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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

JERONICA N. WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001130

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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

State of South Carolina)
)
 v.) Case No. 14-CP-10-3785
)
Jeronica Wilson,)
)
 Defendant)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on February 11, 2014, before The Honorable R. Markley Dennis in Courtroom 4B of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Ran Stoney, Assistant Solicitor
9TH CIRCUIT SOLICITOR'S OFFICE
100 Meeting Street, 4th Floor
Charleston, South Carolina 29402
Appearing for State of South Carolina

Jason King, Assistant Public Defender
CHARLESTON COUNTY PUBLIC DEFENDER
100 Meeting Street, 5th Floor
Charleston, South Carolina 29402
Appearing for Defendant

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Before The Honorable R. Markley Dennis

1 THE COURT: Do we have a sentencing
2 sheet?

3 SOLICITOR: Yes, sir.

4 THE COURT: All right.

5 SOLICITOR: Yes, Your Honor. This is
6 the State versus Jeronica Wilson. He is
7 charged with distribution of crack cocaine.
8 Do you want a recitation of the facts?

9 THE COURT: Let me talk to him first.
10 Thank you very much, appreciate that, Mr.
11 Stoney.

12 Mr. Wilson, I've been handed a sentencing
13 sheet that bears your signature.

14 DEFENDANT: Yes, sir.

15 THE COURT: It is referencing Indict-
16 ment 12-GS-10-2582. That indictment charges
17 you with distribution of crack cocaine, or
18 cocaine base. You understand that, sir?

19 DEFENDANT: Yes, sir.

20 THE COURT: And you have talked with
21 your lawyer about this charge? In fact, I
22 had a pretrial conference with your lawyer
23 yesterday, with you -- with your lawyer and
24 the Solicitor. We have a jury waiting down-
25 stairs to bring them upstairs for you to pick

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1 a jury and have a jury trial. Yesterday,
2 that's what I thought that we were going to
3 have but I've been advised by your lawyer,
4 now confirmed by this sentencing sheet, that
5 you've changed your mind and you want to
6 enter a guilty plea. Is that correct, sir?

7 DEFENDANT: Yes, sir.

8 THE COURT: And you've talked with
9 your lawyer about that decision?

10 DEFENDANT: Yes, sir.

11 THE COURT: It appears also on this
12 sentencing sheet that while the charge is
13 distribution of crack cocaine, that it
14 appears to be a third offense; is that
15 correct?

16 DEFENDANT: Yes, sir.

17 THE COURT: And your lawyer has
18 explained the range of sentencing for
19 distribution of crack cocaine, third, is a
20 minimum of ten years, but a maximum of thirty
21 years?

22 DEFENDANT: That's right.

23 THE COURT: According to this
24 sentencing sheets, you've negotiated a
25 sentence which you are asking me to accept

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1 and impose in this case; is that right, sir?

2 DEFENDANT: Yes, sir.

3 THE COURT: That's true?

4 DEFENDANT: Yes, sir.

5 THE COURT: That would be to impose the
6 minimum ten-year sentence?

7 DEFENDANT: Yes, sir.

8 THE COURT: And that is what you wish
9 for me to do?

10 DEFENDANT: Yes, sir.

11 THE COURT: Your lawyer has explained
12 to you that if I accept it -- and my options
13 are to accept it or reject it, that I can't
14 change it in any way. You do understand
15 that?

16 DEFENDANT: Yes, sir.

17 THE COURT: And I know that there have
18 been some discussions prior to this about
19 some offers that were under ten years, but do
20 you understand that before me, if we went to
21 trial, that the minimum sentence that I could
22 impose would be a ten-year sentence?

23 DEFENDANT: (No verbal response).

24 THE COURT: I don't have any options.
25 Do you understand that?

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1 DEFENDANT: Yes, sir.

2 THE COURT: And now I don't have any
3 options. I can't go more than ten years.
4 All I can say is that I accept it or that I
5 reject it. Do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: But you want me to accept
8 it?

9 DEFENDANT: Yes, sir.

10 THE COURT: Is that right?

11 DEFENDANT: Yes, sir.

12 THE COURT: Your lawyer has explained
13 that it is a serious offense, sir?

14 DEFENDANT: Yes, sir.

15 THE COURT: And you understand the
16 significance of that?

17 DEFENDANT: Yes, sir.

18 THE COURT: It's a strike. Do you
19 understand that that means?

20 DEFENDANT: Yes, sir.

21 THE COURT: Do you realize that, sir?

22 DEFENDANT: Yes, sir.

23 THE COURT: And you understand that it
24 is a nonparolable offense?

25 DEFENDANT: Yes, sir.

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1 THE COURT: And you understand that it
2 is a nonparolable offense?

3 DEFENDANT: Yes, sir.

4 THE COURT: That means that you will
5 serve not less than eight-and-a-half years,
6 eighty-five percent of ten years. Do you
7 understand that?

8 DEFENDANT: Yes, sir.

9 THE COURT: And your lawyer has
10 explained to you that not only will you have
11 to serve that but if you're successful in
12 being released after serving eighty-five
13 percent, you will have to satisfactorily
14 complete a two-year community supervision
15 program?

16 DEFENDANT: Yes, sir.

17 THE COURT: That is like being on
18 probation for two years.

19 DEFENDANT: Yes, sir.

20 THE COURT: The only thing is that if
21 you violate it, they can bring you back into
22 court and you can be returned to prison for
23 up to one year increments for the remaining
24 fifteen percent of your sentence. Do you
25 understand that?

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- 1 DEFENDANT: Yes, sir.
- 2 THE COURT: And your lawyer has
- 3 explained the various elements that the State
- 4 would have to prove to obtain a conviction in
- 5 this case?
- 6 DEFENDANT: Yes, sir.
- 7 THE COURT: Understanding the nature of
- 8 the offense and the possible punishment, is
- 9 it your desire that -- what is your desire?
- 10 To plead guilty?
- 11 DEFENDANT: Yes, sir.
- 12 THE COURT: And it is your desire that
- 13 I accept and impose the negotiated sentence?
- 14 DEFENDANT: Yes, sir.
- 15 THE COURT: Are you totally satisfied
- 16 with your lawyer, sir?
- 17 DEFENDANT: Yes, sir.
- 18 THE COURT: Solicitor, is that the full
- 19 extent of the negotiated sentence, the ten-
- 20 year sentence?
- 21 SOLICITOR: It is, Your Honor.
- 22 THE COURT: Mr. King, do you agree with
- 23 that, sir?
- 24 MR. KING: Yes, Your Honor.
- 25 THE COURT: And I've talked with you

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1 about it. Just for the record, you've
2 investigated this matter fully on your
3 client's behalf?

4 MR. KING: Yes, Your Honor.

5 THE COURT: And you've shared the
6 results of your investigation with him?

7 MR. KING: Yes, Your Honor.

8 THE COURT: I know that we have talked
9 about, yesterday, that you were prepared to
10 argue some legal issues; which in this case
11 there were some significant legal -- or
12 potentially significant legal issues.

13 MR. KING: Yes, sir.

14 THE COURT: And you have discussed with
15 your client that that will be waived now,
16 that there will not be any rulings on those
17 issues?

18 MR. KING: Yes, Your Honor.

19 THE COURT: And he understands that?

20 MR. KING: Yes, sir.

21 THE COURT: After fully consulting with
22 him this morning, he has indicated to you a
23 desire to enter a plea and asked you to
24 negotiate the best arrangements that you
25 could for him?

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- 1 MR. KING: Yes, sir.
- 2 THE COURT: Given the circumstances of
3 where we are today. And I understand, we all
4 understand, that you're limited very much in
5 what you can do with that.
- 6 MR. KING: (Affirmative nod).
- 7 THE COURT: But you were able to get
8 the State to agree to a ten-year sentence?
- 9 MR. KING: Yes, Your Honor.
- 10 THE COURT: Based on your investiga-
11 tion, do you concur with your client's
12 decision to enter a guilty plea?
- 13 MR. KING: I do, Your Honor.
- 14 THE COURT: Considering everything the
15 way that it is today, you consider entering a
16 guilty plea to be in his best interest?
- 17 MR. KING: Yes, I do.
- 18 THE COURT: Mr. Wilson, is that true,
19 sir?
- 20 DEFENDANT: Yes, sir.
- 21 THE COURT: And you understand that if
22 I accept your plea today, that we will not
23 have a trial?
- 24 DEFENDANT: Yes, sir.
- 25 THE COURT: And you understand that if

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1 we were to have a trial that the State would
2 have to prove you Guilty, that you do not
3 have to prove anything at all. You certainly
4 do not have to prove your innocence.

5 And if you had a trial, that you'd have
6 the opportunity to confront the witnesses
7 against you. That means that your lawyer
8 could challenge them, cross-examine them and
9 challenge that testimony. Do you understand
10 that, sir?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you realize that, sir?

13 DEFENDANT: Yes, sir.

14 THE COURT: That won't happen now
15 because you're waiving that right to a jury
16 trial and the right of confrontation. Do you
17 understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Also, as I will tell that
20 jury, as I do in every trial in a criminal
21 case, *'Don't look to Mr. Wilson to prove or*
22 *disprove anything.'* He doesn't have to do
23 *anything. He doesn't have to say a word.'*
24 Do you understand that?

25 DEFENDANT: Yes, sir.

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1 THE COURT: And I would instruct them
2 that you have exercised that right to remain
3 silent and that they could not use that
4 against you. Do you understand that, as
5 well?

6 DEFENDANT: Yes, sir.

7 THE COURT: But you realize that by
8 entering your guilty plea that you've given
9 up your right to remain silent, sir?

10 DEFENDANT: Yes, sir.

11 THE COURT: And that is your decision,
12 as well, sir?

13 DEFENDANT: (No verbal response).

14 THE COURT: Is that correct?

15 DEFENDANT: Yes, sir.

16 THE COURT: Other than the promise
17 contained in the negotiated sentence, any
18 other promise(s) been made to you, sir, to
19 get you to plead guilty?

20 DEFENDANT: No, sir. I have the
21 argument or the request that this is County
22 time and I ---

23 THE COURT: Hold on to that. That's
24 part of what I will do, give you credit for
25 time served. No question about that. But

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1 any other promise(s) made to you to get you
2 to plead guilty, other than the negotiated
3 sentence of ten years?

4 DEFENDANT: No, sir.

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

7 DEFENDANT: No, sir.

8 THE COURT: Have you consumed any
9 alcohol or taken any type of medication in
10 the last twenty-four hours, sir?

11 DEFENDANT: No, sir.

12 THE COURT: Have you been treated for
13 any emotional problems, any mental illness in
14 the past?

15 DEFENDANT: No, sir.

16 THE COURT: And while I understand --
17 when I this question, as a human being I
18 understand that this is not exactly something
19 that you look forward to do, but you're
20 comfortable with your decision and entering
21 this plea here today. Is that correct?

22 DEFENDANT: Yes, sir.

23 THE COURT: And you fully understand
24 your rights?

25 DEFENDANT: I do.

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1 THE COURT: Solicitor, if you would,
2 please, be kind enough to tell me the facts.

3 SOLICITOR: Thank you, Your Honor, may
4 it please the Court, ---

5 THE COURT: Yes, sir.

6 SOLICITOR: This occurred on January
7 27th, 2012, at 1385 Ashley River Road, which
8 is the Ashley Garden Apartments complex.
9 This defendant sold approximately point three
10 (.3) grams of cocaine base to an undercover
11 officer with the Charleston City Police
12 Department. The entire transaction was
13 captured on audio and video. The video is
14 pretty good.

15 He does have a prior record:

16 He has a 1993 possession of crack and
17 ABHAM;

18 1998, ABHAN; and then a

19 2007 possession with intent to distribute
20 cocaine.

21 2007, out of Georgia, later in 2007,
22 another possession with intent to distribute
23 cocaine and possession of cocaine.

24 THE COURT: Okay. Are those facts
25 correct, sir?

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1 DEFENDANT: Yes, sir.

2 THE COURT: And your record has been
3 accurately stated by the Solicitor, sir?

4 DEFENDANT: Yes, sir.

5 THE COURT: Have you fully understood
6 all my questions, Mr. Wilson?

7 DEFENDANT: Yes, sir.

8 THE COURT: And have you truthfully
9 responded to each of my questions?

10 DEFENDANT: Yes, sir.

11 THE COURT: And completely answered
12 them?

13 DEFENDANT: Yes, sir.

14 THE COURT: And the decision to enter
15 this guilty plea and waive your right to a
16 jury trial is your decision?

17 DEFENDANT: Yes, sir.

18 THE COURT: Thank you so much. I find
19 that Mr. Wilson has had the benefit of
20 competent counsel, with whom he's indicated
21 that he is totally satisfied.

22 I find that there is a sufficient factual
23 basis to support the guilty plea.

24 I find his plea to be freely, voluntary-
25 ly, knowingly and intelligently made and

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1 entered and I will accept the plea.

2 Now, Mr. King, I will be delighted to
3 hear from you as to why I should accept the
4 negotiated sentence, sir?

5 MR. KING: Thank you, Your Honor.
6 This is a sad day for me to be here beside
7 Mr. Wilson, having spent the time -- but I do
8 think that it is the best possible outcome
9 that we could have at this stage.

10 I've known Jeronica for a while, having
11 represented him back in 2007. So I've known
12 him for a good little while. We went through
13 a jury trial together and he was acquitted.
14 So I've known him for a while.

15 He's intelligent. He helps with his own
16 research. Sometimes as a lawyer, we want to
17 do everything ourselves but I welcome his
18 help. He had some unique issues and, yeah,
19 he found an issue in this case. He found it.
20 I didn't. I think that under different
21 circumstances that he could have been a
22 lawyer, and he says that that is something
23 that he'd thought about doing. He can argue
24 with the best of them. I tell you that.

25 Personally, I've gotten to know Mr.

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1 Wilson. I like him. I think that he is an
2 intelligent man. I think that he has a lot
3 of potential.

4 I also believe that it's drugs that have
5 had an effect on his life. I believe that
6 he's had a problem with drugs in the past,
7 with cocaine. I think that is one of the
8 main things that got him off the path that he
9 should have been on.

10 It was actually point-two grams (.2),
11 when it was tested, Judge. It was small
12 amount. When the undercover cop goes to
13 catch him, he's walking home with a pizza box
14 from Little Caesar's with his grandmother.
15 So he's not any stand-on-the corner selling
16 drugs dealer. If there had been more or if
17 his record had been a little bit better, it
18 -- an entrapment defense? You know, maybe
19 I could have gotten something going there.
20 But, you know, there just really wasn't
21 enough on the video and his record was one
22 that would show, I believe, predisposition.
23 But he's not out there selling drugs on the
24 street corner. He was walking with his
25 granny. The undercover cop says that he saw

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1 that he gets it from two guys in a blue Crown
2 Vic. So I don't think that he was out
3 looking to sell drugs that day, and it was a
4 small amount. We'd just ask that you
5 consider all that. Ten years is a fairly
6 significant sentence. If you would consider
7 imposing that sentence, I would -- and his
8 mother would like to speak, Your Honor.

9 THE COURT: Yes, ma'am. If you would,
10 just give me your full name.

11 GEORGETTE BROWN: Georgetta Brown.

12 THE COURT: Thank you, Ms. Wilson
13 (sic).

14 GEORGETTE BROWN: He has really turned
15 around. He is real respectful. He helps me
16 a lot around the house. When I was diagnosed
17 with cancer seven years ago, he was there for
18 me, supported me.

19 I am just hoping, you know, that he will
20 take this time to get himself together. He
21 also needs counseling for drugs, because he
22 do use drugs. He needs counseling mental-
23 wise, because I kept him in an abusive
24 situation at home -- it still is an abusive
25 situation and -- (pause) -- he's not a bad

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1 person.

2 THE COURT: Thank you, Ms. Wilson. I
3 appreciate you being here. I'm glad that you
4 have been successful with your battle and I
5 hope that continues for you, as well.

6 Mr. Wilson, anything that you want to
7 add, sir?

8 DEFENDANT: I hope that one day that
9 I'm still practicing -- that I am still doing
10 this job, it's encouraging to hear people
11 talk now about something that I think if we
12 wanted to win the war on drugs that we needed
13 to have talked about twenty years ago.
14 People with addictions need help.

15 That's how you change people. I don't
16 quarrel with the fact that putting people in
17 prison warehouses them and protects them.
18 Some people, it may affect. Historically,
19 the consequences, it doesn't because
20 addictions are something that you have to
21 battle every day.

22 Please do something for me and for that
23 wonderful lady there. That is, when you
24 finish serving your time, you don't have to
25 be in jail, you don't have to be on probation

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1 to get help for addiction. There are lots of
2 agencies that are able to help you, but you
3 have to seek them. They're not going to come
4 to you. Please know that. Please know that
5 is not a weakness, it is just acknowledging
6 that because of some choices that you've made
7 that you had to fight that addiction, and you
8 have to fight it the rest of your life
9 unfortunately. Maybe there will be a drug
10 that will -- and you may even be the one that
11 finds the cure, I hope that happens.

12 I hear your lawyer tell me about you,
13 about your intelligence, your persistence,
14 the depth of your thinking. That is a credit
15 to you. I hope that you will use that for
16 whatever time that God gives you for the rest
17 of your life in a productive sort of way.
18 Certainly it would do well for you, and it
19 would make that lady very happy as well. So,
20 please do that.

21 How much time did he serve? Mr. King, do
22 you have that total?

23 MR. KING: Your Honor, he bonded out
24 after a couple of days. Then his bondsman
25 put him back in for a bit. I ended up with

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1 eighty-three. Mr. Wilson seems to think that
2 it is more.

3 DEFENDANT: (Sidebar with Mr. King).

4 MR. KING: Okay, eighty-three (83)
5 days.

6 THE COURT: Eighty-three days?

7 MR. KING: Yes, sir.

8 THE COURT: They will compute it, but
9 if I write eighty-three then it will be
10 eighty-three. Is everybody all right with
11 eighty-three?

12 MR. KING: (Sidebar with Defendant).

13 THE COURT: I can just check it and
14 they will make the calculation.

15 MR. KING: That's fine.

16 THE COURT: You want them to just make
17 the calculation?

18 DEFENDANT: That's fine.

19 THE COURT: Okay. The sentence of the
20 court, Mr. Wilson, is that you be committed
21 to the Department of Corrections for a term
22 of ten (10) years. I give you credit for
23 time that you have served.

24 GEORGETTE BROWN: I now that I am not
25 supposed to touch him after he has been

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1 sentenced, but could I get a hug?

2 THE COURT: Could you allow the mother
3 to hug him?

4 DEPUTY: No, sir.

5 THE COURT: Nope. Can't do it. Sorry
6 about that. I understand that, appreciate
7 that and respect that a hundred percent, sir.
8 I hope that you understand that.

9 GEORGETTA BROWN: I gotcha.

10 (HEARING CONCLUDED)

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AW

FORM 5

2014-CP-10-3785

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of Charleston)

Jerowica Wilson 211823)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
JUN 13 PM 2:10
CLERK OF COURT

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 Turbeville Corr. Inst.
P.O. Box 252 Turbeville, S.C. 29162
2. Name and location of Court which imposed sentence Courts of General Session
Ninth Judicial Circuit, Charleston County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012 GS 100 2582 Distribution of Cocaine Base

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) February 11, 2014, 10 years, 85% to be served with two years

(b) of probation upon completion

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Wasn't aware of appeals rights and laws involved

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 6th Amendment violation
 (b) 14th Amendment violation
 (c) Involuntary Guilty plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective assistance of counsel
 (b) Evidence tampering, (Due Process), (Fairness) violations
 (c) South Carolina Rules of Criminal Procedure Violation Rule 5 (Brady)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
 ii. N/A
 iii. N/A

iv. _____

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

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?

No

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

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) I am unfamiliar with the Court and procedure governing
 - (b) the matter raised in 10. This is the only course of action
 - (c) known to 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? N/A
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Victoria Anderson, Charleston County Public Defenders office
101 Broad Street 5th floor Charleston, S.C. 29401
 - ii. Jason King 101 Broad St. 5th floor, Charleston S.C. 29401
 - iii. Randall Stoney, Charleston County Solicitor office 101 Broad
St. 6th floor Charleston, S.C.
 - (b) the proceedings at which each such attorney represented you:
 - i. Victoria Anderson represented me at several plea offers, conference
hearing the first 16 months of my representation.
 - ii. Jason King represented me for the remaining 8 months of my
representation during several trial docket appearances, the morning of
 - iii. trial, and guilty plea
Randall Stoney is responsible for Rule 5 violation, and Tampering
with evidence

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

I would like to have my case vacated and given a fair
chance at a trial with the benefits of effective counsel, and
with the benefits of my 14th Amendment rights acknowledged

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

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Charleston)

VERIFICATION

I, Jeronica Wilson, 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.

Jeronica Wilson

SWORN to and subscribed before me this 3rd
day of June 2014.

Erubene Hodge (L.S.)
Notary Public

My Commission Expires: 4-27-2016

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

I, Jeronica Wilson, 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.

Jeronica Wilson
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of June, 2014.

[Signature]
Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA)	IN THE COMMON PLEAS COURT
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
)	
Jeronica Wilson 211823)	CASE NO.: 2014-CP-10-3785
Applicant)	
vs.)	
)	AMENDED APPLICATION FOR PCR
State of South Carolina)	
Respondent,)	
_____)	

FILED
 15 OCT 30 PM 2:44
 JULIE J. ARTHUR RONG
 CLERK OF COURT

To: Rutledge Johnson, Office of the South Carolina Attorney General, PO Box 11549 Columbia, SC 29211.

Applicant, by undersigned counsel, hereby amends his PCR Application originally filed June 3, 2014, to include the following:

1. Applicant repeats and reincorporates herein his entire June 3, 2014 PCR Application
2. As the result of trial counsel's deficient performance as outlined below, Applicant's guilty plea was made neither voluntarily nor knowingly. Specifically trial counsel's performance was deficient and ineffective by:
 - a. Failing to fully investigate the facts and circumstances surrounding his case;
 - b. Failing to accurately advise Applicant regarding potential evidentiary and procedural issues concerning the admissibility of the State's report from the chemical analysis of the controlled

substance that formed the basis of the charges against Applicant (the "State's Report").

- c. Failing to investigate the required SLED procedures for handling and documenting the testing of controlled substances; and failing to investigate how law enforcements failure to follow these procedures would have affected the admissibility of the State's Report.
 - d. Failing to file a motion to suppress the State's Report
 - e. Failing to be prepared to impeach the credibility of the State's Report because of material defects and discrepancies in the chain of custody documentation and other documents required by SLED regulations.
 - f. Alerting the Solicitor's office to the deficiencies surrounding the State's Report and thus allowing the State the opportunity to try and cure the alleged deficiencies.
3. Applicant alleges that the State failed to meet its obligations pursuant to *Brady v Maryland*. Applicant alleges that the State had actual knowledge of the deficiencies and discrepancies in the State's Report yet failed to disclose this exculpatory information to Applicant's counsel.
4. Because of the deficiencies in the State's Report, the State would not have been able to provide evidence of an essential element of the

alleged crime, therefore the lacked subject matter jurisdiction to
accept Applicant's guilty plea.

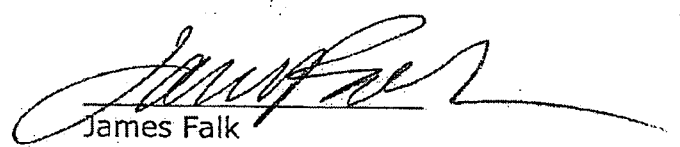
Respectfully Submitted,



James K Falk
Falk Law Firm
Po Box 1058
Charleston, SC 29402
(843) 606 6007
(843) 972 9005 fax

CERTIFICATE OF SERVICE

Undersigned certifies that a copy of the foregoing was mailed this
Oct 30TH, 2015 to Rutledge Johnson, Esq. at the address listed above.



James Falk
Counsel for Applicant

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
)	2014-CP-10-3785
)	
Jeronica Wilson, #211823,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 13, 2014, 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 Charleston County Clerk of Court. The Applicant was indicted at the May 2012 term of the Charleston County Grand Jury for distribution of cocaine base- third offense (2012-GS-10-2582). The Applicant was represented by Jason Anderson, Esquire, and Victoria Anderson, Esquire.

On February 11, 2014, the Applicant pled guilty. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for a period of a negotiated ten years. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of counsel.
2. Brady violation.
 - a. Evidence tampering.
3. Due process and fairness violation.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such

that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant also alleges a Brady violation. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady¹ claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)). The Respondent submits the Applicant has failed to specifically state the nature of the evidence he claims the

¹ Brady v. Maryland, 373 U.S. 83 (1963).

State withheld and that the evidence meets the requirements outlined in Brady. The Respondent acts this Court to summarily dismiss this claim.

V.

Lastly, the Applicant claims due process and fairness violations. The Respondent construes this claim as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel and that the Court summarily dismiss the Applicant's remaining claims with prejudice.

[Signature on the following page.]

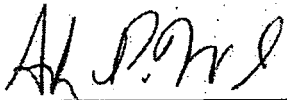
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 15th, 2015.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
)
 JERONICA WILSON, #211823)
)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2014-CP-10-3785

AFFIDAVIT OF SERVICE BY MAIL

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

James K. Falk, Esquire
 3 Broad Street, Ste 450
 Charleston, South Carolina 29401

DATED this 15th day of April, 2015



 Sara B. Moore, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
 3 2014-CP-10-3785
 4
 5

6 JERONICA WILSON,) TRANSCRIPT OF
) RECORD
 7 APPLICANT,)
)
 8 VS.)
) DECEMBER 15, 2015
 9) CHARLESTON, SC
 10 THE STATE OF SOUTH)
 CAROLINA,)
 11)
 RESPONDENT.

12
13 B E F O R E:

14 HONORABLE DEADRA JEFFERSON

15
16 A P P E A R A N C E S:

17 J. RUTLEDGE JOHNSON, ESQUIRE
Attorney for the State

18 JAMES K. FALK, ESQUIRE
Attorney for the Applicant
19

20 * * * * *

21
22 Ruth C. Weese, RDR
23 Official Court Reporter
Ninth Judicial Circuit
24
25

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1 THE COURT: This is Jeronica Wilson
2 versus the State of South Carolina,
3 2014-CP-10-3785. This is an application for
4 post-conviction relief. The offense that went
5 forward was a distribution of cocaine base third
6 2012-GS-10-2582. He was represented by Jason King.
7 There's a typo in the return. It says Jason
8 Anderson. It is Jason King. On February 11th of
9 2014 he entered a plea of guilty before Judge
10 Dennis. He was sentenced to a negotiated ten
11 years. He did not appeal his conviction. I need
12 to know the penalty on a distribution third.

13 MR. JOHNSON: Third is 10 to 30, Your
14 Honor.

15 THE COURT: Day for day, correct?

16 MR. JOHNSON: I don't believe it's day
17 for -- I don't think it's a day for day. I think
18 it's 85 percent.

19 THE COURT: I think -- oh, yeah. I
20 stated it wrong. Once you get up to a crack
21 cocaine third or any kind of third offense it
22 becomes a serious or violent I think, but I'm
23 trying to remember. I think it becomes violent in
24 its classification. Serious, that's what I
25 thought, it was a strike. Mr. Falk, have you

1 explained to your client that the only relief this
2 Court can grant is a new trial?

3 MR. FALK: Yes, I have, Your Honor.

4 THE COURT: Have you explained to him
5 he then risks going back to the maximum penalty
6 which is the 30 years versus the great deal his
7 counsel worked out for him of ten years on a
8 negotiated plea?

9 MR. FALK: Yes, Your Honor.

10 THE COURT: And have you also -- were
11 there any charges that were nolle prossed as a
12 result of this plea?

13 MR. FALK: No, Your Honor.

14 THE COURT: He didn't have any other
15 pending charges that were dismissed? This was the
16 only charge that was pending?

17 MR. FALK: Yes.

18 THE COURT: Mr. King; is that accurate?

19 MR. KING: That's correct, Your Honor.

20 THE COURT: What is his record? Do we
21 know?

22 MR. JOHNSON: Yes, ma'am. We have got
23 a 1998 ABHAN, 2007 PWID cocaine and 2007 PWID
24 cocaine and possession of cocaine out of Georgia.
25 That would be the two predicate offenses to get him

1 to a third, Your Honor.

2 THE COURT: Knowing that does he still
3 wish to go forward with the application, Mr. Falk?

4 MR. FALK: Yes, Your Honor.

5 THE COURT: Mr. Falk, when addressing
6 the Court I need you to stand, sir. If you would
7 stand, sir, for me and raise your right hand to be
8 sworn.

9 JERONICA WILSON

10 Having been duly sworn, testifies as follows:

11 THE COURT: You can put your right hand
12 down. Sir, state your name for the record.

13 THE APPLICANT: Jeronica Wilson.

14 BY THE COURT:

15 Q. Mr. Wilson, how old are you?

16 A. Forty.

17 Q. How far did you go in school?

18 A. GED.

19 Q. And when were you committed to the
20 Department of Corrections on this sentence?

21 A. February 11th, 2014.

22 Q. And did you have any good time credit?

23 A. No.

24 Q. Predetention time that you had served
25 in jail?

1 A. I think 78 days.

2 Q. How many?

3 A. Seventy-eight days.

4 Q. Now, has your lawyer explained to you
5 that the only relief this Court can grant on a
6 post-conviction relief action is a new trial?

7 A. Yes, he has.

8 Q. Do you understand that if you were to
9 get a new trial that you would basically start from
10 scratch?

11 A. Yes, I do.

12 Q. Do you understand you would then face
13 the penalty range of 10 to 30 years and/or a
14 \$50,000 fine?

15 A. I do.

16 Q. And do you understand that your penalty
17 could then increase from the substantial negotiated
18 plea, the benefit that you received of a ten-year
19 sentence?

20 A. I do.

21 Q. You also understand that you will lose
22 any time that you have served at the Department of
23 Corrections?

24 A. I do.

25 Q. And knowing that you still wish to go

1 forward?

2 A. Yes.

3 THE COURT: You may take your seat.

4 Mr. Falk, are you ready to proceed?

5 MR. FALK: We would call Mr. Wilson.

6 THE COURT: I asked a question. Are
7 you ready to proceed?

8 MR. FALK: Yes, Your Honor.

9 THE COURT: Mr. Johnson, are you ready
10 to proceed?

11 MR. JOHNSON: Yes, Your Honor.

12 THE COURT: Mr. Falk, you may proceed.

13 MR. FALK: Your Honor, my client has
14 filed an amended PRC application.

15 THE COURT: Well, he can't file an
16 amended PRC application. You can file one on his
17 behalf.

18 MR. FALK: On his behalf I have filed
19 an amended PCR application.

20 THE COURT: When did you file it?

21 MR. FALK: In October.

22 THE COURT: It should be here in the
23 file. I have it.

24 MR. FALK: I just wanted to make sure.

25 THE COURT: I do and I appreciate you

1 making sure that I have it. Whose going to be your
2 witness?

3 MR. FALK: Mr. Wilson.

4 THE COURT: Sir, I would remind you you
5 are still under oath. You may proceed.

6 MR. FALK: I call Mr. Wilson to the
7 stand.

8 THE COURT: I have already sworn him.
9 He can testify at counsel table.

10 MR. FALK: Your Honor, my client has
11 some documents that he wanted to refer to. Would
12 it be possible for him to be unshackled?

13 THE COURT: I don't interfere with
14 security. He shouldn't really have a need to have
15 the documents. You're his lawyer and you should be
16 able to ask him questions and he should be able to
17 respond to them. There aren't many -- this is a
18 guilty plea, so the scope is very limited on
19 post-conviction relief action. This case is not
20 going to be retried.

21 MR. FALK: Yes, Your Honor.

22 THE COURT: You may proceed.

23 THE APPLICANT: May I address the
24 Court?

25 THE COURT: No, sir. Your lawyer is

1 here. He will ask you the questions.

2 MR. FALK: Mr. Wilson --

3 THE COURT: If you feel the need to ask
4 me any questions after that then you will be
5 allowed to. You may proceed, Mr. Falk.

6 DIRECT EXAMINATION

7 BY MR. FALK:

8 Q. Mr. Wilson, would you please state your
9 grounds for PCR relief?

10 A. Ineffective assistance of counsel,
11 Brady violation, jurisdiction matter and
12 involuntarily guilty plea.

13 Q. And so when you say --

14 MR. JOHNSON: Your Honor, I'm going to
15 object to the Brady violation. I don't see --

16 THE COURT: Let me get clarity. If
17 there was a Brady violation it would have to be
18 within the context of ineffective assistance. In
19 other words, his lawyer failed to raise it.
20 Otherwise it is a direct appeal issue and it can't
21 be addressed. As regard -- there was something
22 else that he just said.

23 MR. JOHNSON: Jurisdictional.

24 THE COURT: The jurisdiction would have
25 to be within the context of his lawyer failing to

1 raise it. But as we know, an indictment is only a
2 notice document. So if it's in that context I
3 think we know what we are dealing with. You may
4 proceed, Mr. Falk.

5 BY MR. FALK:

6 Q. Mr. Wilson, did you alert your counsel
7 that you thought there were problems with any of
8 the discovery that had been provided?

9 A. Yes. I requested my Rule 5 material.
10 Upon looking at my Rule 5 material I noticed that
11 it wasn't enough documents explaining officers
12 handling of controlled substances.

13 Q. What were your concerns about the
14 officers handling of the controlled substances?

15 A. Well, initially there was no
16 documentation concerning what the officer done with
17 it or how it got into the evidence or nothing. It
18 was nothing for me to look at to see as far as to
19 tell how it got into evidence. The weight changed.
20 There was a weight change. There was no
21 documentation concerning like the protection
22 against tampering or nothing of that nature. Plus
23 the custody report that was given to me was
24 something like five months after the initial date
25 of this and so all that brought concern to me.

1 Q. And what specifically were your
2 concerns?

3 A. Basically there wasn't enough
4 documented evidence in regards to the handling of
5 the controlled substance.

6 Q. And are you referring to what you
7 believe are obligations under South Carolina Code
8 Section 44-53-120, duties of state law enforcement?

9 A. Yes, I am.

10 Q. And specifically what do you feel that
11 under that statute they were obligated to do?

12 A. Well, if you -- it's hard for me to do
13 without that document. Section 44-53-120 SLED was
14 delegated authority to promulgate procedures for
15 the handling of the controlled substance.

16 Q. You would be referring to 44-53-120
17 section --

18 A. Subsection five.

19 Q. Where it says SLED -- with regards to
20 handling of controlled substances, SLED shall
21 promulgate regulations to provide uniform
22 procedures for the seizure, inventory, reporting,
23 auditing, handling, testing, storage, preservation
24 for evidentiary use and destruction of other lawful
25 disposition of controlled substances. Are you

1 talking about the regulations that SLED is supposed
2 to promulgate?

3 A. Yes, sir.

4 Q. Are you aware of the regulation South
5 Carolina Code Section 73-72?

6 A. Yes, sir.

7 Q. And did you have concerns under that
8 code section?

9 A. Yes, I have a lot of concerns. I mean
10 initially I didn't know about the regulations. I
11 didn't discover regulations until after the fact.
12 My initial concern was just based off of common
13 sense just looking at it. I couldn't tell exactly
14 what was done with it. So I made my complaint just
15 off common sense just looking at the documents and
16 not being able to tell. At that time I asked if he
17 would suppress it based off of that issue.

18 Q. Are you referring to subparagraph C or
19 paragraph C of that regulation where it says that
20 records created and maintained by state law
21 enforcement agency on secure electronic information
22 management systems may be substituted for any
23 written record required in this article except for
24 a certificate of proof of chain of physical
25 custody?

1 A. No, I am going back to the original
2 which is 73-72. And I have a declaratory judgment
3 from SLED.

4 THE COURT: Mr. Falk, if you can speak
5 up, please. The court reporter is having a little
6 bit of trouble hearing you. You may continue your
7 answer, sir.

8 THE APPLICANT: I have a declaratory
9 judgment from SLED I would like to present to the
10 Court establishing 73-72 of the regulations and
11 it's letting you know that does apply and under
12 those regulations what it does is requires that the
13 law enforcement officials create a written record.

14 THE COURT: Sir, I am aware of what the
15 statute requires. I am well aware of what it
16 requires in the form of chain of custody and that
17 would not have been shown unless you went to trial.
18 And so I'm certain Mr. King will probably address
19 what was provided in the Rule 5 discovery. You may
20 proceed with your question.

21 BY MR. FALK:

22 Q. Did you raise your concerns with Mr.
23 King about the --

24 A. I didn't address that issue.

25 THE COURT: No, sir. You need to

1 answer the question that your lawyer asked you.
2 There's no hybrid representation. The Court is
3 well aware of what the statute requires. I don't
4 need you to provide me with a copy of the statute.

5 THE APPLICANT: The thing I am trying
6 to represent is towards the chain of custody.
7 Actually that's an element of the crime. It's the
8 element of the statute.

9 THE COURT: I am well aware of what --
10 it's not element of the crime. It's an element of
11 the statute. Let your lawyer represent you. Let
12 him ask you questions. Mr. Falk, ask him questions
13 and have him answer the questions.

14 BY MR. FALK:

15 Q. Did you raise these concerns before
16 trial with your counsel?

17 THE COURT: Sir, you need to answer the
18 question. It's a yes or no question.

19 THE APPLICANT: Yes, I did raise these
20 concerns with my counsel.

21 BY MR. FALK:

22 Q. And did you have a concern that there
23 was no proper analysis of the crack cocaine?

24 A. What I had -- it wasn't a problem with
25 the analysis. I felt like it wasn't fair due to

1 the fact that I had to depend on just the officer's
2 word as to how the substance was handled. So based
3 on that I wanted a trial at the time. So I felt
4 like I couldn't get a fair procedure had I gone to
5 trial just relying on an officer's word and that's
6 why I felt like it should have been suppressed.
7 That was my initial concern. At that time of my
8 plea I had no knowledge of the analysis. I had no
9 knowledge of proving of the facts that the
10 substance was an element of the crime. I didn't
11 know about these things.

12 Q. Okay. So did you ask -- for a
13 suppression hearing?

14 A. Yes, I requested that my counsel file a
15 -- that he file for suppression. I have the letter
16 I actually wrote him. I have correspondence that
17 was between us. I have all that right here of
18 what's my concern. I also wrote him and asked him
19 to have it suppressed. I haven't had no response.
20 Mr. King wasn't the person that represented me. It
21 was Victoria Anderson of the public defender's
22 office; most of the correspondence was between me
23 and her. I had everything that she wrote back.

24 Mr. King didn't come until later in the
25 process. I did make him aware of my concerns.

1 First day I met him my exact words to him were I
2 feel like I told her about these issues and I feel
3 she's blowing me off. Based off of her
4 investigation he was like well, he agreed with her
5 and she fully did an investigation. So I was
6 persistent about it, you know? I was like we going
7 to trial. I was very persistent about him looking
8 into the documentation concerning the evidence.

9 So finally he did go look into it. He
10 comes back to me. He says well, there's no
11 documentation concerning the evidence. I voiced
12 concern to begin with. I said it should have been
13 documents. No reason -- I had issues about the
14 document as is right then. But at that time he
15 advised me that it was admissible.

16 So based on that, but I still wanted to
17 proceed to trial on February 11. I was prepared
18 for a trial. That's when we had our conversation
19 outside the courtroom. He told me it was his
20 belief if I went to trial that I would be found
21 guilty. I asked him did you file a suppression
22 motion. At the time he told me he didn't file a
23 suppression motion because he didn't feel a
24 suppression motion was warranted. He told me he
25 felt like if I did go to trial that I would be

1 found guilty. I mean based on that I just took the
2 plea.

3 Q. And so prior to taking the plea you
4 asked him that you wanted to seek to have the
5 evidence suppressed?

6 A. I have the document right here. That's
7 why I was asking the Court to present the evidence
8 documenting the correspondence that I had between
9 him. I wrote him everything -- basically
10 everything I told my lawyer I got it in writing. I
11 made sure and I got the response to it and
12 everything.

13 Q. And is the reason why then you felt
14 that you were forced into the guilty plea because
15 your -- you still entered a guilty plea?

16 A. Yes.

17 Q. And do you feel -- are you claiming
18 that that plea was not made voluntarily?

19 A. No. I mean had he had it properly
20 prepared I would have never took the plea. I was
21 prepared to go all the way through the trial. I
22 found out he didn't file a suppression and it was
23 other issues like he couldn't exactly tell me who
24 we were up to testify against regards to chain of
25 custody. I have two sets of documents that had two

1 different sets of people involved. I couldn't get
2 a clear picture of who I was going to trial
3 against. That became the issue, too, that we
4 talked about. I was asking him to tell me exactly
5 who was it that it was going to be that the state
6 was going to say as far as the chain of custody.

7 I have like one incident report and I
8 have chain of custody report plus an analysis and
9 those were the first documents that I received. I
10 complained about those documents. I said that they
11 weren't accurate. I wasn't -- and all of a sudden
12 like right before trial all these documents gets
13 changed, all the witnesses get changed. I'm like
14 who I am up against? Who are we going -- he
15 couldn't really tell me. He was like depending on
16 the solicitor, he said let me go back, see what the
17 solicitor says.

18 So on the morning of trial not only did
19 he not file a suppression motion, he didn't really
20 say who we going up against as far as the State's
21 witnesses.

22 Q. All the documents that you had gotten
23 you got through your counsel, right?

24 A. Yes, sir.

25 Q. So any documents you had your counsel

1 was --

2 A. Yes, sir.

3 Q. -- aware of?

4 A. Yes, sir.

5 Q. At some point during the plea colloquy
6 you were asked whether or not you were satisfied
7 with your assistance of counsel?

8 A. Yes, I was.

9 Q. And what was your response?

10 A. I told the Court yes. At the time I
11 felt -- like I said, I didn't have the knowledge
12 that I have now. I hadn't obtained this knowledge
13 until I got to SCDC and I went to the law library.
14 At that time the only thing that I had was what he
15 told me. So based off what he told me, I trusted
16 my counsel that he had thoroughly investigated my
17 case. The Court asked on several occasions did you
18 investigate this, did you investigate. He said
19 yes. So I was under the same belief as the Court
20 that he had thoroughly investigated this thing
21 fully. So based on that he gave me the advice, I
22 felt like I was getting the best advice there was,
23 I was getting accurate information, so based off of
24 that, I answered the Court yes.

25 Q. Did he ever tell you why he didn't want

1 to file a suppression motion?

2 A. Never really said. He just said he
3 didn't feel like it was warranted. My
4 representation was strange because I would ask
5 questions and he would answer it, but he would
6 never give me a reason behind why he was answering.
7 I am the type of person if he told me something I
8 was going to go to research it. If he told me this
9 was why I am doing something I go right over to the
10 law library and research and make sure that the
11 information was accurate.

12 So when he told me he was basing it on,
13 my belief of the common law practice chain of
14 custody for evidence, that was my belief. I didn't
15 feel like it was accurate. For me it didn't sit.
16 I still didn't accept that. I was like I told him
17 to keep investigating.

18 Q. What information did you ask counsel
19 for that you believe was a Brady violation that was
20 not supplied to you?

21 A. I haven't really gotten into
22 ineffective assistance of counsel to be honest with
23 the Court. I have a lot of documents that I have I
24 would like to represent to the Court. I'm not
25 being allowed to present to the Court in support of

1 what I am saying. And we are moving on. Had he
2 investigated he would have discovered that those
3 reports, the custody report, it's inadmissible
4 under the statute which deals with the
5 admissibility of the evidence and clearly
6 established that the people who handled those
7 substances was handling them according to those
8 regulations. It's right here. That statute
9 clearly established that he had -- that law
10 enforcement had to handle those substances
11 according to the regulations in order for it to be
12 admissible.

13 You have right there two forms that's
14 specifically required by the regulations, the
15 custody form. Those forms were supposed to be
16 complete. Those forms were directly in regards to
17 what I was arguing about the information that I
18 said was lacking. That's what the forms were for.
19 They substitute the forms for custody forms that
20 were presented in there. If you got 73-72 C (2) it
21 is forbidden, the regulations forbids it. So they
22 violated the regulations. They are never supposed
23 to analyze the stuff without those records being
24 created.

25 So that was my whole argument about

1 that ineffective assistance of counsel. The whole
2 thing is he didn't investigate analysis of the
3 substance. He didn't investigate with regards to
4 what it took because had he done it he would have
5 known that the officers had violated SLED
6 regulations and as a result the evidence was
7 inadmissible.

8 Q. What did SLED do to not handle the
9 documents, the evidence properly?

10 A. If you look at those two forms,
11 initially as you can see I was only provided two
12 documents. That's page 12 and 13 which is right
13 there. That's the report. You pull out the
14 regulations, you look at 73-72, those were reports
15 right there that was required by the regulations.
16 They substituted them. That violated the
17 regulation. The regulation clearly established
18 73-72 C (2) that you can't substitute those forms
19 for any computer generated form. Had he
20 investigated he would have known those were
21 inadmissible.

22 Q. So what you're saying is that you were
23 -- as part of your discovery you received this
24 chain of custody form which is Bate stamped
25 LMCR512?

1 A. Yes, sir.

2 Q. And that's a chain of custody report
3 that you had got?

4 A. Yes, sir.

5 Q. And you're saying that they should have
6 used a chain of custody form?

7 A. By law they were required to. If you
8 go back to the regulation again, look under --
9 73-80 which was the duties of law enforcement
10 officials, it clearly established that that form
11 has to be used. They violated the regulations when
12 they clearly established -- that evidence should
13 never be submitted for analysis unless under 73-90
14 (G) of the regulations tells them that it should
15 never be admitted into analysis unless those forms
16 are coming in.

17 MR. JOHNSON: Your Honor, I am going to
18 object at this point. First of all, it seems to be
19 incoherent rambling. Second of all, any police
20 conduct is a direct appeal issue. I know he is
21 trying to form it as ineffectiveness assistance of
22 counsel for that failure to investigate; however,
23 he is stating nothing but police conduct or what
24 they did or did not do, so I would object as to
25 relevance.

1 THE COURT: I think he has fully
2 covered that issue. You need to move on. I'm
3 clear what he is asserting in that regard. And he
4 is repeating himself. He said it four ways just
5 differently.

6 THE APPLICANT: May I address the
7 Court?

8 THE COURT: No, sir, you may not. I
9 have sustained the objection. I have given your
10 counsel direction. Ask the next question.

11 BY MR. FALK:

12 Q. You are talking about a Brady
13 violation?

14 A. Yes, I talked about that. Can you pull
15 out the documents?

16 Q. While I am pulling out the documents
17 can you just --

18 A. I need the documents to reference the
19 matter. We need this stuff.

20 Q. You have got to testify --

21 THE COURT: Mr. Falk, you need to
22 represent your client. If there were documents he
23 wanted you to share you should have had those to
24 share before today. He doesn't direct his
25 representation. You do. So you need to ask him

1 germane questions and ask him to answer. But I'm
2 not going to have this sort of circle we are going
3 in right now with him trying to direct how you
4 represent him. You know the elements of the PRC
5 claim. I have no doubt that you are going to
6 zealously represent him and advocate for him and I
7 need you to do your job as a lawyer and ask the
8 questions and stop allowing him to sort dominate
9 you instead of doing what you know you need to do
10 in representing him.

11 If there's anything else that he needs
12 to share at the end of this testimony I'll allow
13 you to go over that with him. Right now it's
14 become sort of a circular situation where we are
15 sort of going over the same thing over and over. I
16 need you to ask him the questions that are germane
17 to his application so that we can get to the root
18 what he wants to assert regarding his counsel.

19 Q. So you requested additional documents
20 related to the chain of custody?

21 A. During the representation like I had
22 said earlier, I was given the additional documents.
23 You have the two documents. At some point in time
24 Mr. King said he would look into the issue and see
25 what was going on with the documentation. But when

1 he went to look into the issue what happens is he
2 come back with a whole new set of documents that he
3 presented, these documents. I wasn't aware of the
4 regulations at the time in regards to these
5 documents. So what happened next is I look over
6 these documents. I realize that the -- Your Honor,
7 I can't -- I am sorry.

8 THE COURT: Sir, I need you to answer
9 the questions that Mr. Falk asks you.

10 THE APPLICANT: I can't because he is
11 not --

12 THE COURT: It's not his job for you to
13 direct him. It's his job to assess your PCR and
14 ask you the appropriate questions. You are not
15 representing yourself. You do not direct the
16 questioning. I need you to listen very carefully
17 to Mr. Falk's questions and I need you to answer
18 them to the best of your ability. And if you
19 listen to what he asking you, it is beneficial to
20 you. So I would strongly suggest that you answer
21 his questions.

22 THE APPLICANT: He is --

23 THE COURT: Mr. Falk, ask the next
24 question. He has to assess what your issues are
25 and what is viable before the Court. Mr. Falk, if

1 you would please answer -- ask the next question so
2 that Mr. Wilson can answer it.

3 BY MR. FALK:

4 Q. Were you provided this documentation
5 that I am showing you here?

6 A. Yes, I was.

7 Q. And when were you provided that
8 documentation?

9 A. Like 18 months into my proceedings.

10 Q. Can you tell the Court what your
11 concerns are with this documentation?

12 A. Changed all the information. They
13 completely changed the documents.

14 Q. Can you say specifically what they
15 changed about the document?

16 THE COURT: That's a direct appeal
17 issue. I need to hear that within the context of
18 what his lawyer failed to do. Either he -- this is
19 about ineffective assistance of counsel. About Mr.
20 King's performance. It's not about the case in
21 general.

22 Q. Did you raise these issues with the
23 change in the documentation with Mr. King?

24 A. Yes, I did -- no, we didn't address
25 those issues at the time. I didn't have an

1 understanding what it was. It all goes back to the
2 original documents. Like I said, I raised the
3 issues initially concerning things about the
4 documentation of the evidence and things that were
5 lacking in the documentation. Initially when I
6 raised the issues I raised the issue that there
7 were no signatures in the document, that there was
8 no documentation in them handling, how they
9 handled, the tampering issues.. So all this stuff
10 was missing.

11 So now later down the line what happens
12 is that I get these documents and these documents,
13 what happens is everything that I complained about
14 initially is now covered in these new documents.
15 Every issue that I presented in every letter,
16 everything I was missing 18 months later, a month
17 before we start the trial, all these documents --
18 the document has all the stuff, this information in
19 it. And also changed all of the witnesses. When
20 he initially told me that the document he was going
21 to get substituted, he told me it was due to a
22 case. So I never looked at it. Once I got an
23 understanding for what it was and I looked at the
24 documents I realized they changed up the whole
25 thing. The chain of custody, the chemist, they

1 even did a new incident related report on it.

2 Q. So he was aware of these before your
3 trial?

4 A. Yes, I made him -- how aware he was as
5 far as what they were doing I can't say. I can't
6 answer how aware he was now. I won't sit here and
7 say he knew about it, I can't honestly say that.

8 Q. Your concern was that you were going to
9 -- you were forced to go to trial when you didn't
10 think your counsel was prepared?

11 A. Yeah, that was my concern.

12 Q. Did he show you the change in the
13 quantity of the drug seized, the weight was then
14 moved to .27 grams?

15 A. Your Honor, I would like at this time
16 to ask for a continuance. He was not prepared.

17 THE COURT: No, sir. He is prepared.
18 I am not granting a continuance and you need to
19 answer the question.

20 THE APPLICANT: My case is not being
21 presented. This is not what my case is about.

22 THE COURT: Sir, when the Court is
23 speaking you do not speak.

24 THE APPLICANT: I am asking permission
25 to speak.

1 THE COURT: No, sir. There's not going
2 to be a continuance and you need to answer the
3 questions that Mr. Falk is asking of you.

4 BY MR. FALK:

5 Q. Did you have concern that the weight
6 changed in the -- from when it was originally
7 seized?

8 A. Yes, that was one of my concerns.

9 Q. Was it .4 grams, then went to .27
10 grams?

11 A. It went from .4 to .3 then to .27. It
12 was just all over the place.

13 Q. And did you have an opportunity to ask
14 counsel what the value -- did you discuss the
15 change of the weight with your counsel?

16 A. They didn't want to talk to me about
17 that stuff. I mean those are conversations that I
18 couldn't have. When I would bring up stuff like
19 that they didn't want to speak about those types of
20 things when I would bring it up. It was always
21 take a plea. Wasn't never about an investigation
22 or let's look into the case and see what this is or
23 what that is. Just wasn't that.

24 Q. You were concerned that your counsel
25 was not ready to cross-examine the chain of custody

1 witnesses?

2 A. It wasn't about him not able to -- the
3 whole issue was that he should have filed a
4 suppression motion. That was my issue. That goes
5 back to the ineffective assistance of counsel. He
6 failed to investigate, failed to investigate the
7 facts surrounding the handling of the documented
8 substance. He failed to file a suppression motion.
9 That was my next request after asking him to
10 investigate the handling of the documents. I asked
11 him to file a suppression motion. He didn't do it.
12 Had he filed a suppression motion as a matter of
13 law it would have been suppressed. That was my
14 issue. And under the statute it would have been
15 suppressed.

16 Q. Did he advise you that you could still
17 file for your suppression motion after your plea?

18 A. No, you can't file a suppression motion
19 after a plea. I was well aware of that. The fact
20 was he wasn't prepared. I wasn't going to trial
21 with someone who is not prepared. We weren't on
22 the same page. We were having problems during our
23 representation. I would bring issues to him. He
24 wouldn't explain things to me. I just wasn't
25 satisfied with the representation. Like couple

1 minutes before I went into the courtroom I was
2 going to bring it to the judge's attention. His
3 exacts words to me is it ain't going to make sense
4 because he is going to think you are trying to get
5 out of going to trial. That's the only reason I
6 didn't say nothing about the matter.

7 I mean in hindsight it didn't make
8 sense because at the time I didn't know about these
9 regulations. I couldn't go in front of the judge
10 and point out exactly what was going on. The whole
11 representation, I have a problem with the whole
12 representation. I have documented evidence right
13 here showing that establishes that I had problems
14 with the representation. I have letters to his
15 superior telling him that I wasn't receiving a
16 level of representation that was constitutionally
17 required of Mr. King. This is the issue. In these
18 letters I explained exactly what it is that I felt
19 he wasn't acting in a role as an advocate for me.
20 He didn't do these things. I would present issues
21 that came about with the State's case. He had this
22 issue. Then next thing I am getting new
23 documentation that fixes the issue.

24 MR. JOHNSON: Objection. This is
25 non-responsive, Your Honor.

1 THE COURT: Mr. Falk, it seems that you
2 have already asked and answered all these
3 questions. You're sort of asking him the same
4 things again.

5 MR. FALK: I have no further questions.

6 THE COURT: Would the State like to
7 cross-examine the witness?

8 MR. JOHNSON: Yes, Your Honor. May it
9 please the Court.

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION

12 BY MR. JOHNSON:

13 Q. Mr. Wilson, I believe you had ample
14 opportunity to explain yourself so all I need out
15 of you are yes or no questions; is that understood?

16 A. Yes.

17 Q. Thank you very much. You first stated
18 that you did not have a very good relationship with
19 Mr. King; is that correct?

20 A. Yes, sir.

21 Q. Hadn't he represented you in the past?

22 A. Yes, sir.

23 Q. And he actually got you acquitted of
24 ABHAN charges?

25 A. Yes, sir.

1 Q. And you also stated you didn't know any
2 of this documentation or the regulation until after
3 you pled guilty, right?

4 A. Can you repeat that question?

5 Q. All these regulations that you
6 presented and all this new documentation, you
7 didn't understand all that stuff until after the
8 plea, correct?

9 A. Correct.

10 Q. This isn't your first rodeo in the
11 criminal justice system, is it?

12 A. No, sir.

13 Q. Certainly not your first drug charge?

14 A. No, sir.

15 Q. You also state he didn't ask for a
16 suppression motion and didn't challenge the weight
17 differential in the drugs; is that correct?

18 A. I didn't say that about the weight
19 difference. I said he didn't challenge the
20 documents. He didn't challenge the handling of the
21 documents or the handling. That was just one of
22 the issues with the documents. My whole thing was
23 there wasn't enough documentation concerning the
24 handling of the substance.

25 Q. Understood. You felt that because of

1 this lack of challenging you didn't have a choice
2 to go to trial -- to take a plea, right? Yes or
3 no. Did you not testify on direct examination that
4 you felt forced into --

5 A. Repeat that. That was one of the
6 reasons I felt --

7 Q. If you let me finish the question I'll
8 get it out.

9 A. Right.

10 Q. You testified on direct examination
11 that you felt threatened and forced to take a plea
12 because counsel was not prepared for a trial,
13 correct?

14 A. Yes.

15 Q. Okay. Now, you remember pleading
16 guilty in this case, correct?

17 A. Um-hmm.

18 Q. And you wanted the Court to accept your
19 plea because you were offered the minimum of your
20 charge, correct?

21 A. Yes, sir.

22 Q. You were explained the elements of the
23 crime by the Court, correct?

24 A. No, they didn't explain the elements of
25 the crime to me.

1 Q. Did you not agree with the Court that
2 your counsel has explained the elements of the
3 crime to you?

4 A. Yes.

5 Q. And that you wanted to plead guilty in
6 this case?

7 A. Yes.

8 Q. And that the Court read to you your
9 constitutional rights, including the right to a
10 jury trial, right to remain silent, the right to
11 confront your witnesses, correct?

12 A. Yes.

13 Q. You waived all those rights, correct?

14 A. Yes.

15 Q. And that it was your decision to waive
16 the rights, correct?

17 A. Yes.

18 Q. And you were not under the influence of
19 any alcohol or drugs?

20 A. No, sir.

21 Q. And that you had no mental or emotional
22 issues during the plea?

23 A. No, sir.

24 Q. And that there were no other promises
25 to get you to plead guilty, correct?

1 A. Your Honor --

2 THE COURT: Sir, answer the question
3 yes or no.

4 THE APPLICANT: I don't feel like
5 continuing this --

6 THE COURT: Sir, answer the question
7 yes or no and then you may explain your answer.

8 THE APPLICANT: What's the question?

9 BY MR. JOHNSON:

10 Q. Is that there were no other promises to
11 get you to plead guilty in this case?

12 A. No.

13 Q. And as a matter of fact, you were on
14 video and audio selling crack cocaine to an
15 undercover cop, correct?

16 A. I'd rather not answer that question in
17 case there's --

18 THE COURT: Sir, you waived everything
19 when you filed this PCR. So you need to answer the
20 question yes or no. Either the video and audio
21 exists or it doesn't.

22 THE APPLICANT: I haven't even been
23 given the chance to present my case properly.

24 THE COURT: Sir, answer the question.

25 THE APPLICANT: Yes.

1 BY MR. JOHNSON:

2 Q. And you agreed with the facts as
3 presented by the State during your guilty plea,
4 correct?

5 A. Huh?

6 Q. I said that you agreed with the facts
7 as presented by the State in your guilty plea,
8 correct?

9 A. Yes.

10 Q. You were under oath during the guilty
11 plea, correct?

12 A. Yes.

13 Q. Just like you are here today, right?

14 A. Yes.

15 Q. Okay. And that you fully understood
16 the Court's questions and you have been truthful,
17 right?

18 A. Yes.

19 Q. And you said you were satisfied with
20 counsel during that guilty plea, correct?

21 A. Yes.

22 Q. And apparently now you're not, correct?

23 A. Based on the new information. At the
24 time all I had to go off was what counsel had let
25 me be aware. I wasn't knowledgeable of the law to

1 determine whether or not he had fully represented
2 me. I mean now I understand that he didn't fully
3 investigate, so, no, in hindsight no, I wasn't -- I
4 am not. Then knowing what I knew I felt yeah, but
5 now knowing that he didn't do what he was supposed
6 to do, no, I'm not satisfied with him.

7 Q. And so I again direct you to the
8 question that it's not your first time in the
9 criminal justice system, is it?

10 A. No, it ain't.

11 Q. With drug changes?

12 A. No, it ain't.

13 Q. So you have had ample opportunity to
14 research this prior to your guilty plea, yes or no?

15 A. No.

16 Q. How old are you?

17 A. Forty.

18 Q. And so you stated under oath that you
19 were totally satisfied with counsel, correct?

20 A. Yes, at the time I believed he done
21 what he was supposed to do.

22 MR. JOHNSON: No further questions,
23 Your Honor.

24 THE COURT: Any redirect?

25 MR. FALK: No, Your Honor.

1 THE COURT: Any further witnesses from
2 the applicant?

3 THE APPLICANT: Your Honor, may I
4 address the court?

5 THE COURT: No, sir, you may not. Any
6 further witnesses from the applicant, Mr. Falk?

7 MR. FALK: We will call Mr. King.

8 THE COURT: Mr. King, if you would come
9 to the stand to be sworn, please.

10 JASON KING

11 who, after being first duly sworn, testified as
12 follows:

13 THE CLERK: Please state your first and
14 last name and spell your last name loudly and
15 clearly into the microphone.

16 THE WITNESS: Jason King, K-I-N-G.

17 THE COURT: You may proceed, Mr. Falk.

18 DIRECT EXAMINATION

19 BY MR. FALK:

20 Q. Mr. King, you represented Mr. Wilson in
21 this case?

22 A. Yes.

23 Q. At any point did he express a concern
24 about the evidence in this case?

25 A. Yes, he did. He was preoccupied with

1 the chain of custody for I would say the whole
2 representation. Specifically, the chain of
3 custody.

4 Q. And were some of those issues about the
5 chain of custody that he didn't think that SLED had
6 proper documentation?

7 A. Well, SLED was not involved in the
8 case. It was done by a local lab by the local city
9 police department so SLED didn't do the testing in
10 this case. But his concern was with handling of
11 the evidence, yes, by the chain of custody with our
12 local police department.

13 Q. What did you do to investigate this
14 chain of custody?

15 A. I went down to the police station with
16 the solicitor to view the evidence. And when I
17 first started they had a BEST kit and the police
18 officer would sign a tag. They would sign in and
19 out. It was sort of a written documentation. And
20 the lawyer before me, Ms. Anderson, had requested
21 chain of custody documents and she had gotten
22 screen shots which look like where they had been
23 entered into a computer. When Ms. Anderson left
24 and I got the case I went down to the police
25 department to view the evidence and it turns out

1. that they do it electronically now. So I talked to
2. them about how it works.

3. Actually you get a better understanding
4. of how the chain of custody works and how the
5. evidence room works and I got a printout of the
6. signatures because Mr. Wilson, what he had mainly
7. wanted was to see where signatures were, where
8. these people in the chain of custody had signed
9. something, some sort of proof that there was a
10. chain. So I got a printout from the evidence room
11. at the police department that showed the signatures
12. and provided those to Mr. Wilson.

13. So I went down there to the police
14. station to investigate the chain of custody.

15. Q. Did you review the regulations that Mr.
16. Wilson testified to earlier?

17. A. No.

18. Q. And why was that?

19. A. I'm not sure what regulations they are.
20. I didn't review any regulations regarding SLED or
21. the local police department.

22. Q. Beg your pardon?

23. A. I did not review any regulations. I'm
24. not exactly aware of the regulations you are
25. talking about. I heard a little of it, but didn't

1 understand it completely.

2 Q. Did you review SLED's obligations under
3 South Carolina Code Section 44-53-120?

4 A. No. SLED was not involved in the case.

5 Q. Is that the reason why you did not?

6 A. Yeah, I guess. I wouldn't have
7 investigated anything with SLED if SLED wasn't
8 involved in the case.

9 Q. He asked for a suppression hearing?

10 A. He may have wanted me to try to get the
11 drugs suppressed. I didn't really have any grounds
12 pretrial. If we had gone to trial I would have
13 made the motion when the State tried to introduce
14 the drugs, but pretrial I didn't really have any
15 grounds at the time to make a motion at pretrial.

16 Q. If there would have been problems with
17 the chain of custody would that have been grounds
18 for a suppression hearing?

19 THE COURT: Could you repeat the
20 question? I didn't hear it completely.

21 Q. Do you believe if there was problems
22 with the chain of custody on the drugs that would
23 have been grounds for a suppression hearing?

24 A. Depends on what the problems were,
25 possibly.

1 Q. If there were missing signatures?

2 A. I don't know about pretrial. I would
3 have -- what I would have done is as the case
4 progressed during the trial when those witnesses
5 testified I would have cross-examined them and when
6 the State went to introduce the drugs into evidence
7 then I would have made the motion. I would have
8 been able to cross-examine the witnesses involved
9 and flesh that issue out.

10 Q. Did you get documentation from the
11 State that the weight of the drugs changed?

12 A. Yes, I believe the field weight of the
13 drugs in the police reports was .4 grams. There
14 were two separate tests of the drugs. The first
15 test came back as .3 grams and the second test was
16 .27 grams.

17 Q. Did you have concerns such a quantity
18 of the evidence, a quarter of the evidence
19 disappeared?

20 A. I did not. I would have made that
21 issue in the trial it disappeared, but that's not
22 unusual from my experience in the system. Normally
23 the field weight in my experience always seems to
24 be higher than what the lab weight tends to be.
25 And that could be because the police weigh it with

1 packaging. I had one case where the chemist dried
2 the drugs before they weighed it and it was water
3 weight that changed it. So it wasn't unusual for
4 me see to field weight from .4 grams go down to .3
5 grams as the lab weight. I have seen discrepancies
6 in the amount of grams. I have had cases where the
7 field weight was greater than ten grams in a
8 trafficking case and then comes back less than ten
9 grams when it is no longer trafficking. I have had
10 it be off by several grams before. Even argued
11 that in a trial.

12 In that trial it turns out the chemist
13 said that she had dried the drugs and it was their
14 explanation was that the water had evaporated. But
15 seeing that small of a discrepancy from .4 to .3
16 was not unusual. The .3 to .27 would have been
17 there has to be some quantity used in the test so
18 of course I think that if it's tested a second time
19 the second quantity is going to be a little bit
20 lower than the first quantity.

21 Q. Could that also have raised issues
22 about whether or not that was, in fact, the same
23 sample?

24 A. I would have made that argument in
25 trial. If I would have gone to trial I would have

1 made that argument. I don't think I would have
2 gotten anywhere with it. I don't think it was a
3 very strong argument or anything that I had to make
4 a pretrial argument on. But if we had gone to
5 trial I would have tried this argument of course.
6 But I didn't think that it was a very good
7 argument.

8 THE COURT: Sir, can you please stop
9 mumbling? If there's something you need to tell
10 Mr. Falk you need to tell him, if there's a
11 question you want him to ask. But I'm not going to
12 have him mumbling during the hearing. It's not
13 appropriate.

14 THE APPLICANT: I have been --

15 THE COURT: Sir, tell Mr. Falk whatever
16 it is you need to tell him.

17 (Attorney confers with client.)

18 THE COURT: Mr. Falk, you may proceed.

19 BY MR. FALK:

20 Q. So you did not investigate whether or
21 not the regulations under the -- the SLED
22 regulations under 44-53-485 would have applied in
23 this case?

24 A. I did not.

25 Q. Okay. So you did not investigate

1 whether or not the regulations promulgated under
2 that were followed in this case?

3 A. No, I did not. I was going by the case
4 law on the chain of custody. My experience with
5 that is it is difficult on the chain issue to have
6 an issue. Generally the Courts are going to uphold
7 the chain of custody. They don't have to bring in
8 every person to testify in the chain if they can
9 prove as far as practicable, but the evidence is
10 the same as what the police turned into the
11 evidence department and demonstrate the manner of
12 handling. Typically they can do that in a trial.

13 There was an issue with the chain of
14 custody that we developed right before trial. It
15 was tested by two different chemists. This was
16 actually a decent issue that we had and Mr. Wilson
17 found with the case law I think the Friday before
18 trial. The first chemist no longer worked there.
19 And they had it tested a second time to have that
20 witness testify, that chemist testify. And Mr.
21 Wilson found a case with a similar issue where they
22 didn't call the first chemist. They called the
23 second chemist. And the Court suppressed the drugs
24 based on that bad chain of custody because they
25 didn't call the particular chemist.

1 In our case we had that issue going
2 forward. We had that potential issue where the
3 State was going to call the second chemist but not
4 the first chemist. I couldn't file a motion to
5 suppress on that issue because if I alerted the
6 solicitor to that issue he would just call the
7 first chemist. So that's not an issue I could have
8 addressed pretrial. It was more if everything went
9 perfectly and the State didn't call the first
10 chemist I could have made that motion. What I
11 worried about is that when that motion was made, if
12 the judge allowed the solicitor to ask them about
13 that first chemist and allowed them to maybe call
14 that chemist. And turns out the chemist was
15 locally available. They had left to go to pharmacy
16 school. So they were in town and the State ended
17 up on the eve of trial subpoenaing that first
18 chemist so that issue -- when that issue went away
19 that was the only real issue that we had and that's
20 when -- I advised him to plea before then,
21 certainly after that I advised him to plead guilty.

22 Q. If the drugs would have been suppressed
23 -- obviously you would have expected an acquittal
24 if you could have suppressed the drugs?

25 A. Yes. If I could have gotten the drugs

1 suppressed I would have tried it. Like I said, if
2 it had gone to trial I would have made my best
3 arguments, but going into the trial I would have
4 not have advised him to go forward on that issue.

5 Q. I have no further questions.

6 THE COURT: Any questions for the
7 witness?

8 MR. JOHNSON: Yes, Your Honor, brief
9 followup.

10 CROSS-EXAMINATION

11 BY MR. JOHNSON:

12 Q. Mr. King, is the reason that you didn't
13 investigate those regulations is that this was not
14 a SLED case?

15 A. That's one reason. I didn't -- I don't
16 know that I have ever investigated regulations.
17 Those particular regulations, I am not familiar
18 with them. I read the case law based on chain of
19 custody and that's what I was basing my decision
20 on.

21 Q. And you just testified that you had
22 previously advised Mr. Wilson to plead guilty. Is
23 it true that he had other lesser offers in this
24 case?

25 A. Yes. When I became involved with the

1 case he was represented by Victoria Anderson. I
2 became involved because he felt he didn't really
3 trust Ms. Anderson. They were having some
4 difficulties. I had some history with Mr. Wilson.
5 I liked Mr. Wilson, represented him back in '07 and
6 I thought maybe I could help. He'd been offered --
7 so I when got involved he had already been offered
8 a two-year offer and rejected that offer.

9 I was sitting with Ms. Anderson when it
10 was almost called for a trial before she left and I
11 believe then he was offered eight.

12 Q. And it was his decision to reject those
13 offers?

14 A. Yes.

15 THE COURT: I am sorry, I didn't hear
16 your last answer.

17 THE WITNESS: He was
18 offered --

19 THE COURT: I heard the part about
20 before the -- you said he rejected a two-year
21 offer. Was there another offer you're saying he
22 rejected?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: I didn't hear that part of
25 the answer.

1 THE WITNESS: We were about to go to
2 trial. I was sitting with Ms. Anderson, it was
3 still her case. I was sitting in and we found out
4 right before trial that there was a search warrant.
5 They had done a search of Mr. Wilson's home. They
6 hadn't found anything, but we hadn't been provided
7 with that. And the trial judge gave a continuance
8 because of that. And on that date he was offered
9 eight and he rejected that. I was not involved
10 with the two-year offer, but I was involved when he
11 was offered the eight.

12 BY MR. JOHNSON:

13 Q. Mr. King, he has eluded to some new
14 documentation that came about. Can you explain
15 that to the Court.

16 A. What I am assuming he is meaning by
17 that is he was wanting the documentation on the
18 chain of custody. The only thing Ms. Anderson had
19 was two screen shots which looked like the computer
20 down at the police station where it would have been
21 entered in.

22 When I went down to that evidence room
23 they gave me a different printout from their
24 electronic system with the electronic signature and
25 I provided that to Mr. Wilson and I believe that's

1 what he was talking about.

2 Q. And did you ever force or threaten him
3 to plead guilty in this case?

4 A. No.

5 Q. Whose decision was it to plead guilty?

6 A. It was Mr. Wilson's.

7 MR. JOHNSON: That's all I have, Your
8 Honor. Thank you.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION

11 BY MR. FALK:

12 Q. So you were aware that there was no
13 written log on the chain of custody, it was all
14 computer generated?

15 A. Right. They were able to print it out
16 for me, but that's right, they were doing it by
17 electronic signatures.

18 MR. FALK: No further questions.

19 THE COURT: Mr. King, in the transcript
20 there's -- Judge Dennis makes reference to a
21 pretrial conference that you all had the day prior
22 to the plea and that there was some interesting
23 issues, my words not his, that were raised during
24 that conference. What issues were raised during
25 that conference and I assume that gave you some

1 direction as to whether to proceed to trial or not?
2 Did you all discuss any of these issues that you
3 have indicated with the Court?

4 MR. WILSON: I can't really remember,
5 Your Honor.

6 THE COURT: In the plea transcript you
7 say to him there were some significant legal issues
8 that you all had discussed in the pretrial the day
9 before the plea. And I believe those were Judge
10 Dennis words, significant legal issues. I was
11 wondering why else y'all would have had a
12 discussion.

13 MR. JOHNSON: What page are you
14 referring to, Your Honor?

15 THE COURT: I am referring to page 8,
16 lines 1 through 25 and page nine, lines 1
17 through 17.

18 MR. JOHNSON: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 THE WITNESS: All I can assume, Judge,
21 would be the chain of custody issues. Those were
22 really -- that was really the only issue in the
23 case. So that's -- I don't have any specific
24 memory what we talked about in a conference with
25 the judge, but I have to assume it was chain of

1 custody.

2 THE COURT: And can I -- is it safe for
3 me to make an assumption that you got some
4 direction that colored your instructions to your
5 client or your advice to your client?

6 THE WITNESS: Possibly. I think it was
7 Judge Dennis.

8 THE COURT: It was Judge Dennis.

9 THE WITNESS: And I have heard Judge
10 Dennis talk about chain of custody. He thinks even
11 the BEST kit itself is strong evidence that the
12 item that was turned in by the police to the
13 evidence room is the same item that is introduced
14 in the courtroom. So I got a sense from him that
15 he wouldn't be -- that he wouldn't grant a chain of
16 custody issue. It would be difficult to argue that
17 with him.

18 THE COURT: Based on the tenure of the
19 transcript I assumed that, but I wanted some
20 clarity. Because normally you have a status
21 conference to get clarity as best you can on some
22 issues to know whether to go forward because once
23 you go forward of course any plea offers would have
24 been withdrawn and so I just needed some clarity on
25 that. Any questions as a result of the Court's

1 questions from the applicant, Mr. Falk?

2 MR. FALK: No, Your Honor.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: None from the State, Your
5 Honor.

6 THE COURT: Any objection to Mr. King
7 being excused from the State?

8 MR. JOHNSON: No, ma'am.

9 THE COURT: From the applicant?

10 MR. FALK: No, Your Honor.

11 THE COURT: Sir, you are excused. Any
12 further witnesses from the applicant?

13 MR. FALK: No, Your Honor.

14 THE COURT: Any further witnesses from
15 the State?

16 MR. JOHNSON: None, Your Honor.

17 THE COURT: Mr. Falk, I will be glad to
18 hear from you.

19 MR. FALK: Your Honor, my client has
20 expressed concerns about the chain of custody in
21 this case and the evidence and that --

22 THE COURT: Sir, I would appreciate it
23 and I am certain the gallery would if you would
24 stop making these exaggerated movements with your
25 body and your facial movements. It's disruptive to

1 Mr. Falk as he tries to make a cohesive closing
2 argument on your behalf. It's distracting to him.
3 I would strongly suggest that you listen to what
4 Mr. Falk is presenting to the Court so that he can
5 appropriately present your matter. Mr. Falk, you
6 may proceed.

7 MR. FALK: You have heard testimony
8 there was no written chain of custody documentation
9 kept in this case. The only chain of custody
10 evidence they had was a computer printout. I call
11 the Court's attention to the record keeping
12 requirements under regulation 73-72 under
13 subparagraph C. It says that the only document
14 that cannot be substituted for by computer
15 generated document would be certificate of proof of
16 chain of custody or control.

17 THE COURT: You understand that that
18 statute refers to another corollary regulation in
19 the statute that deals with not calling witnesses.
20 There's a rule that deals with chain evidence where
21 the State can substitute calling each chain witness
22 for a certificate. That's what that regulation
23 refers to. All of SLED's internal testing as well
24 as the city or any independent lab never has
25 original signatures. They are all computer

1 generated.

2 That regulation refers to when the
3 State makes a decision under the rules to instead
4 of bringing like ten chain witnesses up here or
5 five chain witnesses, the state law was changed to
6 allow them to do a certificate that provides for
7 every person in the chain to provide when the drugs
8 were provided to them, what they did with them and
9 to sign it in an affidavit form. That's what that
10 regulation refers to. It does not refer internally
11 to original signatures. That is an onerous burden
12 that no lab could comply with and in addition to
13 that it would be in violation of every industry
14 standard in handling drugs. There's no way in the
15 world. It's all computer generated. It's all done
16 by computer. In fact, at SLED every piece of
17 evidence has a bar code and it is scanned in by
18 each person as it goes from department to
19 department. No original signatures are provided
20 except on the lab report itself maybe, but the
21 regulation that you are referring to in my best
22 recollection deals with the correlating statute and
23 rules that allows the State to substitute bringing
24 every chain witness in for a report that provides
25 for the chain of custody.

1 But I'm not certain it would even apply
2 to the city lab. But in any event, I don't think
3 it would rise to the level of an impediment on
4 suppression because -- I don't think it would have
5 been successful because I don't think it applies in
6 the circumstance that Mr. Wilson thinks it does.
7 And unfortunately that's what happens when you read
8 statutes in isolation and regulations in isolation
9 because they all are interdependent with one
10 another and they all make reference to other
11 regulations and statutes that are in place.

12 Anything further?

13 MR. FALK: My client certainly
14 expressed to counsel that he wanted to have a
15 suppression hearing and that counsel did not move
16 to suppress the evidence and the counsel testified
17 that had he been successful in suppressing the
18 evidence he would have been assured of an
19 acquittal. So in effect Mr. Wilson was forced into
20 taking a plea of going forward with an -- either
21 going to trial with a trial attorney who was not
22 following his wishes and was not pursuing the case
23 to the best of his ability and was not seeking to
24 get the evidence which admittedly would have been
25 crucial to the case suppressed. And therefore

1 faced with the choice of counsel that he couldn't
2 be assured of going forward with in his best
3 interest he felt compelled and forced to enter his
4 plea.

5 THE COURT: Anything further?

6 MR. FALK: No, Your Honor.

7 THE COURT: Would the State like to
8 respond?

9 MR. JOHNSON: Just briefly, Your Honor.
10 The State would point your attention to the case of
11 Rivers v. Strickland, that's 264 S.C. 121 (1975)
12 which states that a plea of guilty constitutes a
13 waiver of non-jurisdictional defects and defenses
14 including claims of violation of constitutional
15 rights prior to the guilty plea. That's what this
16 boils down to. It's pretty simple. He's claiming
17 they were in violation of this regulation of
18 constitutional rights concerning the chain of
19 custody; however, when he pleads guilty and in his
20 own words today and his own words at the guilty
21 plea he was not threatened or promised. It was his
22 decision to plead guilty. He waived all those
23 non-jurisdictional defects.

24 Counsel also testified that he
25 researched the case law and made his advice to Mr.

1 Wilson based on the case law and in this case so
2 therefore there is no ineffective assistance of
3 counsel. And, further, if there's no ineffective
4 assistance of counsel, there can be no resulting
5 prejudice and we ask you to deny this application,
6 Your Honor.

7 THE COURT: Thank you. Do you have a
8 copy of the regulations that your client has been
9 referring to, Mr. Falk?

10 MR. FALK: Yes, Your Honor.

11 THE COURT: If you could provide that
12 to the Court, please. Sir, I'm going to let you
13 say one sentence to me because that's going to be
14 the extent of it.

15 THE APPLICANT: I haven't had the
16 chance to really put all my issues on.

17 THE COURT: Sir, Mr. Falk has evaluated
18 every issue that's viable and he's presented it to
19 the Court. He directs your representation, not
20 you. He has to make an evaluation of what's viable
21 and what should be presented to the Court in your
22 best interest. And I have read your PRC
23 application and everything that's in that
24 application you have presented to the Court.

25 THE APPLICANT: I amended my

1 application.

2 THE COURT: I read that, too, and you
3 have said everything that's in that application
4 twice, yes, sir.

5 THE APPLICANT: So all of my issues as
6 raised in my application, they are preserved today?

7 THE COURT: Sir, everything that's
8 viable -- I'm going to rule on everything you have
9 raised in your application, but believe me, you have
10 covered it. Two times. Everything that's been in
11 your application you have said it twice or three
12 times actually.

13 THE APPLICANT: I didn't get to speak
14 to my jurisdiction matter. I raised it --

15 THE COURT: Sir, that's a direct appeal
16 issue. That is not an issue that deals -- that's
17 something that should have been raised in a direct
18 appeal and tell me in brief what jurisdiction issue
19 you claim exists.

20 THE APPLICANT: Because how the statute
21 requires that the substance be analyzed and proven
22 as a fact. I have read a case --

23 THE COURT: Sir, you have already
24 raised that about the chain. That's not a
25 jurisdictional issue.

1 THE APPLICANT: It's the evidence. It
2 deals with the evidence.

3 THE COURT: That's not a jurisdictional
4 issue either. Jurisdiction deals with an
5 indictment. It deals with the ability of the Court
6 to hear and to have the authority to dispose of
7 your issues. That's not a jurisdictional issue.

8 THE APPLICANT: Can I at least have you
9 rule on the issue?

10 THE COURT: Sir, I'm going to rule on
11 everything that's been raised. I'm very thorough.

12 MR. FALK: Your Honor, this is the
13 other statute we are referring to. (Handing.) Reg
14 73-80. Says a seasoned officer.

15 THE COURT: It says a written record.
16 That doesn't have to be in handwriting. That can
17 be computer generated. It simply says a written
18 record. That doesn't mean it has be in
19 handwriting. I think that's an overly restrictive
20 reading of that statute.

21 THE APPLICANT: Your Honor, if you look
22 at 73-72 --

23 THE COURT: I just looked at it. It
24 says written record.

25 THE APPLICANT: The substitution of the

1 custody forms which I have here. If you go to
2 regulation 73-80 E --

3 THE COURT: Sir, it's been my
4 experience that the city has all those records you
5 are talking about.

6 THE APPLICANT: What I am saying is you
7 are saying it was a written record. You're correct
8 that it is a written record. There's a certain
9 form that's required.

10 THE COURT: You can have this back.

11 THE APPLICANT: That is required under
12 73-80 E.

13 THE COURT: It's unlikely that that
14 would have been the basis for a suppression. It's
15 unlikely the Court would have granted that, sir.

16 THE APPLICANT: Ma'am, I have the
17 statute.

18 THE COURT: I understand that, but it's
19 still not mandatory and it still does not provide
20 -- it does not provide the basis of a suppression.
21 That's a technicality.

22 THE APPLICANT: Your Honor, I have a
23 statute right here that clearly -- I'm just reading
24 the statute and it clearly tells you that is it an
25 admissibility --

1 THE COURT: Where does it say that?

2 THE APPLICANT: He has it right here.

3 That's what I have been trying to tell him to give
4 it to you. He has it right in his hand.

5 THE COURT: But it still doesn't matter

6 --

7 MR. FALK: It's the one I showed you.

8 THE APPLICANT: I have read it up on
9 this thing too.

10 THE COURT: There's case law that
11 develops all those things.

12 THE APPLICANT: If you look it at it
13 says it's mandatory that they comply with the
14 procedure.

15 THE COURT: They inventoried it. They
16 don't have to do that in writing. They can provide
17 a computer generated report for that. And they do.
18 Every agency in South Carolina does. Nobody does
19 that in hand.

20 Now, I will say I have tried cases with
21 the city and other agencies, but when they come to
22 court they will have their written documentation
23 and those forms that provide when the drugs came in
24 their custody, when they signed off and when they
25 put them in the evidence receptacles. They exist

1 and if called to trial that would have been
2 provided.

3 THE APPLICANT: It was at trial --

4 THE COURT: Sir, you had a chance for a
5 trial and you waived that. You could have gone
6 forward.

7 THE APPLICANT: What I am saying is on
8 the morning I took this plea I was scheduled to go
9 to trial. I was ten minutes away from trial.

10 THE COURT: And the Court was ready to
11 give you a trial.

12 THE APPLICANT: The documents were part
13 of the record.

14 THE COURT: They would have provided
15 them. Mr. King would have asked for them and they
16 would have brought them to court. The officer who
17 was testifying would have had them in their file
18 and they would have brought them to court with them
19 and you would have been provided them at that time.
20 Generally those are not in the solicitor's
21 possession.

22 THE APPLICANT: Right now it is like if
23 you read the regulations it tells you --

24 THE COURT: Sir, you are not listening
25 to what I am saying. The forms -- I am probably 99

1 percent sure those form existed. They don't give
2 them to the solicitor. They bring them to court in
3 their file with them. And they read from it and
4 there's one person that generally handles it and
5 they have the forms that they filled out and
6 generally they don't give them to you until trial.
7 And they would have given them to Mr. King and you
8 would have had them.

9 THE APPLICANT: So the individual who
10 filled out the form they are guaranteeing
11 themselves?

12 THE COURT: Yes, in the police file,
13 generally.

14 THE APPLICANT: So they don't have to
15 pass it along with the substance.

16 THE COURT: Sometimes they do.
17 Sometimes they don't. But they still have it.
18 That computer generation that Mr. King had, it
19 verifies who had it, where it went and how it came
20 into their possession from the time it entered the
21 police department up to whoever took it up to SLED
22 to when it was transported back to the agency for
23 purposes of trial.

24 What you are focusing on is
25 technicality that really would not have amounted to

1 a suppression, I am just saying it in short form.
2 It's rare if ever drugs are going to be suppressed
3 for something like that. And I understand in your
4 mind it's like a big issue, but in terms of a trial
5 issue it's a very minimal issue in a Court's mind
6 because we know those forms exist. We know they
7 can be produced. We know they are generally
8 produced at trial. Most times in my experience the
9 person who they call, if they call everybody in the
10 chain, because they are not required to, usually
11 has the file with them and has all those forms with
12 them.

13 But that really isn't an issue in this
14 PCR because there's certain sort of decisions that
15 you make and you weigh when you give up certain
16 things because it's in your best interest. And
17 under the facts of this case Mr. King negotiated a
18 substantial deal for you. It was clearly in your
19 best interest and what happens is when you make a
20 decision to take a plea then you waive your right
21 to pursue all that other stuff and there's no way
22 to sort of test the water with that and then come
23 back and get your plea. It doesn't work that way.
24 So if Mr. King had pursued it your deal would have
25 gone away. In all likelihood based on this

1 evidence that I see you would have been convicted
2 and you would not have gotten ten years. The deal
3 would have gone away and no court after trial would
4 have given you the minimum sentence.

5 So you would have been in a
6 substantially -- in a situation that was at a
7 substantial deficit to you. And it's not because
8 you would be penalized or punished for having a
9 trial. All judges believe in the process. We
10 believe in advocacy. But once you have a buy on a
11 video and audio and it's been presented to a jury
12 and they find you guilty no Court is going to give
13 you the minimum sentence. It doesn't work that
14 way. That's because the facts have developed
15 themselves, the Court has had the ability to see
16 all of that, then they get to see the entirety of
17 your record. They have had the ability to observe
18 you during the course of what would have been at
19 least a three-day trial. Their disposition of it
20 is going to be totally different than hearing a
21 plea of guilty where your lawyer makes a
22 substantial argument for mitigation on your behalf.

23 And so I have no reservation in saying
24 that what Mr. King did was in your best interest.
25 It was in your best interest as well.

1 THE APPLICANT: At this point I am
2 making sure that all my issues that I --

3 THE COURT: Sir, all your issues have
4 been more than adequately preserved for this
5 record. I have listened very intently. You have
6 made the points of what you wanted to proceed upon
7 and I don't see any of what you have raised as
8 being -- what you were referring to, unless the
9 State had those particular records in their
10 possession, would not have had to have been turned
11 over. And what Mr. King investigated which was the
12 computer generated record that showed every place
13 those drugs had been, he met his obligations going
14 down to the police station, meeting with them
15 individually, seeing what they had in their
16 records, finding out what the chain of custody was.
17 And he is absolutely accurate that he did not want
18 pique his hand to let them know where he was going
19 with it because then they would have just corrected
20 the defect. So that's something that would have
21 had to have been raised at trial. But you had to
22 weigh what risk you were willing to take and it
23 appears from this record that you waived that risk
24 and you decided that the risk of pleading guilty
25 was in your better interest than going to trial.

1 THE APPLICANT: That's one issue. I am
2 more concerned about my Brady issue, my
3 jurisdiction issue.

4 THE COURT: Sir, there is no
5 jurisdiction issue.

6 THE APPLICANT: I would like to have
7 all the records.

8 THE COURT: You have already testified
9 to that three times.

10 THE APPLICANT: How about my Brady
11 issue?

12 THE COURT: You have already testified
13 to that more than three times.

14 THE APPLICANT: We never covered that
15 in my voluntary guilty plea.

16 THE COURT: Yes, we did. He covered
17 all of those questions. You said that Mr. King
18 forced you to plead guilty because he didn't
19 investigate and you made a decision that was not
20 fully informed because you found out information
21 subsequent to the plea.

22 THE APPLICANT: That wasn't all of it.
23 That was --

24 THE COURT: What else was there that we
25 didn't hear?

1 THE APPLICANT: Because I didn't -- I
2 wasn't aware of the elements of the crime.

3 THE COURT: Sir, you said that already.
4 Yes, sir, you did testify to that.

5 THE APPLICANT: That I wasn't aware
6 that that plea was involuntary?

7 THE COURT: You did testify to that.
8 You said Mr. King never went over any of that with
9 you, um-hmm. I have been listening very intently.

10 THE APPLICANT: I just want to make
11 sure that my issues are preserved. That's all.

12 THE COURT: You said all that already.
13 Mr. Falk, am I inaccurate?

14 MR. FALK: I agree with the Court.

15 THE COURT: Um-hmm. We have all been
16 listening very intently to your testimony.

17 THE APPLICANT: That's all I --

18 THE COURT: Sir, this Court is
19 concerned that all of your issues are preserved as
20 well. I don't have anybody to reward or punish.

21 THE APPLICANT: You are right.

22 THE COURT: So I always make sure -- as
23 a matter of fact, much to the chagrin probably of
24 my court staff and everybody else I let folks talk
25 a whole lot too much probably. But I feel like

1 it's your one shot, say everything you need to say,
2 that's all we got is time. So I have let you say
3 everything you needed to say. That's why I didn't
4 cut you off, that's why there was an objection
5 posed. The Court did not intervene in your
6 testimony. But believe me, based on my notes and
7 what I listened to, you covered all of these things
8 in multiple forms of your testimony.

9 THE APPLICANT: Just for the record I
10 didn't feel like Mr. Falk -- Mr. Falk and I have an
11 issue with the disciplinary counsel right now based
12 on that same issue that he wasn't communicating
13 with me, why he wasn't allowing me to know what he
14 was doing with my case. I came here today. We
15 talked about one strategy.

16 THE COURT: He doesn't need your
17 permission on strategy.

18 THE APPLICANT: I understand that.

19 THE COURT: He doesn't have to discuss
20 his strategy with you. The case law says that he
21 can make you privy to it, that he can discuss it
22 with you, but, you know, sometimes folks watch too
23 much TV. It's not a lawyer's job to take direction
24 from you. It's their job to make an independent
25 and objective assessment of your situation and to

1 do what is in your best interest which you may not
2 understand at the time. Your lawyer has to be
3 objective. He cannot be controlled by emotion. He
4 has to look at it in a real sterile way and
5 sometimes say things you really don't want to hear.

6 That's why you have a lawyer. A lawyer
7 is supposed to be dispassionate. They are supposed
8 to be objective. He can't tell you what you want
9 to hear. It's his job to tell you what he knows is
10 in your best interest. It is his job to assess
11 your application and to present those issues
12 because he has an ethical obligation to this Court
13 to only present what he knows in good faith is
14 viable.

15 You don't present things that you know
16 aren't going to go anywhere. That does not make
17 sense. It is not in your best interest, not in the
18 best interest of the court in terms of judicial
19 economy. It's just not prudent. You present
20 things that are viable that's what he did.

21 But even beyond that, and I have no
22 problem saying this for this record, Mr. Falk went
23 above and beyond what was required of him. I have
24 observed. He listened to every single concern you
25 have. Even when he knew it was not in your best

1 interest to ask those questions. He backpedaled in
2 his questioning often getting off track of what he
3 knew he needed to be asked of you and asked what
4 you directed him to ask which goes above and beyond
5 what most lawyers would have done. He is not
6 required to take direction from you.

7 THE APPLICANT: I understand.

8 THE COURT: He is not required to take
9 your theory about it. So but in spite of all that,
10 he has listened to you. I have observed the
11 interaction. I have observed him look at all the
12 documents you asked him to look at. Again, getting
13 off course of how he prepared for this hearing to
14 look at the documents that you have asked him to
15 look at present to the Court. I don't think
16 anybody can ask anything more of him than that.

17 THE APPLICANT: Let me address this
18 issue, last issue. I had a lot of document
19 evidence that I wasn't allowed --

20 THE COURT: What documents, sir, did
21 you have to present to the Court that you didn't
22 get the opportunity to present?

23 THE APPLICANT: I have support, I have
24 a declaratory judgement from SLED that I wanted to
25 introduce. I have correspondence.

1 THE COURT: Sir, you can't have a
2 declaratory judgment from SLED. A declaratory
3 judgment has to be through a hearing given by a
4 court.

5 THE APPLICANT: May I present it to
6 you?

7 THE COURT: What is it exactly, Mr.
8 Falk, that he is referring to?

9 MR. FALK: A letter that he received
10 from SLED.

11 THE COURT: Sir, let Mr. Falk talk,
12 please. Sir, I am listening.

13 MR. FALK: Yes, Your Honor.

14 THE COURT: You can just tell me what
15 it is. What is it exactly?

16 MR. FALK: Maybe we can enter it as
17 exhibit.

18 THE COURT: Tell me what it is first.

19 MR. FALK: It is a letter from South
20 Carolina Law Enforcement Division dated August 20,
21 2015 and says regarding declaratory ruling was
22 there, whatever reference line. And it's SLED's
23 response to whether or not the regulation 73-72
24 would pertain to the City of Charleston in this
25 case.

1 THE COURT: I don't think there is any
2 question that it would. That's not an issue.

3 THE APPLICANT: May I speak, Your
4 Honor?

5 THE COURT: There are not -- they
6 don't --

7 MR. FALK: All I am saying is this was
8 a letter that he got.

9 THE COURT: You would have to call them
10 because it's hearsay. The State has the ability to
11 cross-examine them on that issue. So it wouldn't
12 be admissible.

13 MR. FALK: It would be a matter of law.

14 THE COURT: No, it's not as a matter of
15 law.

16 MR. FALK: No, I mean whether or not
17 they are applicable.

18 THE COURT: Yes. That's what the
19 courts interpret. I don't think there is any
20 question the regulations on chain of custody apply
21 and the case law apply. But I don't think anybody
22 disagrees about what the applicable regulations and
23 rules are.

24 MR. FALK: That's what I meant, Your
25 Honor.

1 THE COURT: Yes, sir. Anything
2 further?

3 THE APPLICANT: I have some letters
4 here that --

5 THE COURT: Letters are not admissible,
6 sir.

7 THE APPLICANT: The heading on it in
8 reference to the matter that I brought up in my PRC
9 application kind of supports like what I told him
10 about the issue --

11 THE COURT: I don't think he denied
12 that. He testified that you brought it to his
13 attention.

14 THE APPLICANT: By going to the next
15 phase which is the appellate phase there is stuff
16 that's not on record that the appellate courts --

17 THE COURT: Sir, we have Mr. King's
18 testimony. He doesn't deny that you brought it to
19 his attention.

20 THE APPLICANT: It's not his testimony.
21 It's me supporting my testimony. I don't feel
22 like --

23 THE COURT: You don't need any other
24 independent corroboration. He had already
25 corroborated you had the conversation. There's no

1 -- the only time something needs to be preserved is
2 if there is some contest that's at issue. It's
3 uncontroverted that you told him about it.

4 THE APPLICANT: I was just saying I
5 want to present documentation to show what he was
6 saying.

7 THE COURT: That's bolstering. You
8 have already testified to what you said. And he
9 has already testified that you brought it to his
10 attention. He doesn't deny that you all discussed
11 it, correct?

12 MR. FALK: Yes, Your Honor.

13 MR. JOHNSON: That's the State's
14 understanding, Your Honor.

15 THE COURT: Mr. King, it is your
16 position that you all discussed these things, he
17 brought it to your attention, correct?

18 MR. KING: Well, we did discuss chain
19 of custody. Regulations that have come up today we
20 didn't discuss.

21 THE COURT: But you discussed the chain
22 and I think as a lawyer that is seasoned in these
23 type of matters you know what's required of the
24 chain of custody?

25 MR. KING: Yes, Your Honor. He was

1 preoccupied with chain the whole representation
2 really.

3 THE COURT: That did not come as any
4 surprise to you and you concede that you all had
5 conversations about this.

6 MR. KING: Yes.

7 THE COURT: And that probably dominated
8 the entire representation.

9 MR. KING: Yes, Your Honor.

10 THE COURT: And the record reflects
11 that you represented him in 2007; is that also
12 correct?

13 MR. KING: Yes.

14 THE COURT: And which you had him
15 acquitted on the charge, correct?

16 MR. KING: Yes.

17 THE COURT: So you all have a
18 long-standing relationship?

19 MR. KING: We do.

20 THE COURT: And that's why Ms. Anderson
21 brought you into the case?

22 MR. KING: Yes.

23 THE COURT: Sir, it is preserved.
24 There's no question about that. It's not even
25 contested you didn't have this conversation.

1 THE APPLICANT: Really that's my
2 biggest issue, just make sure that everything that
3 I want to represent to the Court got preserved, all
4 the issues and all those things. That's really why
5 I am sitting here having a thing with you to make
6 sure that everything was properly preserved.

7 THE COURT: Sir, I can state for the
8 record that I have given you two and-a-half times
9 the amount of time allocated for this hearing. And
10 I have allowed you to eat into other applicant's
11 time to make sure that you said everything you
12 needed to say. Okay? All right. Mr. Falk, is
13 there anything further?

14 MR. FALK: No, Your Honor.

15 THE COURT: Anything further, Mr.
16 Johnson?

17 MR. JOHNSON: No, Your Honor.

18 THE COURT: Based on what has been
19 presented to the Court I find that the applicant
20 has failed to meet his burden of proof in
21 establishing that his counsel's performance in this
22 matter was deficient. I first look at what is most
23 dispositive to this Court which is the
24 contemporaneous record of this plea which I think
25 is really quite telling. Judge Dennis went into

1 great detail in his colloquy both with Mr. King and
2 the applicant. And that's why I asked the
3 questions I asked of Mr. King because I agree with
4 him, well, I find credible his testimony and based
5 on my observations of the applicant that he was
6 preoccupied with this chain issue. And it appears
7 from the record that that was discussed pretrial in
8 an effort to get some guidance from the Court which
9 is not unusual because he has something substantial
10 he would be giving up which was a negotiated plea.

11 And once you go forward with a
12 suppression you give that up, it's foregone, it's
13 done. You go can't go back and rewrite the story.
14 And often people say you can't put the genie back
15 in the bottle. So either he needed to plea or he
16 needed to go forward and roll the dice and see what
17 happened at trial.

18 And it was unlikely based on what has
19 been presented either in the transcript or what I
20 have heard today that a suppression in this case
21 would have been granted. It is extremely unlikely
22 and it would have worked as a substantial detriment
23 to Mr. Wilson.

24 The Court is very clear with him and
25 advises him that there's a jury downstairs, the

1 Court is ready to pick a jury for him and if he
2 wanted to go forward he could have gone forward.
3 So I do not find credible any assertion that he was
4 denied his right to trial, that if he had demanded
5 a trial or insisted on a trial he was somehow
6 deprived of that because it does not bear out with
7 what is empirically in the record, and that is at
8 page 2 lines 20 through 25 and page 3 lines 1
9 through 7. Again at page 3 lines 8 through 10
10 where he very clearly articulates to Judge Dennis
11 that he wishes to change his plea from not guilty
12 to guilty.

13 He tells Judge Dennis that he is clear
14 about the charge, the range of penalty and the fact
15 that the plea is negotiated as well as the nature
16 of the negotiated plea and the limitations of the
17 negotiated plea and he clearly articulates to Judge
18 Dennis that he wishes for him to accept the plea
19 and impose the negotiated penalty. That's at page
20 three lines 11 through 16, lines 17 through 22,
21 lines 23 through 25, page 4 lines 1 through 10, 11
22 through 25, page 5 lines 1 through 6, page 5 lines
23 7 through 11. He is clearly aware that this would
24 -- offense is an enhancement and a strike at page 5
25 lines 12 through 22. That it's a non-parolable

1 offense. All of these fall within the range of him
2 being advisable of the penalty. Page 5 lines 23
3 through 25, page 6, lines 1 through 25, page 7
4 line 1. And as well as community supervision once
5 he maxes out his sentence. He is well aware of the
6 elements of the offense which are articulated at
7 page 7 lines 2 through 6, as well as his desire to
8 plead guilty and reenforcing to the Court that it
9 is, in fact, his desire, that he is not being
10 imposed upon in any way, page 7 lines 7 through 11
11 as well as asking the Court to accept the
12 negotiated plea, page 7 line 12 through 14. He
13 indicates that he is satisfied with his attorney,
14 page 7 lines 15 through 17.

15 And then the Court goes into a colloquy
16 with Mr. King about the matter having been fully
17 investigated. That's page 8 lines 1 through 5 and
18 page 9 lines 1 through 17. And the Court makes
19 reference to significant legal issues in pretrial
20 the day before and that he is well aware of those
21 being waived. I can only imagine that deals with
22 any suppression, any sort of issues with the chain
23 of custody. That would be the only thing that
24 could make logical -- be logical within the context
25 of this plea colloquy as there is no other issues

1 that at least I have heard that could have been
2 raised.

3 I can only -- because I have done this
4 so long -- know while the Court would not tell you
5 how they are going to rule, they can kind of tell
6 you where things are headed so that you can make a
7 reasonable assessment of whether it's in your
8 client's best interest to go forward and test the
9 suppression hearing issue or not.

10 And it is clear from this record that
11 would not have been in Mr. Wilson's best interest
12 and it's clear he would not have prevailed on the
13 issue. And that Mr. King felt it was in his
14 client's best interest, at page 9 lines 18
15 through 20 as well as the Defendant indicating that
16 he feels that the plea is in his best interest,
17 page 9 lines 18 through 20.

18 He is very clear that he is waiving his
19 right to a jury trial, what the right of trial is,
20 the process of the trial, that's at page 9 lines 21
21 through 25, page 10 and page 11 lines 1 through 15.

22 That there have been no promises made
23 to him other than the negotiated plea, page 11
24 lines 23 through 25 and page 12 lines 1 through 4.
25 That he is not impaired by drugs or alcohol or have

1 any mental disability, that's page 12 lines 9
2 through 11 and page 12 line 12 through 15, that he
3 is completely comfortable in entering his plea at
4 page 12 lines 16 through 22, that he understands
5 his rights, page 12 lines 23 through 25, and the
6 facts that are presented at page 13 lines 1 through
7 14. This buy was on video and audio which really
8 was the driving impetus, that factual basis. It
9 would be very difficult to overcome and Mr. King is
10 correct and I find his testimony credible on the
11 chain.

12 The State only has to prove the chain
13 as far as practicable. They don't have to bring
14 every single person in and the case law is weighed
15 in -- really for the State to get its fungible
16 evidence. Drugs will generally come in unless
17 there's some huge gap in the chain and that is just
18 not borne out by this record or some documentation.

19 And so under those facts a plea was
20 probably again in his best interest. The allocute
21 to those facts at page 13 lines 24 through 25 and
22 page 14 line 1. That he understood the Court's
23 questions, page 14 lines 5 through 7, and that he
24 was being truthful, page 14 lines 8 through 13.
25 And that it was, in fact, his decision to plead

1 guilty at page 14 lines 14 through 17.

2 I do find credible Mr. King's testimony
3 that he was prepared for trial. Again, this was
4 not his first contact with Mr. Wilson. He had been
5 through a trial with him previously in 2007 where,
6 in fact, he had had him acquitted of a drug charge.
7 So I have no question that he was prepared for
8 trial. I find credible his testimony that he made
9 a strategic decision, which was completely
10 appropriate on his part, not to give the State a
11 heads up as to what he would have pursued as trial
12 because it would have only given the State the
13 opportunity to have corrected any defects in the
14 chain.

15 But as it turns out they went ahead and
16 must have seen that defect themselves and went
17 ahead called or subpoenaed the first chemist. I do
18 not find credible any arguments by the applicant
19 regarding the weight of the drugs. I find Mr.
20 King's testimony credible, and it is borne out by
21 well-earned experience, that field weight is never
22 the same as weight tested. It's always less. And
23 there are many variables that add to that, again,
24 packaging, moisture being present. There are lots
25 of things that affect the weight of drugs and that

1 certainly would have been something as Mr. King
2 articulated he could argue to the jury, although it
3 probably would not have been successful. But it's
4 certainly a factual issue that he could have
5 argued, but it would not have been the basis for
6 the suppression of the drugs.

7 There was no need for him to
8 investigate the SLED regulations. I think that the
9 length of time that Mr. King has been handling
10 these type cases he is well versed in chain
11 evidence. I also find credible his strategic
12 decision based on what he -- every judge has a
13 different philosophy about evidence, evidentiary
14 issues as well as other issues and he very clearly
15 articulated what he knew this particular judge's
16 philosophy to be and made a well-informed
17 assessment of his client's situation and I do find
18 credible his testimony that if his client had
19 decided to go forward at trial he would have raised
20 any issues regarding the drugs, whether he thought
21 they would have been successful or not. He would
22 have raised them, but that was not necessary
23 because after making an informed and well-reasoned
24 assessment of this case he advised his client to
25 enter a plea. But ultimately I do find credible

1 his testimony as borne out by the record that any
2 decision to enter a plea was ultimately Mr.
3 Wilson's.

4 I am instructing the Attorney General's
5 office to provide the Court with a proposed order
6 within 20 days. He will provide a copy of that
7 order to Mr. Falk in the same method he provided it
8 to the Court which is in Word format. Mr. Falk, if
9 there anything you want to add to the order please
10 make the Court aware of it. But I generally, even
11 though I ask the AG to provide me with an order, I
12 generally rewrite them to incorporate all findings
13 of fact and conclusions of law that are in the
14 record to support the Court's ruling. Thank you
15 all very much.

16 (These proceedings were concluded at
17 11:53 a.m., December 15, 2015, Charleston County,
18 South Carolina.)

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1 CERTIFICATE OF REPORTER

2
3 I, Ruth C. Weese, Registered Diplomate
4 Reporter for the State of South Carolina at Large,
5 do hereby certify that the foregoing transcript is
6 a true, accurate, and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 21st day of June, 2016 at
12 Charleston, Charleston County, South Carolina.

13
14 *Ruth C. Weese*

15
16 _____
17 Ruth C. Weese
18 Registered Diplomate
19 Reporter
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AG
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jeronica Wilson, #211823,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2014-CP-10-3785

ORDER OF DISMISSAL

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
James K. Falk, Esquire
J. Rutledge Johnson, Esquire
Jason T. King, Esquire
December 15, 2015
Ruth Weese

FILED
2015 APR 26 PM 3:50
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 13, 2014. The Applicant also filed an Amended Application on October 30, 2015. Respondent made its Return on April 15, 2015 and filed on April 17, 2015. An evidentiary hearing into the matter was convened on December 15, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by James K. Falk, Esquire. J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Applicant testified on his own behalf. Jason King, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, the South Carolina Department of Corrections records, the Applicant's PCR application, the State's Return and the guilty plea transcript.

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[Signature]

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2012 term of the Charleston County Grand Jury for distribution of cocaine base-third offense¹ (2012-GS-10-2582). The Applicant was represented by Jason King, Esquire, and Victoria Anderson, Esquire.

On February 11, 2014, the Applicant pled guilty. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to a period of confinement of ten (10) years pursuant to a negotiated plea. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Brady violation.
 - a. Evidence tampering.
3. Due process and fairness violation.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel;

¹ Distribution of Crack Cocaine is a serious felony and "for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be

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SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he had issues with discovery and his Rule 5 materials. Applicant claimed there were not enough documents on the chain of custody of the drugs, and there was no chain of how the drugs got put into evidence. Applicant claimed there was a weight change in the drugs and that he did not receive the chain of custody documents until five (5) months after his plea. Applicant then claimed that law enforcement did not follow the statutes or regulations properly. Applicant also stated he asked Counsel about suppressing the evidence, as, in his opinion, there was no proper analysis performed on the drugs and there was an unfair procedure. Applicant claimed he requested that Counsel file a suppression motion. Applicant also testified that if he had proceeded to trial, he would have been found guilty because Counsel did not file a suppression motion. Applicant testified he accepted the plea because of Counsel's inaction, but would have gone to trial if Counsel was prepared.

Applicant testified he was satisfied with Counsel at the time because he did not have the knowledge about the statutes or regulations until after the plea. He thought Counsel had thoroughly investigated the case. According to Applicant, Counsel did not say why he did not file a suppression motion. Applicant testified he told Counsel to keep investigating.

As to Applicant's Brady claim, he testified that he was given additional documents by counsel eighteen (18) months after the case. Applicant claimed these documents were changed and Counsel did not address these issues at the time. Applicant then claimed he was forced to plead guilty because Counsel was not prepared. Applicant claimed there was a change in drugs from .4 g to

imprisoned for not less than fifteen [(15)] years nor more than thirty [(30)] years, or fined not more than fifty thousand

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[Signature]

.3 g to .27 g. Applicant claims this was never discussed with him. Applicant further claimed Counsel was always talking about accepting a plea and that Counsel should have filed a suppression motion. Applicant lastly stated he did not have a good relationship with Counsel.

On cross-examination, Applicant admitted that Counsel had represented him successfully in the past, and that this was not his first exposure to the Criminal Justice system. Applicant also admitted he was offered the minimum sentence in this case and rejected that offer. Applicant further admitted that during his guilty plea, he told the plea judge under oath that he wanted to plea, waive his constitutional rights, and that it was his decision to accept the plea offer. Additionally, Applicant testified under oath that he was not under any influence of drugs or alcohol, that there was no other promise to entice him to plead guilty, and that he agreed to the facts as presented by the assistant solicitor. Moreover, Applicant admitted this drug transaction was recorded on audio and video devices. Lastly, Applicant admitted that he answered the plea judge's answers truthfully at his plea.

Jason T. King, plea counsel, testified that Applicant had expressed concerns about the evidence, and that he was "preoccupied" with the chain of custody issue during the entirety of his representation. While Applicant claimed SLED violated their regulations, Counsel explained that SLED was not involved in this case. Counsel testified that he went with the assistant solicitor to the police station to investigate this case and view an electronic evidence log. Applicant wanted to see where the signatures were for the chain of custody and Counsel got a printout of the signatures. Counsel stated he did not research the regulations which Applicant alluded to, because he did not know which regulations they were; once again, SLED was not involved in this case.

dollars [(\$50,000.00)], or both." S.C. CODE ANN. § 44-53-375 (2009); S.C. CODE ANN. § 17-25-45(C)(2)(a) (2009).

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Counsel also testified that he might have asked for a suppression motion, but he did not have the grounds at the time. Counsel then stated that if there was a problem with the chain of custody, depending on the grounds, it was possible to file a pretrial suppression motion. Counsel also said he may not file a pretrial suppression motion, but when the State attempted to introduce the drugs at trial, he would move to suppress the drugs. Counsel explained that he took no issue with the change in the weight because the weight naturally changed after testing: the field weight at .4 g to the first testing at .3 g and then to the second testing of the drugs at .27 g. The drugs were tested by two (2) different chemists because by the time they were ready for trial, the first chemist did not work at the lab anymore and so the drugs were retested. Counsel stated he was not going to address this pretrial, as he did not want to show his cards to the State. He further testified it is not unusual for the field weight of substances to differ substantially from their lab weight.

On cross-examination, Counsel reiterated that he did not investigate the regulations because this was not a SLED case. Counsel also explained that there was a two (2) year offer, which Applicant rejected, and also an eight (8) year offer, which Applicant likewise rejected. Counsel then stated he took over this case because of his prior professional relationship with Applicant. Counsel then stated the new documentation, of which Applicant complains, was a new printout of the chain of custody. Counsel lastly testified that there were no threats or promises made to entice Applicant to plead guilty and that it was Applicant's decision to plead guilty.

Upon questioning by this Court, Counsel testified that there was a pretrial conference with Judge Dennis concerning the chain of custody of the drugs. In Counsel's professional opinion, he did not think that Judge Dennis would grant a suppression motion in this case.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

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

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have

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prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

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

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel negotiated with the State in Applicant's best interest. Applicant testified he pled because he thought he had no other choice; this Court does not find this credible, as Applicant certainly could have pursued a trial and had Counsel challenge the chain of custody and the weight of the drugs. This Court finds there was a jury available and the Applicant changed his plea from not guilty to guilty. (Tr. 2: 20-25; 3: 1-7). This court further finds the Applicant understood his right to a jury trial, the waiver of this right and the process of trial. (Tr. 9: 21-25; 10: 1-25; 11: 1-15). The charge and range of penalty were explained to the Applicant. (Tr. 3: 11-22; 7: 7-11). This Court finds it was the Defendant's decision to enter into the guilty plea for a negotiated sentence of ten (10) years. (Tr. 3: 23-25; 4: 1-10). The Court explained that the Court could only accept or reject a negotiated plea. (Tr. 4: 11-25; 5: 1-6). The Court also explained that the charge was a serious offense and would constitute a strike. (Tr. 5: 12-22). This Court finds the Applicant understood it was a non-parolable offense to be served at eighty-five percent and satisfactorily complete a two-year community supervision program. (Tr. 5: 23-25; 6: 1-25; 7:1). This Court also finds Applicant understood the elements of the offense and the

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possible punishment, and it was still his desire to plead guilty. (Tr. 7: 2-11). Furthermore, Applicant desired the Court accept his plea and impose the negotiated sentence. (Tr. 7: 7-11).

This Court finds Applicant was satisfied with his Counsel. (Tr. 7: 12-14). Counsel fully investigated the case and discussed the findings with Applicant. (Tr. 8: 1-20). While there were potentially significant legal issues Counsel was prepared to argue at trial, the Applicant waived those issues in order to go forward with the plea. (Tr. 8:21-25; 9: 1-17). This Court finds the Applicant had fully consulted with Counsel and desired to enter the plea. (Tr. 9: 18-20). This Court finds the Applicant understood his right to a jury trial, and that he was waiving his constitutional rights in order to proceed with the plea. (Tr. 9: 21-25; 10:1-25; 11: 1-15). This Court finds Counsel had negotiated the ten (10) year sentence in the Applicant's best interest. (Tr. 8: 1-25; 9: 1-17).

Applicant admitted there were no promises made other than the negotiations to entice him to plead guilty and he was not under the influence of drugs or alcohol. (Tr. 11: 16-25; 12:1-11). This Court finds Applicant was comfortable with proceeding with the plea, understood the charge against him, and made the decision to plead guilty on his own accord with the help of learned, prepared counsel. (Tr. 3: 1-25; 4:1-25; 5:1-25; 6: 1-25; 7: 1). Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. (Tr. 16: 16-25; 17:1-25). Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty and he understood his rights. (Tr. 2: 20-25; 3: 1-7; 12: 16-25). The State presented audio and video of the sale. (Tr. 13: 1-14). The Applicant allocuted to the facts as they were presented by the State. (Tr. 13: 24-25; 14:1). Furthermore this Court finds the Applicant understood his rights, was truthful, and it was the Applicant's decision to plead guilty. (Tr. 14: 8-17).

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This Court also finds the guilty plea transcript dispositive of this case, as it is a contemporaneous recording of the proceedings. This Court finds the Applicant knowingly, intelligently and freely waived his rights to challenge the chain of custody and the weight of the evidence. (Tr. 8: 1-25; 9:1-24). This Court further finds Counsel made a strategic decision not to challenge the weight of the drugs pretrial. (Tr. 16: 10-22).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an

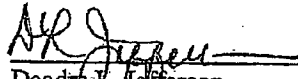
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[Signature]

Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!


Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

April 26, 2016
Charleston, South Carolina

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LMC20120200968

DOCKET NO. 2012GS1002582

WITNESSES

The State of South Carolina

Charleston City Police Department

County of Charleston

AGENCY CASE NUMBER
1201471

COURT OF GENERAL SESSIONS

May Term 2012

ARREST WARRANT NUMBER
M640798

THE STATE

DATE OF ARREST
February 2, 2012

vs.

ACTION OF GRAND JURY
SUE DILL
SUE DILL

JERONICA NORVELLA WILSON
DOB: [REDACTED]
B/M

[Signature]
Foreperson of Grand Jury
Date: MAY 07 2012

Indictment for

VERDICT

Distribution Of Cocaine Base

Foreperson of Petit Jury Date:

INDICT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

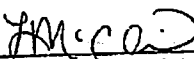
INDICTMENT

At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

Distribution Of Cocaine Base

That in Charleston County, South Carolina, on or about January 27, 2012, the Defendant, JERONICA NORVELLA WILSON, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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



 LINDSEY MCCLAIN
 ASSISTANT SOLICITOR