -- when he stole
5 them, and he didn't know how much it was going to
6 be. When he actually got back in the car, when he
7 saw the amount and he got scared and all, really, he
8 used the drugs so when he stole them, my role, he
9 asked me to like help him, did I know anybody that
10 would actually buy the drugs or something. And it
11 happened Monday, the event actually took place
12 Monday. As far as leading up to Thursday when the
13 drugs actually found, I didn't see him again until
14 Thursday morning. When I called him to go to
15 Advance Auto that's when he came back. And I
16 actually didn't know the drugs was still left in the
17 car until I called him on the cell phone once we got
18 stopped looking for the registration papers, and he
19 said, aw, man, it's still, the drugs are in the car.
20 That's when I realized the drugs was still in the
21 car. That's when I just panicked, start thinking
22 about all kind of things. And I actually asked Nate
23 Turner to claim the drugs because I knew that reason
24 he was going to jail for the drugs even though he
25 didn't have nothing to do with it, he didn't know

1 nothing about it. It was just Darryl taken the
2 drugs. He wasn't in the car at the time so I didn't
3 want to be even charged with the drugs at the time,
4 and I would just ask for the Court's mercy.

5 THE COURT: All right. Anything else from
6 anyone else, Mr. Weaver?

7 MR. WEAVER: Your Honor, I believe the
8 State wants to rebut; but I will say this, Your
9 Honor, if I'm not mistaken, I believe that the
10 aggravating circumstances were supposed to be stated
11 prior to the mitigating circumstances and I believe
12 the aggravating circumstances were stated —

13 THE COURT: I go back and forth until I
14 make my decision.

15 MR. WEAVER: Yes, Your Honor. Yes, Your
16 Honor. Nothing else, Your Honor.

17 THE COURT: I control the order who I hear
18 from and when.

19 MR. WEAVER: Yes, Your Honor. I will just
20 add this one thing, Your Honor. Even in the
21 statement that Mr. Fortune just stated, he also went
22 ahead and said that the codefendant who was in the
23 vehicle with him didn't have anything to do with it.
24 He took full responsibility yet again. On every
25 conviction he has had so far he has pled guilty. He

1 has not wasted the Court's time with a trial, and I
2 think that's another circumstance of mitigation as
3 well, Your Honor.

4 THE COURT: All right. You have folks
5 come? Do they want to say something or you want
6 them to say something?

7 MR. WEAVER: Only if they would like to,
8 Your Honor.

9 THE COURT: All right. Yes, sir, who are
10 you?

11 MR. FORTUNE, SR.: Excuse me?

12 THE COURT: Who are you?

13 MR. FORTUNE, SR.: My name is Roger
14 Fortune.

15 THE COURT: Roger Fortune. You're related
16 to Mr. Fortune?

17 MR. FORTUNE, SR.: Yes, sir, I am.

18 THE COURT: Relationship is?

19 MR. FORTUNE, SR.: I'm his father.

20 THE COURT: You're his father.

21 MR. FORTUNE, SR.: Yes, sir.

22 THE COURT: What would you like to tell
23 me?

24 MR. FORTUNE, SR.: Your Honor, I stand
25 here and blame me. I'll accept a lot of fault. He

1 didn't -- I didn't raise him. I'm a disabled
2 veteran. I had problems when I got out, and I just
3 one around. I do know Roger is very intelligent,
4 you know. I do know with the proper guidance and
5 help he can, like the gentleman I guess is his
6 lawyer said ---

7 THE COURT: Mr. Weaver is his lawyer,
8 hardworking lawyer.

9 MR. FORTUNE, SR.: Okay. That he can be
10 an asset to the community. I suggest, you know,
11 maybe a drug program or something.

12 THE COURT: He's facing a minimum of 10
13 years, a maximum of 30 years on the heroine charge.
14 He's facing a minimum of 5 years, a maximum of 30
15 years on trafficking cocaine offense. He's facing a
16 minimum 7 years, a maximum 30 years on a second
17 trafficking cocaine case, based on a quantity being
18 28-grams or more. He's facing up to 5 years on one
19 other charge and up to 1 year on another charge. If
20 all charges were run consecutive he's facing a
21 hundred and -- how many years in prison?

22 MR. BROWN: 116 by my math.

23 THE COURT: 116 years in prison. So he's
24 -- a minimum of 10 years; that's the minimum. He
25 won't get any whatever you're about to ask for. He

1 will get at least 10 years in prison and he can get
2 up to maximum of 116 years in prison —

3 MR. FORTUNE, SR.: Well, Your Honor —

4 THE COURT: —for all the charges, for
5 all these drugs. Go ahead.

6 MR. FORTUNE, SR.: I apologize.

7 THE COURT: I want you to be informed —

8 MR. FORTUNE, SR.: Yes, sir.

9 THE COURT: —as you say whatever you
10 want to say. Go ahead.

11 MR. FORTUNE, SR.: With all honesty,
12 hopefully the good Lord will spare my life for at
13 least ten of those years. I mean, you're saying to
14 me that, you know, it's almost no choice in the
15 matter and I understand that; but I do ask for those
16 mitigating circumstance that Mr. Weaver had asked
17 you about. I would like to see my son not in
18 prison, you know, for my lifetime.

19 THE COURT: I understand.

20 THE SISTER: I just want to say —

21 THE COURT: Tell us your name.

22 THE SISTER: Shameka Fortune.

23 THE COURT: Yes, ma'am.

24 THE SISTER: I'm his sister. We grew up
25 very close. He's always been real smart. But like

1 my father said, my mom was single. She went through
2 depression all our lives so it's really just been
3 us, you know. It's been very hard. We all have
4 choices, you know, that I mean, and we make
5 mistakes. But for the past few years hes' been
6 trying to change, but it's just that every time he
7 always had pending cases. You know, I just moved
8 back from Philadelphia. I try — he came to visit
9 me a couple of times and had jobs up there, you
10 know, with construction and stuff like that; but
11 because of all the pending cases he could never stay
12 away from South Carolina. He always had to come
13 back. And because he had to come back he was
14 exposed to the same people, around the same stuff.
15 We don't have a lot of family here. You know, I
16 mean, and it's just been real hard. Like everybody
17 says, we all have choices, you know what I mean, and
18 he just got caught up with the wrong, wrong types of
19 crowds and things like that. He's a very religious
20 man. When I'm having a hard day he always me what
21 Bible quote to read, you know. I tell him maybe he
22 should try to change and do something like that, you
23 know, but it's hard. It's hard to be a better
24 person or a good person when you're around the same
25 crowds, you know what I mean. And it's not his

1 fault because, like I said, we don't have a lot of
2 family who look out for us and we got to make it on
3 our own; it's always been like that. It's always,
4 always been like that, our whole life. That's not
5 an excuse but I'm just saying, he is a good person.
6 He has a good heart. He's been trying to change for
7 a long time, but the same situation, it's just he be
8 there, he be there.

9 THE COURT: All right. I'll move on to
10 the State.

11 MR. BROWN: May it please the Court, Your
12 Honor. Your Honor, it was represented to the Court
13 that he has not had any drug convictions, any
14 trafficking convictions since 2001. Your Honor may
15 recall that at the beginning of his guilty plea he
16 outlined -- we had to outline why this is a third or
17 subsequent offense. And Your Honor, to represent
18 that is, this is the first trafficking offense he's
19 picked up since 2001, just candidly isn't true.
20 He's had a long history with drugs. In 2002 he was
21 convicted of possession of narcotics out of another
22 state, it looks like Philadelphia, where he received
23 probation. In 2000 he picked up a false information
24 to police. In 2001 he picked up trafficking crack
25 cocaine 10 to 28-grams. He was sentenced to prison

1 for five years, 25,000-dollar fine. During the time
2 he was in prison he got out, it looks like, sometime
3 before April 26th, 2004, because on April 26th,
4 2004, he was convicted of distribution crack cocaine
5 first offense and trafficking crack cocaine 10 to
6 28-grams first offense where he received five years
7 concurrent time between the two of those. In 2006
8 he must have paroled out because he was revoked on
9 parole. And in 2010 he picked up another cocaine
10 charge. It was a second offense where he received
11 18 months in the Department of Corrections. And
12 that's the entirety of his criminal history but
13 since he got out from that possession charge and
14 prior to picking up Williamsburg County charges he
15 also picked up charges in Marion County. I've been
16 told by law enforcement that there's charges in
17 Florence. I can't independently corroborate the
18 Florence charges. I can't tell the Court that he
19 does have pending charges in Marion County for which
20 he was wearing an ankle monitor at the time that
21 this occurred, which were all drug charges,
22 possession with intent to distribute cocaine third
23 offense, distribution of marijuana second offense,
24 distribution of marijuana second, distribution of
25 crack third, distribution of crack third,

1 distribution of heroine second, conspiracy to
2 distribute heroine, possession with intent to
3 distribute marijuana, and trafficking in cocaine
4 base 10 to 28-grams third offense. I don't know
5 what the status of that case is, but I think that
6 shows a window into who Roger Fortune is; and that
7 he is, candidly, one of the bigger drug dealers in
8 the Pee Dee region. It seems every time he gets out
9 of prison he's right back right where he started,
10 and so that's the reason that we took the position
11 we initially did, significant prison time. And we
12 stand by the fact that we do believe this needs to
13 be a significant prison time. I think we're echoed
14 by law enforcement on that. Roger fortune is just
15 ever since 2001 just been heavily involved in drugs
16 and so there comes a point in time where we have to
17 stop that in this community. And that's the State's
18 position, Your Honor.

19 THE COURT: Mr. Weaver.

20 MR. WEAVER: Yes, Your Honor, thank you.
21 We wholeheartedly disagree with what the State has
22 said, Your Honor. The 2004 conviction, when I said
23 2001 arrest, the 2004 conviction is a result of the
24 2001 arrest; therefore, the last time he was
25 actually arrested for trafficking was in 2001. The

1 conviction just didn't come till 2004. Since then,
2 Your Honor, the only time he's been arrested for
3 drugs has been the possession of crack. Now Your
4 Honor, as the State talked about the Marion County
5 charges, if the Court will remember, I will say
6 sometime around five months ago or so, the Court —
7 myself and Roger Fortune appeared before the Court
8 for a motion for bond reduction. Mr. Fortune —

9 THE COURT: When was that again?

10 MR. WEAVER: It was May 15th, Your Honor.

11 THE COURT: All right.

12 MR. WEAVER: We appeared before the Court
13 on a motion for bond reduction. At that time the
14 Court denied Mr. Fortune's bond, and primarily
15 because Mr. Fortune had those charges out of Marion
16 county. At that time I represented to the Court
17 that I did not represent Mr. Fortune on those
18 charges, but I did represent a co-defendant on those
19 charges, that those charges were trumped up charges
20 in my opinion and that the reason is because the
21 police had been having an investigation against the
22 individuals in this house for some substantial
23 period of time. On this particular date this
24 individual was having a cookout; and while he was
25 having a cookout that was the time that the police

1 kicked the door in. Not only was Mr. Fortune
2 arrested, other individuals were arrested as well.
3 The reason I'm aware of the facts is because I
4 represented one of the Mr. Fortune's co-defendants
5 who was factually similar situated to Mr. Fortune,
6 and those charges were dismissed over a phone call.
7 Therefore, based on the facts Mr. Fortune has given
8 me regarding that incident, Your Honor, those
9 charges will eventually be dismissed I believe.
10 Also, after that bond was denied, 90 days later I
11 came back before Judge Cothran on another motion
12 because the court gave me right to come back within
13 90 days. Before Judge Cothran that same case came
14 up. The same facts were stated as I just stated
15 them to the court. Your Honor, I firmly believe
16 that Mr. Fortune was a visitor in that home. Mr.
17 Fortune was there for the cookout along with the
18 other codefendant that I represented. He was not
19 registered to that home. He was not the owner. He
20 was not on the lease to that home whatsoever. And I
21 don't believe there's anything that links him to the
22 drugs that were found in a bathroom. And I believe
23 some of them were found in the living room, but they
24 were found hidden, in hidden positions, but I don't
25 think there's anything that's going to link him to

1 drugs in that home.

2 I would just ask the Court to make this
3 decision based off of Mr. Fortune's convictions and
4 not things that I believe are just, are going to be
5 dismissed eventually and those convictions, Your
6 Honor, I believe are few and far between. I do not
7 believe that Mr. Fortune's history makes him a big
8 drug dealer in Williamsburg County. The man gave a
9 full confession and he said he didn't even know how
10 much drugs was under the seat. He don't even know
11 what he stole. All he knew he had a whole bunch of
12 drugs under the seat.

13 THE COURT: Does he have a pending charge
14 for stealing?

15 MR. WEAVER: No, Your Honor, he does not.
16 And I would just ask the Court —

17 THE COURT: How were the drugs stolen?

18 MR. WEAVER: According to the statement,
19 Your Honor, the drugs were not stolen from inside
20 anyone's house. Apparently, when individuals deal
21 in high quantities of drugs, they don't keep them in
22 the house; they keep them in the wood line behind
23 the house. Someone else observed this individual
24 going back and forth to this wood line, and they
25 believed that he was getting drugs from the wood

1 line. That individual got with his group and said,
2 hey, I know where we can get some drugs from and
3 then that individual, according to Mr. Fortune,
4 eventually did go back and take the drugs. Those
5 drugs were placed underneath the car seat that
6 Mr. Fortune was eventually stopped by the police for
7 failure to wear a seat belt. At the time that he
8 was actually stopped, according to the statement and
9 according to the confession which was relied upon by
10 police in their investigation because they did no
11 further investigation, I'm aware of, after he wrote
12 his confession, according to that statement

13 Mr. Fortune didn't know how much drugs was in the
14 bag. All he knew is it was a lot of drugs. And
15 that doesn't make him the biggest drug dealer in
16 Williamsburg County. That makes him a young man who
17 has not been arrested for trafficking since 2001 —

18 THE COURT: We have yet to see the biggest
19 drug dealer in Williamsburg County. I've been
20 around a long time and I haven't seen him yet, he or
21 she, or whoever it is, —

22 MR. WEAVER: Probably doesn't live in
23 Williamsburg County, Your Honor.

24 THE COURT: —some mystical somebody.

25 MR. WEAVER: Yes, Your Honor, probably

1 doesn't even live in Williamsburg County, Your
2 Honor. But I would just ask the Court be as lenient
3 as possible, Your Honor. Thank you very much.

4 THE COURT: All right.

5 Yes, sir.

6 THE DEFENDANT: Yes, to speak on, like,
7 when I went to prison my first time I went on -- I
8 violate parole because of conditions of my living
9 arrangements and I got sent back because I violated,
10 like, three times, not on another charge. When I
11 went back I had to do seven months. And as soon as
12 I got out a month, like a month and seven days
13 later, when I was actually arrested on possession
14 charge was the old charge, and I had -- and that
15 happened 2007. Then it took three years before I
16 went to court in 2010. Then I went in 2010,
17 served -- I made parole again. I made parole and I
18 got out. I completed the parole. Then, as soon as
19 I got out, as soon as I got out of jail they serve
20 me another charge. As soon as I got out, the day I
21 got out of prison, they gave me another charge
22 dating back to 2009, a distribution of 2009. And
23 that's why I'm saying, 2009, I had -- that's the
24 Florence County. So it was -- every time I got out
25 of prison they bring up another charge. And then

1 when they arrest me, they pin it on arrest record
2 like it was something new but it happened a long
3 time ago.

4 THE COURT: Well, I mean, you're operating
5 in all these different places: Marion County,
6 Philadelphia, Florence County, Williamsburg County.
7 What other counties you had cases in?

8 THE DEFENDANT: Never had none nowhere
9 else, and that first one was from Connecticut. Yes,
10 the same time when I had caught the first actual
11 charge I was still in high school and that's what
12 force me to have to drop out of high school when I
13 caught that, that charge. And all those occurred at
14 the same time.

15 THE COURT: All right. Well, you know,
16 many people have interests in many different things.
17 Mr. Weaver started out by saying you're a landscaper
18 and what else?

19 MR. WEAVER: I said he does odds and ends.

20 THE COURT: Landscaper and person who does
21 odds and ends so we're not dealing with that person.
22 We're dealing with Fortune, the man whose opted to
23 deal in drugs. Many people choose to deal in many
24 things. Some people have an interest in cars. Some
25 people deal in hair. Some people deal in music, and

1 some people deal in drugs. And the people who
2 choose to deal in drugs, those are the ones who
3 usually end up in the setting that Mr. Fortune has
4 found himself in here today. That's not a — no
5 distinction between whether or not the person is a
6 good person or not a good person 'cause we're all
7 basically the same; it's just a matter of what you
8 choose to get involved in. And unfortunately, for
9 so many people who drop out of school, as you said
10 you have, and just found themselves in a down and
11 out situation and they choose to deal in drugs and
12 law enforcement and on the high end, you know, risky
13 side of life, they found themselves in and out of
14 prison and in the situation that you're in. You
15 know, I've met a lot of Fortunes, folks, Fortunes
16 during my time. Most of them are fantastic people.
17 I'm related to some Fortunes up around Jefferson or
18 someplace over in that Chesterfield area of the
19 state. I've known many Fortunes who are great
20 people. But unfortunately for you, you picked up
21 some big cases, and the solicitor's arguing for a
22 minimum. We started here the other day a minimum
23 sentence of 20 years for that. It was 15 years,
24 went up to 20 years the solicitor wants in this case
25 on the premise that you're one of the biggest drug

1 dealers in Williamsburg County, and your track
2 record of being in and out involved with drugs. But
3 what you've pled guilty to, you face a minimum of
4 ten years on that charge and all these other
5 different charges. Whoever went in the woods and
6 stole the drug dealer's drugs, had they stolen one
7 drug that'd been one thing, but they — he had an
8 assortment. I mean, he was a regular drug store.
9 He had marijuana, he had pills, he had cocaine, he
10 had marijuana, he had everything. And everything
11 was stolen and you were caught with it so that
12 brings you in this situation here. And just

13 happens, I guess, to be in Williamsburg County. I
14 guess up of to leave Marion County all the time to
15 go someplace and you just happened to come, to have
16 come this way. Where was he arrested by the way?

17 MR. BROWN: Hemingway, Your Honor, on 41
18 and ---

19 THE COURT: Yeah, well.

20 MR. BROWN: It was right in the Hemingway
21 area. I'll find the street.

22 THE COURT: 41. Yeah, you jump on that
23 you'd be out of Marion County in no time, from
24 Gresham anyway.

25 My sentence to you is this, Mr. Fortune, on

1 this 0 to 1 charge the sentence is 1 year; 0 to 5
2 charge, the sentence is 5 years. The 7 to 30
3 charge, which is trafficking less than at least 28
4 and less than a hundred grams, the sentence is 10
5 years and a fine of \$50,000. The second trafficking
6 in cocaine, second offense, the sentence is 10 years
7 and a fine of \$50,000. And on the heroine charge
8 where there's a minimum sentence of 10 and maximum
9 of 30, the sentence is 11 years and a \$50,000 fine.
10 It's a \$50,000 fine on the other trafficking case as
11 well. These all sentences will run concurrent.
12 He's given credit for time served. You know, none
13 of us have a crystal ball as to how much time is
14 enough time to give someone some opportunity to pay
15 their debt to society and move on either move on
16 going on the right or wrong direction, or wrong
17 direction. None of us have that crystal ball so
18 that's, you know. I think for generally deciding to
19 warehouse people for their life for drug cases
20 hadn't proven to serve any useful purpose to
21 society, so my sentence is 11 years.

22

23 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

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

Witness my hand at Florence, South Carolina, this 31st day of January, 2015.

Frances B. Ray

FRANCES BAKIS RAY, RPR

FORM 5

STATE OF SOUTH CAROLINA)
County of Williamsburg)
Roger Leon Fortune III 301471)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

SCANNED
7/22/15

15 CP45 343

v.

APPLICATION FOR

POST-CONVICTION RELIEF

State of South Carolina)
)
)
)
)

2015 JUL 17 AM 10:42

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 Kirkland Correction Institution
2. Name and location of Court which imposed sentence Williamsburg General Sessions
3. Name(s) of co-defendant(s) (if any) Nicholas Turner
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 A45 10100363 ; 2014 A45 10100364 ; 2014 A45 10100366
 - (b) 2014 A45 10100368 ; 2014 A45 10100370

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) I am not guilty. My Lawyer acted ineffectively so I am being held
 - (b) My Initial stop of the vehicle was not justified
 - (c) I wrote a false statement out of hope and fear in which the
- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) My Lawyer did not go through with the pre-trial motions we discussed
 - (b) The police officer made up the reason for the stop & probable cause.
 - (c) After telling him over & over I didn't do about the drugs he told me
- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? N/A
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 - (d) any other petitions, motions or applications in this or any other Court? N/A
- 13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A
 - (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

90 cont.

- A) Illegally pursuant to U.S. Strickland
- C.) police officer used a question first miranda warnings later tactic
- D.) I only have one prior Trafficking charge, I was indicted on 3rd offense
- .) cont. Trafficking charges, I plead to a 2nd offense (lesser included) when it was my 2nd.
- B.) In which the charges were Nolle-prosse weeks after my plea of guilty,
- C.) the only way he could help is if I told him something about the drugs, so I made up a story and told him, He then came back hours later and ask me to write what I told him down. I then asked why did I need to write it, he then told me that it was for his personal use and for him to show the solicitor for my benefit, so I said OK, he left the room and came back I gave him to papers and told him I started over becus I wasn't sure if the 1st one was good enough, while he was looking over it he passed me a miranda warnings paper, so I asked whats this for he said listen you want help dont you, I said yeah and he said well just sign it I'm an honest man I will never lie to you, so I signed it and soon as I walked out the door another officer read me my rights and serve me some warrants,
- D.) My record used in my motion (rule 5) states a misprint having the same charge written down a Two seperate convictions. IF I would have went to Trial the lowest sentence I could recieve would have been 25 years instead of 7 years, I only have (17-25-45) (17-25-50) One serious charge on my record

(c) the disposition thereof:

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

N/A

(d) the date of each such disposition:

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

N/A

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

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

N/A

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?

N/A

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

(a) which grounds have been presented:

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

N/A

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

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

N/A

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) these issues should have been presented at pre-lim or pre-trial motion
- (b) My lawyer told me that the initial step didn't matter and that
- (c) I did not know my sentence was mandatory until my caseworker told me.

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? NO
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. Marshall Weaver 3888 Hoffmeyer Rd. Florence, SC
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Marshall Weaver - arraignment and plea
 - ii. Marshall Weaver - sentencing
 - iii. _____

" cont.

B.) The Judge was gonna allow the statement b-cus I sign the miranda warnings.

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

sentence being vacated or a new Trial

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

N/A

STATE OF SOUTH CAROLINA)
)
County of Williamsburg)

VERIFICATION

I, Roger Leon Fortune III, 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.

Roger Leon Fortune III

SWORN to and subscribed before me this 13th
day of July, 2013.
[Signature] (L.S.)
Notary Public

My Commission Expires: April 2, 2023
Aphc

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

I, Roger Leon Fortuore III, 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.

Roger Leon Fortuore III
Applicant
Roger Leon Fortuore III

SWORN or affirmed to and subscribed before me this

13th day of July, 2015.

[Signature]
Notary Public

My Commission Expires: April 12, 2023

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)	FOR THE THIRD JUDICIAL CIRCUIT
)	
Roger Leon Fortune, #301471,)	2015-CP-45-343
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 17, 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 Williamsburg County Clerk of Court. The Applicant was true bill indicted at the July 2014 term of the Williamsburg County Grand Jury for trafficking crack cocaine (28-100 grams) (3rd or subsequent offense); trafficking cocaine (10-28 grams) (3rd or subsequent offense); possession with intent to distribute heroin (3rd or subsequent); possession with intent to distribute marijuana; possession of schedule I to IV controlled substance (3rd or subsequent offense). Marshall Weaver, Esquire represented Applicant. On October 15, 2014, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant without negotiations or recommendations to five year term of imprisonment for possession of scheduled I, II, or III drugs, one year term of imprisonment for possession of Schedule V drugs –first offense, ten year term of imprisonment for trafficking in methamphetamine or cocaine base – 28 grams or more but less than 100 grams, eleven year term of imprisonment for possession with intent to distribute heroin, and ten year term of

imprisonment for trafficking in cocaine ten grams or more – second offense with all sentences running concurrently. Applicant did not appeal his guilty plea or sentence.

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

II.

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

- I. Ineffective assistance of counsel
 - a. Initial stop of the vehicle was not justified
 - b. I wrote a false statement out of hope and fear in which the police officer used a question first Miranda warnings later tactic
 - c. My lawyer did not go through with the pre-trial motions we discussed.
 - d. The police officer made up the reason for the stop and probable cause.
 - e. After telling him over and over I didn't no (sic) about the drugs, he told me the only way he could help is if I told him something about the drugs, so I made up a story and told him....

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, SCRPC.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

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

IV.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

[signature to follow]

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October 28, 2015.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

<u>WITNESSES:</u>	<u>PAGE</u>
ROGER FORTUNE	
Direct By Mr. Boozer5
Cross By Ms. Coleman	23
MARSHALL WEAVER	
Direct By Ms. Coleman	26
Cross By Mr. Boozer	36

INDEX

Certificate	43
-----------------------	----

RESPONDENT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Motion		30

1 (The following proceedings are reported on
2 March 27, 2017.)

3 THE COURT: All right.

4 MS. COLEMAN: May it please the Court.

5 THE COURT: Call the case, please,
6 Ms. Coleman.

7 MS. COLEMAN: This is Roger Leon Fortune
8 versus the State of South Carolina, Docket Number
9 2015-CP-45-343. The applicant is presently confined in
10 the South Carolina Department of Corrections pursuant to
11 orders of commitment of the Williamsburg County Clerk of
12 Court.

13 Applicant was true bill indicted at the
14 July 2014 term of the Williamsburg County Grand Jury for
15 trafficking crack cocaine third or subsequent offense,
16 trafficking cocaine third or subsequent offense,
17 possession with intent to distribute heroin third or
18 subsequent offense, possession with intent to distribute
19 marijuana, and possession of Schedule I to IV controlled
20 substance third or subsequent offense.

21 Marshall Weaver, Esquire, represented the
22 applicant. On October 15, 2014, applicant pled guilty
23 as indicted before the Honorable Clifton Newman. Judge
24 Newman sentenced applicant without negotiations or
25 recommendations to a five-year term of imprisonment for

1 THE WITNESS: Roger Fortune, F-O-R-T-U-N-E.

2 THE COURT: Mr. Boozer, I don't want to try
3 to tell you how to do your case. But if you would, I
4 am reading through the trial transcript here on the
5 initial motions being made by Mr. Weaver as it relates
6 to the offers being made to where he was willing to
7 accept, if I recall correctly, 15 years. The State
8 offered 20.

9 He rejected that at the time, and it looks
10 like he got less than any of what he was willing to take
11 at the time. If you will cover those from the outset
12 and then go into any issues pertaining to the
13 ineffective assistance.

14 MR. BOOZER: Certainly, Your Honor.

15 THE COURT: Thank you.

16 DIRECT EXAMINATION

17 BY MR. BOOZER:

18 Q Mr. Fortune, how are doing?

19 A All right, doing fine.

20 Q Do you know why we are here today?

21 A Yes.

22 Q Why is that? What have you filed to get us in
23 court today?

24 A I filed an ineffective assistance of counsel, PCR
25 court.

1 Q And let me ask you this: You understand that the
2 only thing that this Court can do for you -- this
3 Court can't reduce your sentence. This Court can't
4 make you parole eligible.

5 The only thing this Court generally can do is
6 to grant your PCR application, send your case
7 basically back to the Solicitor's Office; and you
8 face the original charges all over again in this
9 case. Do you understand that?

10 A Yes, sir.

11 Q And any plea deal or whatnot that has been made,
12 that would come undone; and you go back and face
13 the original charges. Do you understand that?

14 A Yes, sir.

15 Q And you are currently serving a sentence -- what is
16 your sentence right now?

17 A Eleven years.

18 Q Eleven years?

19 A Yes, sir.

20 Q If you would, what were you originally charged for
21 in this case?

22 A Trafficking crack cocaine, trafficking cocaine,
23 PWID of heroin, possession of pills, and possession
24 of marijuana.

25 Q And who represented you on those charges?

1 A Mr. Weaver, Mr. Marshall Weaver.

2 Q All right. Now, you and I have been working under
3 the assumption for quite a while since I've been
4 representing you that there was no transcript of
5 your motions or your plea; is that right?

6 A Yes, sir.

7 Q We have since been provided with that, and you and
8 I have looked at that this morning?

9 A Yes.

10 Q If you would, from your recollection can you walk
11 the Court through the plea offers that were made up
12 until you ended up with what appears to be having
13 some pretrial motions and then finally you enter a
14 plea. What was the plea offer that was initially
15 made to you?

16 A Originally, it started out with me trying to go up
17 for a bond. I think on my last day, when I did
18 actually go up for a bond, that's when I received
19 the offer.

20 Other than that, I never -- well, it was 15
21 years, but besides that I never talked to the
22 solicitor or nothing. That was the first initial
23 offer, like a month before trial.

24 Q In the transcript that's at page 12 where the Court
25 says, "You were unwilling to plead to an offer of a

1 negotiated sentence of 15 years," is that what you
2 are talking about?

3 A Yes, but I never --

4 Q Okay -- go ahead. I'm sorry.

5 A I never negotiated. We never had negotiated. That
6 was just his initial offer.

7 Q Was 15 years?

8 A Yes.

9 Q All right. And you were not willing to take that?

10 A No, sir.

11 Q So then you go to court, and it appears y'all made
12 some pretrial motions. Do you recall that?

13 A Yes.

14 Q What was the 15-year offer to? Because you pled to
15 trafficking second. What was that, to trafficking
16 second as well?

17 A The plea offer was to drop the third offense
18 trafficking to second offense trafficking and 15
19 years for everything, 15 years for every charge.

20 Q Okay. And so you have these motions and part of
21 the motions that were made was your lawyer asked to
22 keep a plea offer open for you. Do you recall
23 that?

24 A I don't recall that motion.

25 Q Do you recall any sort of hearing before Judge

1 Cothran where there was a plea offer of up to 20
2 years?

3 A A plea offer?

4 Q Correct. Do you recall there being a recent plea
5 offer that was for you to plead to a 20-year
6 sentence?

7 A Yes.

8 Q When was that?

9 A That was the day I went up for a bond.

10 Q Okay. And that's one that you rejected?

11 A That's the same day. The same day that I received
12 the 15 is the same day that he gave me the 20. He
13 told me if I went up for a bond and didn't get a
14 bond that he was going to take the 15 off the
15 table.

16 Q So is that -- you had two plea offers before that
17 you rejected, one for 15 and one for 20?

18 A Yes, in the same day.

19 Q In the same day. Then you go -- was there any
20 other plea offer in between that time and the time
21 you went to court for your pretrial motions and
22 your plea?

23 A No.

24 Q So you get to court and do you recall your lawyer
25 making a motion to keep open a plea offer for you?

1 Because it appears from the transcript that you
2 guys had been provided with, I guess, a video; but
3 that video was not disclosed to y'all until the day
4 before the expiration of the plea offer. Do you
5 recall that?

6 A I recall the video and I recall him stating
7 something about telling the judge that he was just
8 now receiving a last piece of the five, the Rule 5.

9 Q And he was asking the Court to hold open that plea
10 offer, I guess the 20 years, so that y'all could
11 review everything? Do you remember all that?

12 A Yes.

13 Q So ultimately you end up entering a plea that day
14 with those pretrials motions. What did you end up
15 pleading guilty to that day?

16 A I end up pleading guilty to everything, everything
17 I was charged with, an open plea.

18 Q But you didn't plead guilty to trafficking third?

19 A No, sir.

20 Q What did you plead guilty to?

21 A Trafficking second.

22 Q And you got what sentence as a result of that?

23 A Ten years.

24 Q Did you get ten or 11? What was your sentence?

25 A I got ten for the trafficking and 11 for the

1 possession with intent.

2 Q So you got 11 concurrent with ten?

3 A Yes.

4 Q What is your max-out date?

5 A I think 9/23, 2023.

6 Q 2023?

7 A Yes, September.

8 Q So the sentence that you received at the end of
9 day, that was much better than those two initial
10 sentences -- two plea offers that you had of the 15
11 and the 20?

12 A Yes.

13 MR. BOOZER: Your Honor, does that cover it
14 background wise?

15 THE COURT: Yes, sir. Thank you.

16 BY MR. BOOZER:

17 Q Mr. Fortune, as I indicated before, the only thing
18 this Court can do is start you over. You would
19 face -- of course, part of it would be that
20 trafficking third. You would face all your
21 original charges again.

22 If you go to trial, you can either, of course,
23 beat those charges, which would be your best case
24 scenario, or there is a possibility, if everything
25 went terribly wrong, you could be found guilty.

ROGER FORTUNE -- DIRECT -- MR. BOOZER

12

1 Do you understand if that happened, you could
2 face significantly more time than what you have
3 left to serve on your sentence?

4 A Yes, sir.

5 Q And we have discussed that, have we not?

6 A Yes.

7 Q Do you still want to go forward with your PCR
8 knowing that?

9 A Yes.

10 Q Mr. Fortune, who was your lawyer? You said it was
11 Marshall Weaver?

12 A Yes.

13 Q In your application you have a few allegations.
14 You have got one that the initial stop of the
15 vehicle was not justified?

16 A Yes.

17 Q Tell the Court what you wanted your lawyer to do
18 with regard to that allegation.

19 A Basically, I wanted him to, like, test the grounds
20 of the initial stop; like, go forward with, like,
21 see what was going on; like, with the initial stop.
22 Since the initial stop was never justified,
23 basically to check on everything that the officer
24 was saying.

25 I told him that Officer Scott was lying at the

1 time, like, he made up every reason even to stop
2 for seat belt. Everything that he wrote up, it was
3 a lie. I really wanted the dash-cam video so I
4 could prove that he was lying on the statements.

5 Q What was your lawyer's response to you asking or
6 inquiring about that?

7 A At first he was -- we was waiting on the stop. But
8 every time we went to court, they continued it.
9 When we went to the magistrate court, they
10 continued it. Then we asked that it be moved to
11 general sessions court.

12 Then when it went to general sessions court,
13 they pushed it back down to magistrate again. When
14 we went to magistrate court one more time, they
15 continued it. The last time they continued it
16 would have been for November the 4th. But by then
17 I already had pled October 15th, 2014.

18 Q Explain that to me one more time. What happened by
19 the time you pled?

20 A I pled October 15th but the charge was nol-prossed
21 as to November 4th.

22 Q And you are talking about -- you handed me a couple
23 of documents. You are talking about you were
24 stopped for not having a seat belt on?

25 A Yes.

1 Q That was something that was nol-prossed?

2 A Yes.

3 Q And you also had unlawful advertise, sell, or
4 manufacture or possess drugs. That was something
5 that was nol-prossed?

6 A Yes.

7 Q What is it you wanted your lawyer to do?

8 A To go for suppression of evidence due to violation
9 of the Fourth Amendment. If the initial stop
10 wasn't justified, everything final would be fruits
11 of the poisonous tree.

12 Q And did he tell you that he would do any of that?

13 A Yes.

14 Q Did he do any of that?

15 A No, we never got to it.

16 Q You've also got an allegation that you wrote a
17 false statement out of hope and fear in which the
18 police officer used in questioning you. Is that
19 one of your allegations?

20 A Yes.

21 Q Explain to the Court what you mean by that.

22 A Basically, when I first got arrested while we was
23 sitting in this holding cell or whatever, the
24 police officer came up and he kept asking me about
25 the drugs, me and my codefendant.

1 I kept telling him that I didn't know anything
2 about the drugs. So we went back and forth like
3 that. Then after a while he was, like, "Man, you
4 want help, don't you? You want help?" He kept
5 asking did I want help.

6 I was, like, yeah. And I was, like, "Well, do
7 you know anybody that actually" -- I told him I
8 don't know nothing about the drugs. I told him if
9 anybody got warrants or anything like that, you
10 give me a name. I might know somewhere where they
11 are, but I don't know nothing about no drugs.

12 He kept saying, "If you need help, you want
13 help, you got to tell me something about the
14 drugs." It was going on back and forth like that.
15 Then I made up a story about the drugs while me and
16 the officer was talking.

17 Then that was earlier that day. Then he came
18 back later on that day asking me the same thing.
19 He was, like, "I need you to write what you wrote
20 down -- write what you wrote down, the same thing
21 you told me earlier."

22 I said, "I already told you. Why do you need
23 me to write it down?" He said, "If you want help,
24 I just need you to write it down. It's for my
25 benefit and the solicitor benefit." He said, "It's

1 going to help you out."

2 I said okay. So I wrote -- I summarized what
3 I wrote, what I wrote down, from what I told him.
4 After that -- well, he left out of the room when I
5 started writing. Then he came back and he told
6 me -- he came back and he asked me was I finished.

7 I gave him a paper, actually two papers,
8 because I wrote one and then I wrote something
9 else. I was, like, "Is that good enough for you?"
10 He was like yeah.

11 When he came back, he gave me -- as soon as he
12 walked in the door, he gave me a Miranda warning
13 paper and asked me to sign. I was like, "What's
14 this for?" He was like, "If you want help though,
15 just sign it. I'm an honest man. I will never lie
16 to you. I will help you out."

17 So I just signed the paper without even
18 looking at anything. Then he walked out and then
19 within two minutes later, another officer came to
20 the door and presented me with the warrant.

21 Q Did you have any discussion with your lawyer about
22 that particular statement that you claim you
23 falsely wrote?

24 A Yes.

25 Q What was that discussion?

- 1 A The discussion that we was going to challenge the
2 statement in a -- I think it's called a Jason
3 hearing or Jackson something, Denno Jackson, some
4 kind of hearing where we supposed to have doing the
5 pretrial motions.
- 6 Q Okay. Did y'all do that?
- 7 A No.
- 8 Q Why not?
- 9 A I don't even know why not.
- 10 Q You've also got an allegation that the police
11 officer lacked probable cause for the stop. I
12 think -- have you covered that with your initial
13 allegation in that the initial stop of the vehicle
14 was not justified when you were talking about the
15 seat belt?
- 16 A Yes. Basically, the initial stop was the seat
17 belt, but then he challenged that he smelled
18 marijuana also. But the charge for me having an
19 unlawful, like, possession, it was actually
20 paraphernalia. It was a scale, which was actually
21 a phone, and that got nol-prossed too.
- 22 Q Along with the seat belt violation?
- 23 A Yes.
- 24 Q How did Mr. Weaver come about representing you?
25 Did you hire him or was he appointed to represent

1 you?

2 A I hired him but I didn't get a chance to pay him in
3 full.

4 Q Do you know about how many times you met with
5 Mr. Weaver?

6 A Maybe -- I would say no less than five, no more
7 than ten.

8 Q Did you have a preliminary hearing?

9 A Yes.

10 Q Did you feel like your lawyer did everything he was
11 supposed to do in that preliminary hearing or do
12 you have any complaints about that?

13 A Yes. Well, I didn't really know everything that he
14 could have done in the preliminary hearing until I
15 got -- until I started reading over the laws
16 myself.

17 I think the officer that day at the
18 preliminary hearing, the officer didn't bring the
19 file. So it really wasn't too much he could do on
20 that day. He asked him about his file, not
21 significantly but just briefly.

22 Q Did you and Mr. Weaver discuss the defenses to the
23 case?

24 A As far as the suppression of evidence and the
25 hearing and the challenge of the statement?

1 Q Correct.

2 A Yes.

3 Q Did y'all discuss what your trial strategy would
4 be?

5 A Yes.

6 Q What was the strategy?

7 A Basically when he came to see me, we went over --
8 we went over the statement. We went over
9 everything I did during that day throughout the
10 plan. My plans on that that day, when I woke up
11 that morning, I think he started about 8:00 o'clock
12 and set a time when it stopping happening.

13 Q Okay. You actually pretty much began the trial
14 because y'all had some pretrial motions. What
15 caused you to enter the plea?

16 A What caused me to enter the plea, basically after
17 everything was said and we took the break, they
18 went into -- I went into another smaller room, me
19 and Mr. Weaver.

20 Mr. Weaver asked me did I want -- if he can
21 get the 15 off on the table, would I take it? I
22 was, like, I told him I didn't want to take it. I
23 told him -- I kept asking him to ask about my --
24 like, I only had one trafficking, one prior
25 trafficking, and how can it be my third? I kept

1 asking about that.

2 Then he said, "Hold up." He left out. He
3 left out to go back in. At the time I still was in
4 the room. When he came back in, he told me that he
5 got another offer, open pleas, did I want to take
6 that.

7 Initially I told him, no, I didn't want to
8 take it. I still want to go to trial. He was just
9 showing concerning saying, "I don't want to see you
10 get 25 years. You are 31" --

11 Q On the third you were facing a minimum of 25 years?

12 A Yes.

13 Q Keep going. I'm sorry.

14 A He was saying that he didn't want to see me get 25
15 years. I could handle something lower than that,
16 but he don't want to see me get 25 years. I was,
17 like, "If I do lose, I can fight it or appeal it or
18 whatever."

19 He was, like, he know a lot of cases that
20 don't ever get to that point. So after that he
21 was, like, "Man, it's best you go ahead and take
22 the plea." He asked me, he was, like, "You trying
23 to go to trial and everything."

24 He told me, he you said he up here doing
25 everything he can, even though I didn't pay him all

1 the money. I told him, "Well, I would get you the
2 money, the rest of the money."

3 He was, like, "No, the rest of the money
4 probably won't come," like that, not if I get time,
5 which I understand everything he was saying at the
6 time; but I still told him I wanted to go to trial.

7 But it came to a point, like, where I felt
8 like all the fight and energy that he had them in
9 initially from the start when he was talking about
10 trial wasn't there for a guilty plea.

11 It was, like, I just -- like, lack of
12 confidence, like, it was no way. Like, if he had
13 to represent him, he was; but I don't think it
14 would have been to the best of his ability by the
15 way he was talking, by the way his language
16 changed. It was, like, he wanted me to take the
17 plea, no matter what.

18 Q At the plea did you have some dispute as to whether
19 it was actually -- you pled guilty to trafficking
20 second; right?

21 A Yes.

22 Q Did you have some dispute or voice your opinion
23 that you didn't believe it should have been charged
24 as a trafficking third?

25 A Yes.

1 Q Why was that?

2 A Because the solicitor, every time he spoke, he kept
3 speaking about I had a prior trafficking in 2001,
4 and I had another trafficking. He said I had a
5 trafficking in 2001 and I got five years.

6 Then he stated I had a trafficking in 2004 and
7 I got five years. He was saying this was my
8 initial -- this was my third offense trafficking,
9 which would be like my third serious charge.

10 I feel like I only had one prior trafficking.
11 He was -- when you look at my record, it shows I
12 got arrested in 2001; but I didn't get -- go to
13 court until 2004. So I felt like the solicitor was
14 basing his assumption off that.

15 Q Did you have any discussions with your lawyer about
16 your dispute with it being a third?

17 A Yes.

18 Q What was his response?

19 A He was saying that -- well, initially he was saying
20 that the solicitor wasn't going off that.

21 Q We covered a number of things. Is there anything
22 that we have not covered as far as why you pled
23 guilty or the allegations that are in your PCR
24 application?

25 A The only other reason why I ended up pleading

1 guilty because it was, like, Mr. Weaver wasn't
2 going to go through -- I asked him to go ahead,
3 "Let's just go ahead and go through with the
4 challenge of the statement, the suppression of
5 evidence." I asked him, "Can we just go ahead and
6 do that instead of talking about a plea?"

7 I still wanted to go to trial. Then he said
8 no. He told me I just need to take that plea.
9 Therefore, that's why I ended up just saying, "Man,
10 forget it," and just went ahead and took the plea.

11 Q Okay. Mr. Fortune, that's all the questions I have
12 for you right now. Please answer any that the
13 State may have for you.

14 A Okay.

15 THE COURT: Cross examination.

16 MS. COLEMAN: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. COLEMAN:

19 Q Good morning, Mr. Fortune.

20 A Good morning.

21 Q Do you recall reviewing discovery with your
22 attorney?

23 A Yes.

24 Q And did he explain all of that to you?

25 A Yes.

1 Q Do you recall at the guilty plea waiving your
2 constitutional rights, like your right to a jury
3 trial and your right to remain silent?

4 A Yes.

5 Q So the judge explained all of that to you, didn't
6 he?

7 A Yes.

8 Q Were you aware or did you understand at the time by
9 pleading guilty, you were waiving your right to
10 challenge the underlying evidence by pleading
11 guilty?

12 A Can you repeat that for me?

13 Q Were you aware that -- when you pled guilty, did
14 you know that by pleading guilty, you were waiving
15 your right to challenge the evidence, like the
16 police report and the stop and everything?

17 A I guess it's kind of in between.

18 Q Do you recall telling the judge that you were
19 satisfied with your attorney's services?

20 A Yes.

21 Q And you had no complaints against him at the time;
22 correct?

23 A Not none that I stated.

24 Q Why didn't you tell him that you had complaints?

25 A Because up until that point, till that last moment,

1 like, the last 15 or 25 minutes before when we were
2 supposed to go with everything with the pretrial
3 motions and everything, I didn't have no
4 complaints.

5 Q Do you recall telling the judge that no one was
6 promising or threatening you to plead guilty?

7 A Yes.

8 Q Do you recall telling the judge that you were
9 guilty of this crime?

10 A I recall but I told him really I was just pleading
11 guilty because I didn't know anything about the
12 drugs until the actual phone call that I made
13 during the stop.

14 Q But did you have those drugs in your car during the
15 stop?

16 A The drugs was in the car but not my car.

17 Q But you told him that you were in the car with the
18 drugs; correct?

19 A Yes.

20 Q Did you say anything at the time to your attorney
21 about your prior convictions? You testified a
22 moment ago that you don't think you should have
23 been charged with third offense because you didn't
24 have two prior offenses. Did you tell your
25 attorney this at the guilty plea?

1 A I was telling him, through a background check of my
2 record, I believe the solicitor was making a
3 mistake the whole time.

4 Q And you pled down to second offense; correct --

5 A Yes.

6 Q -- instead of third. Thank you. No further
7 questions.

8 THE COURT: Mr. Boozer.

9 MR. BOOZER: Nothing further, Your Honor.

10 THE COURT: Sir, you may step down.

11 (The witness leaves the witness stand.)

12 MS. COLEMAN: The State calls Marshall Weaver.

13 MARSHALL WEAVER, being

14 first duly sworn, testifies as follows:

15 CLERK: Can I get you to state your name for
16 the record and spell your last name, please.

17 THE WITNESS: Marshall Weaver, W-E-A-V-E-R.

18 DIRECT EXAMINATION

19 BY MS. COLEMAN:

20 Q Good morning, Mr. Weaver.

21 A Good morning.

22 Q How long have you been practicing law?

23 A For eight years.

24 Q Do you recall whether you were appointed or
25 retained in this case?

1 A I was retained in this case on May the 9th, 2014.

2 Q How many times did you meet with the applicant
3 before his guilty plea?

4 A I met with him somewhere between -- I would say
5 somewhere between seven and nine times.

6 Q Did you file any Rule 5 or Brady motions?

7 A I did. I filed Rule 5 and Brady motions on the
8 case, and I did receive all discovery. All
9 discovery was -- I then made copies of all
10 discovery and all of it was turned over to
11 Mr. Roger Fortune.

12 Q There was an issue that they discussed on the
13 transcript about -- and I think they testified
14 today -- about a videotape that you didn't get
15 until closer to the day of the trial; is that
16 correct?

17 A That's right. The video was the basis of the
18 motion for the State to keep the offer open. What
19 the State had done was made an offer for a
20 negotiated 15 years.

21 Then after the offer, the day before the offer
22 closed, then they presented me with a video. In
23 the video it showed Mr. Fortune in the back seat of
24 a car, in the back seat of a patrol car, discussing
25 with the codefendant that he should take the drugs.

1 He should take the charge.

2 Of course, I never got the video myself. It
3 was one that I had to drive to Kingstree and watch
4 with Mr. Fortune. That was the basis of my motion,
5 which was that Chief Justice Toal had issued a
6 memorandum sometime back stating that offers
7 should remain open until all discovery had been
8 received.

9 So the basis of my motion was I hadn't
10 received all the discovery myself, but just having
11 one day to consider and actually go through that
12 video, it would have been impossible.

13 Q And were you successful on that motion?

14 A Yes, I was.

15 Q So you testified that you did review the discovery
16 with the applicant; is that correct?

17 A Yes, we went over everything, very in depth.

18 Q Did this videotape that they provided you, later on
19 did that change your plans to go to trial, rather
20 than plead guilty?

21 A No, it didn't. It created another burden. It
22 created another hurdle that we had to get over,
23 which I discussed with Mr. Fortune, another
24 obstacle.

25 But Mr. Fortune wanted to proceed forward with

1 trial. So I proceeded forward. The manner in
2 which I was going to proceed, further was I made a
3 motion. I intended to make a motion to preclude --
4 yes, to suppress or redact the video.

5 Q And did you get to argue that motion?

6 A I did not.

7 Q This was one of the pretrial motions that you did
8 not get to because he decided to plead guilty?

9 A That's correct.

10 MS. COLEMAN: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 MS. COLEMAN: Thank you.

14 BY MS. COLEMAN:

15 Q I will hand you a document and ask you if you
16 recognize this?

17 A Yes, I do.

18 Q And what is that?

19 A This is my motion to suppress the defendant's
20 statement, which was filed in Kingstree on
21 October 13, 2014.

22 Q Did this come from your file today?

23 A Yes, it did.

24 Q Do you recall filing this motion?

25 A Yes, I do.

1 MS. COLEMAN: I have shown a copy of this to
2 opposing counsel. The State moves to enter this as
3 Exhibit Number 1.

4 THE COURT: Any objection?

5 MR. BOOZER: No objection, Your Honor.

6 THE COURT: Without objection so admitted.

7 (Respondent's Exhibit Number 1 is received
8 into evidence.)

9 BY MS. COLEMAN:

10 Q Mr. Weaver, was this -- what was that motion that I
11 just handed you?

12 A That was a motion to suppress Mr. Fortune's
13 confession, the confession that -- when he
14 testified he stated he had made a statement and
15 that the statement had been made under duress or
16 coercion. That was the basis of that motion.

17 It was my intention to proceed forward with
18 the Jackson v. Denno hearing and to flush out any
19 potential defenses that I would have to possibly
20 exclude his statement.

21 Q And why didn't you get to go forward on this motion
22 or the others?

23 A Mr. Fortune decided to plead guilty when the first
24 motion was -- actually, my second motion of the day
25 was granted.

1 Q There is some discussion on the record about the
2 plea offer. Obviously, he granted your motion to
3 reopen the offer. If you had gone forward with the
4 pretrial motions, would that offer have still been
5 open?

6 A No, it would not have been.

7 Q Did the applicant tell you his version of the facts
8 in this case?

9 A Yes, he did.

10 Q And what were those?

11 A His version of the facts were -- his version of the
12 facts were that they were coming through
13 Johnsonville. I can't remember the name of the
14 highway. They reached Highway 4151.

15 They made a right turn, but he was asleep in
16 the car. And when he woke up, the police officer
17 was tapping on his window. When I asked him,
18 "Well, how did you miss all this? Why didn't you
19 know the police officers were there?"

20 Because there was a lot of drugs in the car.
21 I mean, this was a tremendous amount of drugs. I
22 don't see how a person could sleep sitting on all
23 these drugs. He told me at that time that he was
24 under the influence of some pills that he had
25 taken, and that's why he was sleeping in the

1 car.

2 Q So he admitted to you that he was in the car with
3 these drugs?

4 A Yes, he did.

5 Q Did you discuss any possible defenses with him?

6 A Yes, I did.

7 Q And what were those?

8 A Well, the vehicle was not his vehicle. He had
9 been going back and forth to Advance Auto Parts
10 that day working on another vehicle. So the
11 defense that he and I arrived at was the defense
12 of, first of all, he did tell me that he didn't
13 know about the drugs.

14 We arrived at the defense of that they were
15 not his drugs, that he was in that vehicle going
16 back and forth to Advance Auto with the
17 codefendant, who was the driver of the vehicle.
18 Basically, that was going to be the basis of his
19 defense is that he just didn't know that they were
20 underneath the seat.

21 Q So you have already discussed some of the State's
22 evidence against the applicant, including that
23 videotape. Did you think that that evidence was
24 strong or overwhelming?

25 A I thought it was extremely -- I thought it was very

1 strong evidence.

2 Q And did you discuss the elements of the charge with
3 the applicant and what the State was required to
4 prove?

5 A I went through each charge and discussed all the
6 elements on every charge, and I discussed the
7 sentencing of every charge as well.

8 Q Did he seem to understand those conversations?

9 A He did.

10 Q Did you review his constitutional rights before the
11 guilty plea?

12 A I did.

13 Q Did he seem to understand everything?

14 A Yes, he did.

15 Q What was the State's offer that he initially pled
16 guilty to?

17 A The State, following a conversation with Assistant
18 Solicitor Tyler Brown and Judge Newman in chambers,
19 I went back to Mr. Fortune and told him, "I think
20 it would be in our best interest if we allowed the
21 State to completely withdraw the negotiation and
22 the recommendation and to plead straight up," and
23 he agreed to do that.

24 So the final plea was not a result of the
25 negotiation or the recommendation. It was a result

1 of a straight-up plea before Judge Newman. The
2 only thing that changed was the trafficking third,
3 trafficking thirds, were reduced to trafficking
4 seconds to allow for a lower sentence.

5 Q Did the applicant -- they have alleged today that
6 he did not have two prior trafficking charges that
7 could have been used to enhance his conviction to
8 be charged with third offense or plead to second
9 offense.

10 Did the applicant have the proper prior
11 convictions to enhance this charge?

12 A Yes, he did. One moment please.

13 Q Uh-huh.

14 THE WITNESS: I beg the Court's indulgence,
15 Your Honor. We just got these transcripts.

16 THE COURT: Yes, sir.

17 (Pause.)

18 A Can you repeat the question, please.

19 Q Sure. Did the applicant have the proper prior
20 convictions to enhance this charge to a second or
21 third offense?

22 A Yes, he did. He actually had the charge of
23 possession of meth or cocaine base, which was a
24 second conviction, which was on January 19, 2010.
25 He also had a trafficking ice, crank, or crack

1 greater than 10 grams but less than 28 grams
2 conviction on April 23, 2004.

3 In the transcript when we went before Judge
4 Newman, I asked Judge Newman to actually review
5 that with him because I kept explaining to him it
6 was through the drug enhancement statute, but he
7 wouldn't take my word for it.

8 I knew what was at stake, and I didn't want
9 him to feel uncomfortable entering his plea. So I
10 asked Judge Newman before his plea if he would
11 please go over the drug enhancement statute with
12 him so that he would understand it. Judge Newman
13 did oblige and did go over everything prior to him
14 entering the plea as well.

15 Q And that's all on the record, isn't it?

16 A Yes, it is.

17 Q Whose decision was it to plead guilty?

18 A It was his decision entirely.

19 Q And do you agree with that decision?

20 A Yes, I did.

21 Q Do you still agree with that decision?

22 A Yes.

23 Q Thank you. No further questions.

24 THE COURT: Mr. Boozer.

25 MR. BOOZER: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. BOOZER:

3 Q Mr. Weaver, how are you doing?

4 A Doing well. How about yourself?

5 Q Doing fine. Thank you. Were you retained in this
6 case?

7 A I was.

8 Q Did y'all have any discussion or did he make any
9 sort of request about trying to get any sort of
10 dash-cam video? Do you recall?

11 A Yes.

12 Q What was --

13 A We got the dash-cam video.

14 Q Okay.

15 A That was the one we saw. That's the one -- the
16 video that they presented to us showed the outside
17 of the vehicle. Then once they put them -- it was
18 like a camera that's in the patrol car that could
19 be rotated from showing forward to showing
20 backward.21 So when they apprehended them, they put them
22 in the back of the patrol car. They took the same
23 camera that showed the stop and turned it around
24 and now it was showing them and recording the
25 inside of the vehicle.

1 Q And do you recall how many cars arrived and which
2 camera that car was in, whether it was the car that
3 initiated the stop or whether it was just one that
4 arrived at the scene?

5 A As I recall, it was in the vehicle that arrived at
6 the scene. I don't think it was in the vehicle
7 that initiated the stop.

8 Q Did y'all have any discussion about getting the
9 dash-cam video from the vehicle that initiated the
10 stop?

11 A Yes. As I stated, I can't recall which vehicle it
12 was actually; but, yes, I requested everything from
13 the Solicitor's Office.

14 Q Do you recall if y'all actually reviewed any
15 dash-cam video from the vehicle that made the stop?

16 A I do believe that we did; but, however, as I
17 remember it, the vehicle only showed the tail end
18 of the stop. The camera was not activated until
19 the lights were initiated, and they were stopped
20 for failure to stop at a stop sign for a California
21 roll, is what they call it, a California
22 roll-through.

23 Where the vehicle was stopped at couldn't have
24 been no more than 40 feet from the stop sign that
25 they were just accused of having ran through. I

1 can't be for certain -- because I have seen so many
2 of these videos -- but I tend to think that maybe
3 we did look at that video, and that one showed a
4 California roll-through, but I can't say for
5 certain.

6 Q Did y'all have any discussion about whether on the
7 video it would show or could show that they weren't
8 wearing their seat belts?

9 A I can't recall at this time, but I do know if that
10 was an issue, if I saw something on the video that
11 would have given me any indication that it was an
12 illegal stop, then we would have pursued it. So I
13 am confident it was nothing that I saw on the video
14 that would have led me to believe that.

15 Q Before what ended up being the pretrial motions in
16 the plea, there had been two plea offers? Is that
17 your recollection?

18 A Yes, that's right.

19 Q And those would have been -- because they were for
20 15 and, I think, 20 -- those would have been the
21 trafficking seconds; right?

22 A That's right.

23 Q And he was adamant that he was not taking those?

24 A Well, he said he wasn't going to take them, yes;
25 but I can't say he was adamant on them. That's

1 kind of ambiguous, but he did say that he wasn't
2 going to take them.

3 Q I don't want to use the word adamant again, but was
4 he pretty -- I mean, was he pretty set on going to
5 trial in the case?

6 A I believe so.

7 Q Do you know what sort of changed at the pretrial
8 hearing or whatever to sort of change his mind,
9 going from a trial setting to a plea?

10 A I don't think it was the pretrial hearing. I think
11 the day before we saw that -- it was the video.

12 Q Okay.

13 A The video -- and he and I discussed this at
14 length -- but the video, as I stated earlier, added
15 another hurdle because they already had a written
16 confession. They had a boatload of drugs. And now
17 they had a video to boot.

18 I explained to him that it was a lot of
19 hurdles to get across. We went back and forth with
20 the offers that were being made by the State.
21 Actually, on the day of trial, the State was up to
22 20.

23 That was the day the State was up to 20 years.
24 He wouldn't take that. He wouldn't take the 15.
25 So we commenced with proceeding forward with the

1 trial.

2 Q Mr. Weaver, going back to the stop sign, are you
3 certain that that was what initiated the stop? Or
4 do you recall if that was the seat belt?

5 A I know it was at that stop sign, and I know it was
6 within 40-yards of the stop sign; but I can't
7 remember if it was the roll-through or it could
8 have been the seat belts.

9 But the point I am making is the police
10 vehicle was not behind that vehicle for a long
11 period of time. From the time that the infraction
12 occurred to the time that the vehicle came to a
13 complete rest couldn't have been the length of this
14 courtroom.

15 Q Okay. I know you have just reviewed the
16 transcript, as I recently received it as well.

17 A Yes.

18 Q You would agree though that the solicitor states
19 that they observed the vehicle approach a stop sign
20 and observed neither was wearing a seat belt. So
21 that would have been the reason for the stop?
22 Based on failure to have on seat belts, he made a
23 traffic stop?

24 A What page is that on?

25 Q It's on page 36. It begins at line 7 on 36.

1 A Yes, I see it.

2 Q Okay. Do you recall there being a preliminary
3 hearing?

4 A Yes, there was a preliminary hearing, sir.

5 Q Do you recall what happened at the preliminary
6 hearing?

7 A I don't recall what happened at the preliminary
8 hearing. I know generally what I try to do at the
9 preliminary hearing. If I see a case that is this
10 strong, I try to at least get a good idea for what
11 the facts are. So I'm certain that I asked the
12 officer what the cause for the stop was at the
13 preliminary hearing.

14 Q Thank you, Mr. Weaver. That's all the questions
15 that I have.

16 MS. COLEMAN: Nothing further.

17 THE COURT: Sir, you may step down. Thank
18 you.

19 THE WITNESS: Thank you, Your Honor.

20 (The witness leaves the witness stand.)

21 MS. COLEMAN: The State has no further
22 witnesses, Your Honor.

23 THE COURT: Anything by way of argument,
24 Mr. Boozer?

25 MR. BOOZER: Nothing further, Your Honor.

1 MS. COLEMAN: Nothing from the State. Thank
2 you.

3 (Pause.)

4 THE COURT: I will take a look at it and let
5 you all know.

6 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Williamsburg County, South Carolina, on the 27th day of March, 2017.

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

July 21, 2017

s/L. Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Roger Leon Fortune, #301471,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2015-CP-45-343

ORDER OF DISMISSAL

FILED - A
P11 5: 14

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 17, 2015. Respondent made its Return on October 28, 2015. An evidentiary hearing was convened on March 27, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Marshall Weaver, Esquire ("Plea Counsel") also testified. The Court had before it a copy of the guilty plea transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted at the July 2014 term of the Williamsburg County Grand Jury for trafficking crack cocaine (28-100 grams) (3rd or subsequent offense); trafficking cocaine (10-28 grams) (3rd or subsequent offense); possession

DC
10/10
P.

with intent to distribute heroin (3rd or subsequent); possession with intent to distribute marijuana; possession of schedule I to IV controlled substance (3rd or subsequent offense). Marshall Weaver, Esquire represented Applicant. On October 15, 2014, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant without negotiations or recommendations to five year term of imprisonment for possession of scheduled I, II, or III drugs, one year term of imprisonment for possession of Schedule IV drugs –first offense, ten year term of imprisonment for trafficking in methamphetamine or cocaine base – 28 grams or more but less than 100 grams, eleven year term of imprisonment for possession with intent to distribute heroin, and ten year term of imprisonment for trafficking in cocaine ten grams or more – second offense with all sentences running concurrently. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. Initial stop of the vehicle was not justified
 - b. I wrote a false statement out of hope and fear in which the police officer used a question first Miranda warnings later tactic
 - c. My lawyer did not go through with the pre-trial motions we discussed.
 - d. The police officer made up the reason for the stop and probable cause.
 - e. After telling him over and over I didn't no (sic) about the drugs, he told me the only way he could help is if I told him something about the drugs, so I made up a story and told him....

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

DWA
2/1/10

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

Applicant testified that he is currently serving an eleven year sentence. He stated that he was originally charged with trafficking crack, trafficking cocaine, possession with intent to distribute cocaine, possession of pills, and possession of marijuana. He testified that they were about to go to trial on his charges, but his attorney made a motion to reopen the State's plea offer of fifteen years for all charges. Applicant stated that the trial court granted his motion and he

DLS
3/10

accepted the offer and chose to plead guilty. He stated that he pled guilty to all charges, but he pled down to trafficking, second offense, rather than trafficking, third offense, and he received an eleven year sentence.

Applicant testified that he went into a room in the middle of the pre-trial hearings to discuss a plea. He stated that he did not want to accept the plea offer, but Plea Counsel talked him into it. He stated that he wanted to go to trial but Plea Counsel lacked confidence and he would not have represented him to the best of his ability.

Plea Counsel testified that the State extended a plea offer before Applicant's trial, but it had a finite deadline, and the day after the offer closed, the State turned over a new piece of evidence—a videotape of Applicant in the police car telling the person with him to take the fall for the drugs. Plea Counsel stated that he argued to the trial court before the trial began that the State should reopen their plea offer because it was not fair to close the offer without offering all discovery, and the trial court granted his motion and reopened the offer. He stated that, at that point, he and Applicant discussed the plea offer, and Applicant chose to accept the offer instead of proceed to trial.

Plea Counsel testified that he intended to argue his motion to suppress the videotape before the trial began, but Applicant chose to plead guilty before he argued them. He stated that if he had argued his motions before the trial court, the State would have revoked their offer, so he could not argue his pre-trial motions if Applicant wanted to accept the plea deal. He stated that Applicant was charged with trafficking, third offense, but he pled down to trafficking, second offense in exchange for his guilty plea. Plea Counsel testified that Applicant had the proper prior convictions to enhance his trafficking charge; Applicant was convicted of possession of methamphetamine/cocaine in 2010 and trafficking ice in 2004. He stated that he explained to

D.B.
11-17-10

Applicant the drug enhancement statute, but he did not believe him, so he specifically asked the plea judge to explain the enhancement statute to Applicant on the record.

Plea Counsel testified that if he had seen anything on the videotape or in the discovery indicating that the stop of the vehicle was illegal, he would have noticed and argued that to the trial court, but he did not. He stated that the evidence against Applicant was very strong and included a written confession, the videotape of his interaction in the police car with the person he was arrested with, and a very large amount of drugs. He testified that it was Applicant's decision to plead guilty.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony to be not credible. In contrast, this Court finds Plea Counsel's testimony to be very credible. These findings are applied to the specific findings below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Counsel was ineffective in his advice surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by

D. P. B.
5/7/10

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. This Court finds that Plea Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant, as well as fully explained the possible outcomes in sentencing. This Court finds that Plea Counsel's representation did not fall below the standards of professional norms in any manner. Based on the testimony presented and the record before the court, this Court finds that Plea Counsel's representation was not ineffective in any regard.

Applicant alleges that Plea Counsel was ineffective for failing to argue the pre-trial motions that they discussed. Plea Counsel credibly testified, and the transcript clearly shows, that if Plea Counsel had gone forward and argued the pre-trial motions he had filed, the State would withdraw their plea offer. The trial court granted Plea Counsel's motion to reopen the State's offer, but it was understood by all parties that Applicant needed to accept or reject that offer before they moved forward to any other motions. Applicant intelligibly chose to plead guilty rather than proceed to trial, so there was no reason for Plea Counsel to argue his motions.

Plea Counsel went above and beyond the standards of representation in this case, and he did everything he could to represent Applicant in the face of very strong evidence against him. Plea Counsel was not deficient in any regard, and there was no prejudice to Applicant from any

DCB
P. 6 of 10

of Plea Counsel's actions or inactions. Therefore, this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

To the extent that Applicant argues his plea was not given freely and voluntarily, this Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing 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. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Plea

DK
P 7/9/10

Counsel's testimony that he advised Applicant of all facts and risks of pleading guilty, and that it was Applicant's decision to plead guilty.

The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed with prejudice.

UNDERLYING EVIDENCE

This Court finds that the remaining allegations Applicant argues in his application are attempting to challenge the sufficiency of the underlying evidence in his case, and he waived his right to challenge this evidence by pleading guilty. A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985). The plea admits all elements of the offense charged, "leaves open for review only the sufficiency of the indictment and waives all other defenses." Id. at 314, 338 S.E.2d at 330; cf. United States v. Broce, 488 U.S. 563, 569, 109 S.Ct. 757 (1989). Applicant waived his right to challenge the

DCB
p. 8 of 10

stop of the vehicle and the State's evidence against him by pleading guilty. Therefore, these allegations are denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VII. CONCLUSION

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

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

[signature page to follow]

DCB
P. 9/10

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 25 day of April, 2017.



D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina

DCB
P 10 7/10

STATE OF SOUTH CAROLINA)
)
 County of Williamsburg)
)
Roger Leon Fortune, 111.)
)
) Petitioner)
)
) vs.)
)
) STATE OF SOUTH CAROLINA)
)
) Defendant)

IN THE COURT OF
 COMMON PLEAS
 3rd Judicial Circuit

NOTICE OF APPOINTMENT
 FOR LEGAL COUNSEL

Case Number 2015-CP-45- 343

To: Boozer, Attorney at Law

By order of the Chief Administrative Judge and pursuant to Rule 608, SCACR, you are hereby appointed to act as attorney for Roger Leon Fortune, 111, the Petitioner, in this action.

This 9th day of Sept, 2015.

Sharon W. Stagers
 Judge/Clerk of Court

WITNESSES

Seth Scott
Williamsburg County Sheriff


ARREST WARRANT NUMBER

2014A4510100363 2014A4510100364
2014A4510100365 2014A4510100366

2014A4510100367 2014A4510100368
2014A4510100369 2014A4510100370
2014A4510100371 2014A4510100372

ACTION OF GRAND JURY

TRUE BILL
Date 7/31/14


Foreperson of Grand Jury
Date: 7/31/14

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-45-0210

The State of South Carolina
County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JULY TERM 2014

THE STATE

vs.

ROGER LEON FORTUNE
NICHOLAS TURNER

Indictment for

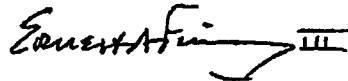
TRAFFICKING CRACK COCAINE (28 TO 100 GRAMS)
(3RD OR SUBSEQUENT FOR FORTUNE);

TRAFFICKING COCAINE (10 TO 28 GRAMS) (3RD OR
SUBSEQUENT FOR FORTUNE);

PWID HEROIN (3RD OR SUBSEQUENT FOR
FORTUNE);

PWID MARIJUANA;

PWID SCHEDULE I TO IV CONTROLLED
SUBSTANCE (3RD OR SUBSEQUENT FOR FORTUNE)



ERNEST A. FINNEY, III, SOLICITOR

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR 2014-GS-45-0210 WITH THE AFORESAID NAME OF ROGER LEON FORTUNE AND NICHOLAS TURNER SHOWN THEREON:

COUNT THREE - POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

That Roger Leon Fortune and Nicholas Turner did in Williamsburg County on or about May 1, 2014, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Heroin, a Schedule I controlled substance under the provisions of §44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of §44-53-0370(b)(1), S. C. Code of Laws, 1976, as amended this being a third or subsequent offense for Roger Fortune.

COUNT FOUR - POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

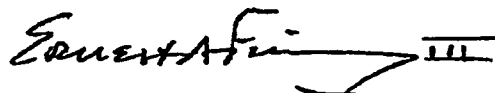
That Roger Leon Fortune and Nicholas Turner did in Williamsburg County on or about May 1, 2014, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Marijuana, a controlled substance under the provisions of §44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of §44-53-370(d)(2), S. C. Code of Laws, 1976, as amended.

COUNT FIVE - POSSESSION WITH INTENT TO DISTRIBUTE SCHEDULE I-IV CONTROLLED SUBSTANCES

That Roger Leon Fortune and Nicholas Turner did in Williamsburg County on or about May 1, 2014, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of schedule I-IV controlled substances, to wit; Oxycodone, Xanax (a.k.a. Alprazolam), and Clonazepam, all schedule I-IV controlled substance under the provisions of §44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of §44-53-370, S. C. Code of Laws, 1976, as amended.

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

Solicitor



STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

TRAFFICKING CRACK COCAINE (28 TO 100 GRAMS) (3RD
 OR SUBSEQUENT FOR FORTUNE);

TRAFFICKING COCAINE (10 TO 28 GRAMS) (3RD OR
 SUBSEQUENT FOR FORTUNE);

PWID HEROIN (3RD OR SUBSEQUENT FOR FORTUNE);

PWID MARIJUANA;

PWID SCHEDULE I TO IV CONTROLLED SUBSTANCE (3RD
 OR SUBSEQUENT FOR FORTUNE)

At a Court of General Sessions, convened on July 31, 2014 the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - TRAFFICKING COCAINE BASE, 28 GRAMS TO 100 GRAMS

That Roger Leon Fortune and Nicholas Turner did in Williamsburg County on or about May 1, 2014, knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than twenty-eight (28) grams but less than one-hundred (100) grams, same being a controlled substance all within the meaning of §44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of §44-53-375(c)(2), S. C. Code of Laws, 1976, as amended, for the crime of trafficking, this being a third or subsequent offense for Roger Fortune.

COUNT TWO - TRAFFICKING COCAINE, 10 GRAMS TO 28 GRAMS

That Roger Leon Fortune and Nicholas Turner did in Williamsburg County on or about May 1, 2014, knowingly sell, deliver, purchase or bring into this State, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten (10) grams, but less than twenty-eight (28) grams, the same being a controlled substance, all within the meaning of §44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of §44-53-370(e)(2)(a), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking, this being a third or subsequent offense for Roger Fortune.

COUNTY OF Williamsburg
STATE VS.

Roger Leon Fortune

AKA: _____

Race: Black Sex: M Age: 31

DOB: 1982 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

INDICTMENT/CASE#: 2014-GS-45-0210

A/W#: 2014A4510100363

Date of Offense: 5/1/2014

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET

TO: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.t.d. - 1st

CONVICTED OF or PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186

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. EWB

ATTEST: [Signature] 78316 Roger Fortune [Signature] 78752
Brown, Tyler 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 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:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
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	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>8.40</u>
TOTAL		\$ <u>288.40</u>

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 [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2127
Sentence Date: OCT 15, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

0-137

COUNTY OF Williamsburg
STATE VS.

Roger Leon Fortune

AKA:

Race: Black Sex: M Age: 31

DOB: 1982 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

CONVICTED OF or PLEADS

TO: Drugs / Manufacture, possession of Schedule V drugs with intent to distribute - 1st offense

in violation of § 44-53-0370(b)(4) of the S.C. Code of Laws, bearing CDR Code # 0191

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.

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

ATTEST: Tyler Brown, SC Bar# 78316, Defendant; Roger Fortune, Defendant; Attorney for Defendant; SC Bar# 78752

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

for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on:

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:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 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, § 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, 3% to County (if paid in installments) \$240, TOTAL \$288.00

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: Sharon W. Steffen
Court Reporter: Marlene Baker Day
SCCA/217 (03/2011)

Presiding Judge: G. Merrin
Judge Code: 2129
Sentence Date: Oct 15, 2014

COUNTY OF Williamsburg
STATE VS.

AKA: Roger Leon Fortune

Race: Black Sex: M Age: 31

DOB: 1982 SS#: [REDACTED]

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: Drugs / Trafficking in meth. or cocaine base - 28 g or more, but less than 100 g - 3rd or sub. (Feb. 2nd or Subsequent 266)

in violation of § 44-53-0375(C)(2)(a) 266 of the S.C. Code of Laws, bearing CDR Code # 0349-0389 263

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST: Brown, Tyler SC Bar# 78316 Defendant Roger Fortune Attorney for Defendant 78752 SC Bar#

INDICTMENT/CASE#: 2014-GS-45-0210
A/W#: 2014A4510100366
Date of Offense: 5/1/2014
S.C. Code § : 44-53-0375(C)(2)(c)
CDR Code #: 0349

SENTENCE SHEET

CONVICTED OF or PLEADS

Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

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 \$ 50,000.00 ; 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:
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

PTUP days/hours Public Service Employment

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 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, § 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, 3% to County (if paid in installments) \$ 312.00, TOTAL \$ 107,342.00

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 Sharon W. Stappen
Court Reporter: Sharon Bullock-Roy
SCCA/217 (03/2011)

Presiding Judge Judge Code: Sentence Date: Oct 15, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF Williamsburg)
STATE VS.)
Roger Leon Fortune)
AKA:)
Race: Black Sex: M Age: 31)
DOB: 1982 SS#:)
Address:)
City, State, Zip:)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 2014-GS-45-0210
A/W#: 2014A4510100368
Date of Offense: 5/1/2014
S.C. Code § : 44-53-0370(e)(3)(c)
CDR Code #: 0149

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: ~~Drugs/Trafficking in Heroin, morphine, etc., 28 g or more~~ PWD Heroin 3 (63)

in violation of § 44-53-0370(e)(3)(c)(1)(i) of the S.C. Code of Laws, bearing CDR Code # 01490185 (63)
 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. DWP.
ATTEST: [Signature] 78316 Roger Fortune [Signature] 78752
Brown, Tyler 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 11 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 50,000 ; 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:
 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 _____

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: _____

Recipient: _____

*Fine:	\$50.00	\$ 50.000
§ 14-1-206 (Assessments 107.5%)		\$ 53,750
§ 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)		\$ 312.00
TOTAL		\$ 104,342.00

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

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2127
Sentence Date: Oct 15, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

5-30

COUNTY OF Williamsburg
STATE VS.

AKA: Roger Leon Fortune

Race: Black Sex: M Age: 31
DOB: 1982 SS#: [redacted]

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: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense 2nd offense

in violation of § 44-53-0370(e)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0278-0387
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

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

ATTEST: Brown, Tyler SC Bar# 78316 Defendant Roger Fortune Attorney for Defendant 78752 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 \$ 50,000; 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:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Recipient:
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:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (DUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCJA Surcharge), 3% to County (if paid in installments), TOTAL \$104,342.00

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

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2127
Sentence Date: Oct 15, 2014

ARREST WARRANT

2014A4510100363

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

THE STATE 14004337

against

Roger Leon Fortune

Address:

Phone: SSN:

Sex: M Race: B Height: Weight:

DL State: DL #:

DOB: 1982 Agency ORI #: SC0450000

Prosecuting Agency: Williamsburg County Sheriff

Prosecuting Officer: Seth Scott - 0073

Offense: Drugs / Manuf., poss. of other sub. in Sch. I,II,III or flunitrazepam or analogue, w.i.t.d. - 1st offense

Offense Code: 0186

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

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant 50-02-14 on Roger Leon Fortune

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 125 W. Main Street Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

Personally appeared before me the affiant Seth Scott who

being duly sworn deposes and says that defendant Roger Leon Fortune

did within this county and state on or about 5/1/2014 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Williamsburg)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I,II,III or flunitrazepam or analogue, w.i.t.d. - 1st offense

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

That on May 1, 2014, located on County Line Road/Hwy.41, within Williamsburg County, one Roger Fortune did willfully and unlawfully commit the offense of Possession of Control Substance with Intent to Distribute 1st. Roger Fortune did have in his control and possession approximately 168 prescription pills. Possession of a Control Substance 1st with Intent to Distribute is in violation of the South Carolina Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

Affiant's Address 126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone (843)355-6381

ARREST WARRANT

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

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

on or about 5/1/2014 defendant Roger Leon Fortune

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

County/ Municipality of Williamsburg) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I,II,III or flunitrazepam or analogue, w.i.t.d. - 1st offense

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

Sworn to and subscribed before me

on 5/2/2014

Signature of Issuing Judge (L.S.)

Delores Franklin Williams

Judge Code: 5992

Judge's Address 209 Short Street

Kingstree, SC 29556-

Judge's Telephone (843)355-9565 x 277

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

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

ORIGINAL

AFFIDAVIT

ARREST WARRANT

2014A4510100364

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

THE STATE 1404337
against

Roger Leon Fortune

Address:

Phone: [redacted] SSN: [redacted]

Sex: M Race: B Height: Weight:

DL State: DL #:

DOB: [redacted] 1982 Agency ORI #: SC0450000

Prosecuting Agency: Williamsburg County Sheriff

Prosecuting Officer: Seth Scott - 0073

Offense: Drugs / Manufacture, possession of Schedule V
drugs with intent to distribute - 1st offense

Offense Code: 0191

Code/Ordinance Sec: 44-53-0370(b)(4)

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Roger Leon Fortune
on 05-02-14

Carl W. A.
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
125 W. Main Street
Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

- ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

Personally appeared before me the affiant Seth Scott who

being duly sworn deposes and says that defendant Roger Leon Fortune

did within this county and state on or about 5/1/2014 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Williamsburg)
in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, possession of Schedule V drugs with intent to distribute - 1st offense

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

That on 05/01/2014, located on County Line Road/Hwy 41, within Williamsburg County, one Roger Fortune did willfully and
unlawfully commit the offense of possession of Schedule V Drugs with Intent to Distribute 1st. Roger Fortune did have in his
possession a large clear plastic bag weighing approximately 3 lbs filled with a green plantlike substance believed to be Marijuana.

Possession of Schedule V Drug with Intent to Distribute 1st is in Violation of the South Carolina Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

Affiant's Address 126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone (843)355-6381

ARREST WARRANT

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

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

on or about 5/1/2014 defendant Roger Leon Fortune

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

County/ Municipality of Williamsburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, possession of Schedule V drugs with intent to distribute - 1st offense

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

on 5/2/2014

Delores Franklin Williams (L.S.)
Signature of Issuing Judge

Delores Franklin Williams

Judge Code: 5992

Judge's Address 209 Short Street

Kingstree, SC 29556-

Judge's Telephone (843)355-9565 x 277

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

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

ARREST WARRANT

2014A4510100366

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

THE STATE

14004337

against

Roger Leon Fortune

Address:

Phone: SSN:

Sex: M Race: B Height: Weight:

DL State: DL #:

DOB: 1982 Agency ORI #: SC0450000

Prosecuting Agency: Williamsburg County Sheriff

Prosecuting Officer: Seth Scott - 0073

Offense: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 3rd or sub. (Fel., 25Y to

Offense Code: 0349

Code/Ordinance Sec: 44-53-0375(C)(2)

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 05-02-14 Roger Leon Fortune

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 125 W. Main Street Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

Personally appeared before me the affiant Seth Scott who

being duly sworn deposes and says that defendant Roger Leon Fortune did within this county and state on or about 5/1/2014 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Williamsburg) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 3rd or sub. (Fel., 25Y to 30Y)

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

That on 05/01/2014, located on County Line Road/Hwy 41, within Williamsburg County, one Roger Fortune did willfully and unlawfully committed the offense of Trafficking Cocaine Base 28 GM or more but less than 100 GM 3rd or subsequent offense. Roger Fortune did have in his control and possession approximately 72.6 GM of a White in Color Rock like Substance that field tested positive for Cocaine Base. Roger Fortune has two prior offenses on his criminal history for the same offense.

Trafficking Cocaine Base 28 GM or more but less than 100 GM 3rd ro Subsequent is in Violation of the South Carolina Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Williamsburg

Affiant's Address 126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone (843)355-6381

ARREST WARRANT

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

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

on or about 5/1/2014 defendant Roger Leon Fortune

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

County/ Municipality of Williamsburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 3rd or sub. (Fel., 25Y to 30Y)

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

Sworn to and subscribed before me

on 5/2/2014

Signature of Issuing Judge Delores Franklin Williams (L.S.)

Delores Franklin Williams

Judge Code: 5992

Judge's Address 209 Short Street

Kingstree, SC 29556-

Judge's Telephone (843)355-9565 x 277

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

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

ORIGINAL

AFFIDAVIT

ARREST WARRANT

2014A4510100368

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Williamsburg

THE STATE

14004337

against

Roger Leon Fortune

Address:

Phone: [redacted] SSN [redacted]

Sex: M Race: B Height: [redacted] Weight: [redacted]

DL State: [redacted] DL #: [redacted]

DOB: [redacted] 1982 Agency ORI #: SC0450000

Prosecuting Agency: Williamsburg County Sheriff

Prosecuting Officer: Seth Scott - 0073

Offense: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

Offense Code: 0149

Code/Ordinance Sec: 44-53-0370(e)(3)

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 05-02-14 Roger Leon Fortune

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 125 W. Main Street Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Williamsburg

Personally appeared before me the affiant Seth Scott who

being duly sworn deposes and says that defendant Roger Leon Fortune

did within this county and state on or about 5/1/2014 violate the criminal laws of the

State of South Carolina (or ordinance of [X] County/ [] Municipality of Williamsburg)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

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

That on 05/01/2014, located on County Line Road/Hwy 41, within Williamsburg County, one Roger Fortune did willfully and unlawfully committed the offense of Trafficking Heroin 28 GM or more. Roger Fortune did have in his control and possession approximately 55.8 GM of a White in Color Powder Substance that field tested positive for Heroin.

Trafficking in Heroin 28 GM or more is in Violation of the South Carolina Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Williamsburg

Affiant's Address 126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone (843)355-6381

ARREST WARRANT

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

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

on or about 5/1/2014 defendant Roger Leon Fortune

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

[X] County/ [] Municipality of Williamsburg) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

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

Sworn to and subscribed before me

on 5/2/2014

Signature of Issuing Judge (L.S.)

Delores Franklin Williams

Judge Code: 5992

Judge's Address 209 Short Street

Kingstree, SC 29556-

Judge's Telephone (843)355-9565 x 277

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

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

ARREST WARRANT

2014A4510100370

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Williamsburg

THE STATE 14004337 against

Roger Leon Fortune

Address:

Phone: [redacted] SSN: [redacted]

Sex: M Race: B Height: [redacted] Weight: [redacted]

DL State: [redacted] DL #: [redacted]

DOB: [redacted] 1982 Agency ORI #: SC0450000

Prosecuting Agency: Williamsburg County Sheriff

Prosecuting Officer: Seth Scott - 0073

Offense: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

Offense Code: 0278

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

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 05-02-14 Roger Leon Fortune

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions 125 W. Main Street Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Williamsburg

Personally appeared before me the affiant Seth Scott who being duly sworn deposes and says that defendant Roger Leon Fortune did within this county and state on or about 5/1/2014 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of Williamsburg) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

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

That on May 1, 2014, located on County Line Road/Hwy 41, within Williamsburg County, one Roger Fortune did willfully and unlawfully committed the offense of Trafficking in Cocaine more than 10 but less than 100 GM. Roger Fortune did have in his control and possession approximately 24.8 GM of a White in Color Powder Substance that field tested positive for Cocaine Base.

Trafficking in Cocaine 10 GM or more but less than 100 GM is in Violation of the South Carolina Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Williamsburg

Affiant's Address 126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone (843)355-6381

ARREST WARRANT

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

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

on or about 5/1/2014 defendant Roger Leon Fortune did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of Williamsburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

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

on 5/2/2014

Signature of Issuing Judge Delores Franklin Williams (L.S.)

Delores Franklin Williams

Judge Code: 5992

Judge's Address 209 Short Street

Kingstree, SC 29556-

Judge's Telephone (843)355-9565 x 277

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by 8 C. Attorney General April 21, 2003 SCCA 518