

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

—————  
Certiorari to Berkeley County

Honorable G. Thomas Cooper, Circuit Court Judge  
—————

DAMON T. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001635  
—————

APPENDIX  
—————

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STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
 COUNTY OF BERKELEY )  
 State of South Carolina )  
 )  
 v. ) Case No. 12-GS-08-1107 et al  
 )  
 Damon T. Brown, )  
 )  
 Defendant )

### TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on October 3, 2013, before The Honorable R. Markley Dennis in Courtroom E of the Berkeley County, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel as follows:

#### APPEARANCES:

Michael Patterson, Assistant Solicitor  
 9<sup>TH</sup> CIRCUIT SOLICITOR'S OFFICE  
 300 California Avenue  
 Moncks Corner, South Carolina 29461  
 Appearing for State

Steve Davis, Esq.  
 431 East Main Street  
 Moncks Corner, South Carolina 29461  
 Appearing for Defendant

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Before The Honorable R. Markley Dennis

1 THE COURT: You are Damon Brown?

2 DEFENDANT: Yes, sir.

3 THE COURT: Mr. Brown, I've been  
4 handed two indictments, indictments charging  
5 you with drug offenses. You've been standing  
6 with Mr. Davis. Does he represent you?

7 DEFENDANT: Yes, sir.

8 THE COURT: He's explained to you  
9 the nature of these charges and the possible  
10 punishment?

11 DEFENDANT: Yes, sir.

12 THE COURT: Indictment 12-GS-08-  
13 1108 charges you with trafficking crack  
14 cocaine, ten to 28 (10 to 28) grams. Do you  
15 under-stand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Your lawyer has  
18 explained to you that that charge -- excuse  
19 me. It charges you with more than that.  
20 It's checked as a lesser. What ---

21 SOLICITOR: It's -- it could be a  
22 third but we're treating it as a second.

23 THE COURT: All right. The third  
24 would be, what, twenty-five to thirty years?

25 SOLICITOR: Yes, sir.

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THE COURT: Do you understand that, sir?

DEFENDANT: Yes, sir.

THE COURT: And your lawyer has explained that to you?

DEFENDANT: Yes, sir.

THE COURT: Do you understand that I could sentence you to a minimum of five years and that there is a maximum sentence of thirty years?

DEFENDANT: Yes, sir.

THE COURT: So you understand that that is a serious offense, ---

DEFENDANT: (Affirmative nod).

THE COURT: --- a violent offense?

DEFENDANT: (Affirmative nod).

THE COURT: And a nonparoleable offense?

DEFENDANT: Yes, sir.

THE COURT: Meaning that you will serve eighty-five percent of any sentence that I impose?

DEFENDANT: Yes, sir.

THE COURT: What is your plea?

DEFENDANT: Guilty, Your Honor.

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1 THE COURT: Let me ask you, at  
2 this point are you under the influence of any  
3 alcohol, any type of medication?

4 DEFENDANT: No, sir.

5 THE COURT: Have you consumed any  
6 type of alcohol or taken any type of drugs  
7 within the last twenty-four hours?

8 DEFENDANT: No, sir.

9 THE COURT: Have you been treated  
10 for any emotional problems, any mental  
11 illness?

12 DEFENDANT: No, sir.

13 THE COURT: Indictment 12-GS-08-  
14 1107 charges you with distribution of  
15 cocaine; do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: And as second -- it's  
18 five to thirty.

19 SOLICITOR: Yes, Your Honor.

20 THE COURT: And if it was a third,  
21 it would be ten to thirty?

22 SOLICITOR: That's correct.

23 THE COURT: So we've let him plead  
24 to a second?

25 SOLICITOR: Correct.

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1 THE COURT: Do you understand  
2 that, Mr. Brown?  
3 DEFENDANT: Yes, sir.  
4 THE COURT: Your lawyer has  
5 explained that charge to you and the fact  
6 that I could sentence you to minimum of five  
7 years and a maximum of thirty?  
8 DEFENDANT: (Affirmative nod).  
9 THE COURT: Again, that it is a  
10 serious offense?  
11 DEFENDANT: (No verbal response).  
12 THE COURT: Again, that it is a  
13 nonparoleable offense?  
14 DEFENDANT: Yes, sir.  
15 THE COURT: What is your plea?  
16 DEFENDANT: Guilty, Your Honor.  
17 THE COURT: Are you totally  
18 satisfied with your lawyer?  
19 DEFENDANT: Yes, sir.  
20 THE COURT: Judge Harrington  
21 apparently sentenced you in November of 2011.  
22 DEFENDANT: Yes, sir.  
23 THE COURT: It appears that she  
24 imposed concurrent ten-year sentences, which  
25 she suspended?

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1 DEFENDANT: Yes, sir.

2 THE COURT: For drug offenses:  
3 PWID cocaine and manufacturing of -- what was  
4 it? Meth?

5 SOLICITOR: I think that it was  
6 crack cocaine.

7 THE COURT: Crack cocaine. Do you  
8 understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: And that was -- and  
11 you understand that what we do today will  
12 violate that probation?

13 DEFENDANT: Yes, sir.

14 THE COURT: And that sentence was  
15 in November and then this occurred in March  
16 of 2012?

17 DEFENDANT: Yes, sir.

18 THE COURT: Is there any  
19 recommendation other than allowing him to  
20 plead to the charges -- treating it as a  
21 second offense?

22 SOLICITOR: There is no other  
23 recommendations (sic). Without recommenda-  
24 tion, the State will be asking for  
25 significant time.

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1 THE COURT: I understand that.  
2 I could have guessed that. Mr. Davis,  
3 is that your understanding?

4 MR. DAVIS: That is my under-  
5 standing, Your Honor.

6 THE COURT: You have investigated  
7 this matter fully on your client's behalf?

8 MR. DAVIS: Yes, Your Honor. I  
9 have.

10 THE COURT: And you've shared the  
11 results with him?

12 MR. DAVIS: Yes. I will share a  
13 little bit more, Judge. I came in after  
14 another lawyer was involved.

15 THE COURT: And after consulting  
16 with him, he has entered the desire to enter  
17 a plea?

18 MR. DAVIS: Yes.

19 THE COURT: And you've advised him  
20 of the rights that he would be relinquishing  
21 as well as the consequences of his decision?

22 MR. DAVIS: I have, Your Honor.

23 THE COURT: Based on the  
24 investigation that you've conducted for your  
25 client, do you agree with his decision to

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1 enter the guilty plea in each case?

2 MR. DAVIS: I concur, Your Honor.

3 THE COURT: Mr. Brown, is that  
4 true, sir?

5 DEFENDANT: Yes, sir.

6 THE COURT: You realize and under-  
7 stand that you will be giving up your right  
8 to have a jury trial, your right to confront  
9 the witnesses against you and your right to  
10 remain silent?

11 DEFENDANT: Yes, sir.

12 THE COURT: Have there been any  
13 threats or promises made to you at all to get  
14 you to plead guilty, sir?

15 DEFENDANT: No, sir.

16 THE COURT: Is there any question  
17 of your guilt here today?

18 DEFENDANT: No, sir.

19 THE COURT: Tell me the facts,  
20 please.

21 SOLICITOR: Thank you, Your Honor.

22 On March 20<sup>th</sup>, 2012, the Berkeley County  
23 Sherriff's Office utilized a confidential  
24 informant and an undercover agent to conduct  
25 a controlled purchase of cocaine at 399

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1 Corner Square Plaza in the Moncks Corner area  
2 of Berkeley County. They met with the  
3 Defendant to purchase 1.2 grams of cocaine.

4 Agents then obtained an arrest warrant  
5 for the defendant for distribution.

6 On March 30<sup>th</sup>, 2012, agents were  
7 conducting surveillance at the Defendant's  
8 residence in Berkeley County and observed the  
9 Defendant get in his car and drive to  
10 Whitesville Elementary School.

11 As the Defendant got out of his car,  
12 agents moved in to arrest him. A search of  
13 the defendant's car was conducted and 14.9  
14 grams of crack cocaine were located in the  
15 vehicle. As stated earlier, this is without  
16 recommendation.

17 His prior record consists of a 2004  
18 possession of marijuana; a 2006 PWID cocaine;  
19 and in 2011, two counts of PWID crack  
20 cocaine.

21 THE COURT: Which they treated as  
22 a first offense then?

23 SOLICITOR: That's correct, Your  
24 Honor. As stated, this could be a third. We  
25 are allowing him to plead to a second.

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1           However, we think something in between the  
2           five and the thirty is appropriate in this  
3           situation. Fifteen is less than the twenty-  
4           five he would face on a third, and ten more  
5           than the five he would be facing on the  
6           second. We feel that fifteen would be an  
7           appropriate sentence in this particular case.

8                       THE COURT:     Is the factual  
9           recitation by the Solicitor correct?

10                      DEFENDANT:    Yes, sir.

11                      THE COURT:    Have you truthfully  
12           responded to all my questions here this  
13           morning, Mr. Brown?

14                      DEFENDANT:    Yes, sir, I have.

15                      THE COURT:    You realize and you  
16           fully understand that I will be relying on  
17           your responses?

18                      DEFENDANT:    Yes, sir.

19                      THE COURT:    And you want me to do  
20           that? You want me to rely on what you are  
21           telling me to be the truth?

22                      DEFENDANT:    I want to do what's  
23           right, Your Honor.

24                      THE COURT:    I understand. And you  
25           have completely responded to each question?

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1                   DEFENDANT:     Yes, sir.

2                   THE COURT:     And you are totally

3 satisfied with your lawyer?

4                   DEFENDANT:     Yes, sir.

5                   THE COURT:     No complaints about

6 anything that he has done?

7                   DEFENDANT:     No, sir.

8                   THE COURT:     And you understand

9 what a guilty plea means?

10                  DEFENDANT:     Yes, sir.

11                  THE COURT:     You are giving up the

12 right to challenge all this evidence. Do you

13 understand that?

14                  DEFENDANT:     Yes, sir.

15                  THE COURT:     And it limits what you

16 can have reviewed -- have it reviewed on an

17 appeal. Do you understand that?

18                  DEFENDANT:     Yes, sir.

19                  THE COURT:     It also limits what

20 you are going to be able to look at on a PCR.

21 Do you understand that?

22                  DEFENDANT:     (No verbal response).

23                  THE COURT:     Post-conviction

24 relief. That's where you say, 'I want

25 another trial because my lawyer didn't do

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1 what he was supposed to do.'

2 DEFENDANT: It ain't going to  
3 happen. Yes, sir, I understand.

4 THE COURT: I'm not suggesting  
5 that you're thinking about that but I'm just  
6 telling you that this restricts it because  
7 you're doing this plea because that's what  
8 you want to do?

9 DEFENDANT: Yes, sir.

10 THE COURT: Not to try to set up  
11 anything?

12 DEFENDANT: No, sir.

13 THE COURT: And the answers to my  
14 questions are your answers, not what your  
15 lawyer has told you to tell me?

16 DEFENDANT: They are my answers.

17 THE COURT: Those are your  
18 answers?

19 DEFENDANT: (Affirmative nod).  
20 Yes, sir.

21 THE COURT: Okay. I find that  
22 there is a sufficient factual basis to  
23 support the plea. I find that Mr. Brown has  
24 an extremely competent counsel in this case  
25 and -- obviously the record reflects that he

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1 has done an excellent job for his client  
2 given the past history of his involvement and  
3 the State's willingness to let him plea to a  
4 second when he's already had that benefit  
5 once before. That is an extreme benefit to  
6 you. Do you understand that, Mr. Brown?  
7 You agree with that, don't you?

8 DEFENDANT: Yes, sir.

9 THE COURT: In fact, you agree  
10 that your lawyer has done a good job for you,  
11 don't you?

12 DEFENDANT: Very good. Yes, sir.

13 THE COURT: I therefore find the  
14 plea to be freely, voluntarily, knowingly and  
15 intelligently made and I will accept the  
16 plea. I find him to be in willful violation  
17 of the terms and conditions of Judge  
18 Harrington's probation. Your recommendation  
19 is a fully revocation?

20 PROBATION AGENT: Your Honor, we  
21 have no recommendation at this time.

22 THE COURT: No recommendation.

23 PROBATION AGENT: No, sir.

24 THE COURT: Thank you. Mr. Davis?

25 MR. DAVIS: Judge, some clients

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1 you really don't like to represent, to be  
2 honest with you.

3 I've been knowing Damon for some  
4 period of time. I've got a son the exact  
5 same age as Damon, at Berkeley High School.

6 I didn't represent Damon in the last  
7 two incidences that he was -- involving  
8 criminality. In fact, I didn't represent him  
9 in the issue pertaining to Judge Harrington.

10 Matter of fact, I didn't represent  
11 him initially in this matter. I came in  
12 somewhat later. But I welcome the  
13 opportunity to try to do something positive,  
14 if I can, for the gentleman because I think  
15 he's a guy worth saving to some degree.

16 (David) Fashion (Probation Agent) and the  
17 Probation folks will tell you that he has  
18 been a great guy on probation, has done  
19 everything asked of him.

20 I looked through his report and it  
21 was an interesting thing that he said he hid  
22 this from his family. You know?

23 He's been a barber for over fifteen  
24 years. He's a father, has two lovely  
25 daughters. He's been married -- his lovely

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1 wife is in the courtroom. Cierra, standing.  
2 She comes down here from Chicago and marries  
3 a country boy he puts her through all these  
4 kinds of issues, (negative gesture).

5 Rev. Leon Brown.

6 His father.

7 His mother.

8 He has a whole host of people in the  
9 courtroom supporting him today.

10 Damon is a great guy except for this  
11 issue, which is illegal and which is wrong.

12 Okay.

13 Judge, the sad thing about every-  
14 thing is that he don't understand the hard-  
15 ship is so tremendous in reference to the  
16 whole family.

17 THE COURT: Absolutely.

18 MR. DAVIS: I think that he's  
19 getting the easy ride no matter what sentence  
20 that you impose today, because it's the  
21 family that is impacted, who is going to be  
22 left holding the bag; two beautiful little  
23 girls who won't have a father. The  
24 barbershop is going down, he can't cut the  
25 hair. All because of this behavior that he

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1           ceased to prevent. It was a hundred dollar  
2           sale of a piece of cocaine, to some guy who  
3           has a need for drugs with whom he thought  
4           he'd developed a relationship. He'd come to  
5           the barbershop, give him a hundred dollars.  
6           Twenty days later and his criminal activity  
7           is still going on -- so he's got additional  
8           stuff, but he don't know he's already busted.  
9           He's on probation.

10                        So, Judge, this is where we are.  
11           I'm asking in relationship -- I know that he  
12           has to go to prison, Judge. But that eighty-  
13           five percent is real. People don't think  
14           that, but it is real. It's affected a lot of  
15           families, and it's going to impact him also.

16                        Judge, I would ask for you to  
17           consider two sentences this morning. One  
18           where you can consider the minimum sentence,  
19           which is five years at eighty-five percent.  
20           Or you could impose Judge Harrington's  
21           sentence, which was ten years. Both  
22           instances is less than fifteen years but it's  
23           still a tremendous hardship for this family  
24           because it has to serve eighty-five percent  
25           of it.

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1           Now, Judge, the empirical data is  
2           that in our state we've been giving out too  
3           long, too lengthy sentences for drug  
4           convictions. Just a minute ago you had a  
5           young lady who was on drugs from a different  
6           standpoint , prescription drugs, where her  
7           life is devastated. This young man is  
8           perpetuating the same instances but don't  
9           have a pharmacy license; in a sense.

10           But, Judge, this young man deserves  
11           some consideration, Your Honor. I say that  
12           because in reference to the character  
13           references I've submitted to you.

14           THE COURT:       I've read those.

15           MR. DAVIS:       They speak highly of  
16           this young man.

17           I know that the solicitor's position  
18           is that this guy needs to be taken out of the  
19           community, that he needs to be removed, that  
20           he needs to be sentenced to a long time.  
21           Judge, at the end of the day, you and I are  
22           quite aware that there's another individual  
23           getting to pick up the mantel once he steps  
24           out of the picture. What I mean by that is  
25           that the war on drugs ---

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1 THE COURT: No need to go there.

2 I couldn't agree with you more. It's a war.

3 As I told somebody this morning, who  
4 came up to me at the service station,  
5 somebody who we all know, and I don't need to  
6 mention his name, but -- uh, we were talking  
7 about that.

8 I've been watching *The Wire*, but I  
9 felt this a long time ago. I think that the  
10 first time that I ever came to this  
11 realization was when the movie *Traffic* came  
12 out Michael Douglas played in it. I remember  
13 walking out of that movie and saying, 'This  
14 is silly. We're fighting. . . ' -- first of  
15 all, we aren't dealing with the real culprits  
16 here. All we are doing is supporting that  
17 industry. I'm not talking about the users,  
18 I'm talking about the people that are making  
19 the money, that are making tons and tons and  
20 tons of money. We are not touching those  
21 people. We're not going to be able to touch  
22 them.

23 Sad reality is that as a society we  
24 don't learn much from history, apparently.  
25 We sure as heck didn't learn about how to not

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1 get involved in wars. We keep doing that  
2 from time to time. After Korea, it was  
3 Vietnam. After Vietnam, Iraq. Afghanistan.  
4 But we still don't get it yet. Apparently we  
5 are kinda slow.

6 Then we sit here and we have a time  
7 in the '20s when everybody -- we've seen all  
8 the movies about it and we know who got rich  
9 during Prohibition. We tried to say 'you  
10 can't drink.' That was silly. Nobody is  
11 going to stop that. So who got rich? Al  
12 Capone got rich, and people like Al Capone.  
13 The same thing is happening today.

14 People say there's a war on drugs.  
15 Best line I ever heard, "wars end." We're  
16 still fighting it, the war on drugs.

17 All we've done is jeopardized the  
18 safety of good officers. We've spent money  
19 and we've -- so -- I hear you. I understand  
20 that.

21 The bottom line is -- and this is  
22 the problem -- and I agree with you. I just  
23 heard this morning on APR, they did a thing  
24 on Wisconsin and how many people they had in  
25 prison and what percentage were African

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1 Americans. It's disturbing. They talk about  
2 the problems associated with when they get  
3 out. Because, you're right, it compounds it.  
4 When he gets out, now he's really got a  
5 problem getting a job.

6 But you know who authored that? He  
7 stands right next to you.

8 MR. DAVIS: Yeah, I know.

9 THE COURT: That's the problem.  
10 And the problem is -- I've read -- it's nice  
11 to read all these fine things, and you're  
12 deserving of every compliment that they are  
13 giving you. But the problem with that is  
14 that it shows that you have the ability of  
15 being a productive, caring, concerned person.

16 That's why I look at it and think,  
17 'well, why didn't you respect' -- I mean, it  
18 wasn't just that 'well, I will do this for  
19 one person', knowing that it's illegal. It's  
20 not only illegal but 'I'm looking at ten  
21 years.' It was December, January, February,  
22 March. Four months.

23 A ten-year threat didn't deter him?  
24 Nope. So the only thing that we can do -- I  
25 can stop him for a while. You and I both

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1 know that he's being warehoused. Does it  
2 help anybody? Not a soul. Society -- at  
3 least officers won't have to arrest him,  
4 won't have to -- and he won't be putting  
5 himself at risk.

6 Anyway, I hear you. I understand.  
7 You're preaching to the choir, my friend.

8 MR. DAVIS: Judge, could you hear  
9 a little bit ---

10 THE COURT: Oh, I'll ---

11 MR. DAVIS: --- from the wife and  
12 the reverend?

13 THE COURT: Sure.

14 MR. DAVIS: Thank you, Judge.

15 THE COURT: Good morning.

16 CIERRA BROWN: Good morning. I  
17 am Cierra Brown, I am his wife.

18 THE COURT: Yes, ma'am.

19 CIERRA BROWN: Like he said, this  
20 is something -- I'm hearing everything that  
21 you're saying. I understand everything that  
22 you're saying.

23 But what I want you to understand  
24 from my standpoint, Damon doesn't deserve  
25 society to come down on him so hard. Yes, he

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1 put himself in this situation. He's grown.  
2 He's a man and will have to take account for  
3 himself.

4 But on my behalf, I have two little  
5 ones. Two little ones who don't cry for me.  
6 They cry for him.

7 THE COURT: Oh, I understand.

8 CIERRA BROWN: They don't ask for  
9 me, they ---

10 THE COURT: How old are they?

11 CIERRA BROWN: --- ask for him.

12 They are eight and two.

13 THE COURT: So they were there in  
14 2012?

15 CIERRA BROWN: They were,  
16 (affirmative nod).

17 THE COURT: Thank you.

18 CIERRA BROWN: And I understand  
19 that. This is something that was hidden. Me  
20 and Damon are both entrepreneurs. I have a  
21 salon, he has a barbershop. Concurrently we  
22 plaited a lot of hair, and I love it.

23 But his decision, I feel like it was  
24 a mature thing about him. It took Jesus  
25 thirty years to make it to manhood. He just

## State of South Carolina v Damon T Brown

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Case No. 12-GS-08-1107 et al

Hearing of October 3, 2013

Before The Honorable R. Markley Dennis

1 turned thirty. I feel like for us to look  
2 upon him as society's worst criminal or the  
3 worst person on earth because he did  
4 something wrong, I don't feel like that is  
5 fair.

6 Me, as his wife, I hated it for him.  
7 You know, because this was something that he  
8 put me and our family through. But at the  
9 same time, I love him more because I  
10 understand that everybody has faults,  
11 everybody has wrongs and for us to sit up  
12 here and judge is not for us to do.

13 Damon has grown and changed his life  
14 in more ways than another. I feel like this  
15 last time was the biggest wakeup call,  
16 because I threatened to leave, I threatened  
17 to take the girls and everything else. But  
18 he showed me improvement.

19 He works in our ministry now. Me  
20 and him have talked about an outreach program  
21 for young men, so that they won't go the same  
22 route that he did. My brothers look up to  
23 him. You know, my mother talks highly of  
24 him. My mother-in-law talks highly of him.  
25 We all talk highly of him.

State of South Carolina v Damon T Brown  
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24

1 We tried to push him. But can't  
2 nobody push him until he's seen it for  
3 himself. Now he sees it.

4 I'm begging you, literally begging  
5 you, to just have a little bit of heart and  
6 just to see for him -- I understand that he  
7 stood before this judge on other occasions  
8 but now, this time, I believe he is standing  
9 before you knowing that this is the end. And  
10 I stand in the gap for him.

11 You know, our pastor is here.  
12 Everybody sees him growing. He's part of a  
13 ministry now. In March, I couldn't say that.  
14 I don't believe that he could have even said  
15 that.

16 The barbershop has gotten to the  
17 point now where he is ready to open up a  
18 barber college. But you take that from him,  
19 -- like Mr. Davis said, there's going to be  
20 more in front of you, that don't have  
21 anything to do with him. But if he is out  
22 there, his testimony could help those who  
23 could come in front of you.

24 You know, I don't know what to say.  
25 I am holding back tears. If I were to ask

## State of South Carolina v Damon T Brown

25

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1           you now -- if I were to cry now, it would be  
2           tears of joy because I know that now it's in  
3           His hands, that it is done. As I stand  
4           before you, it's done. If he was to do it  
5           again, I promise you that I lay before you  
6           and I would sit in jail for him.

7                        THE COURT:     No, ma'am. Thank you.  
8           That would be the worst thing that you could  
9           do.

10                      MR. DAVIS:     Yeah.

11                      REV. BROWN:    Good morning, Your  
12           Honor.

13                      THE COURT:     Reverend Brown, good  
14           morning. It's good to see you, sir.

15                      REV. BROWN:    It's good to be here.  
16           Sad for this case. I'm here because Damon  
17           has made a lot of changes.

18                      THE COURT:     I'm sure he has.

19                      REV. BROWN:    We've worked with him,  
20           we've talked to him and he's just made a lot  
21           of changes. He's really trying to turn his  
22           life around. He is trying to be more  
23           obedient to us and to his family. Certainly  
24           we thank God for the changes he has made thus  
25           far. We still pray that you will take all of

State of South Carolina v Damon T Brown  
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1 this into consideration. I'd appreciate  
2 anything that you can do for him, sir.

3 THE COURT: Thank you very much,  
4 sir. Thank you for all that you have done  
5 and continue to do, sir, for this community.

6 MR. DAVIS: And, Judge, just one  
7 thing in closing. There were no weapons, no  
8 violence, nothing of that kind of situation  
9 in his past history.

10 Judge, whatever the sentence the Court  
11 gives, the impact is going to be  
12 astronomical. I've been on that side and I  
13 understand the prosecution's position, but at  
14 the end of the day -- I know that you will  
15 factor in the fact that the parole  
16 eligibility of eighty-five percent ---

17 THE COURT: Oh, I know.

18 MR. DAVIS: If somebody tells me  
19 -- if somebody would pay me eighty-five  
20 percent of something, that's a pretty good  
21 payoff.

22 So I'd ask that you'd consider as  
23 minimum a sentence as you possibly can.

24 THE COURT: Thank you, sir. Mr.  
25 Brown, is there anything that you want to

State of South Carolina v Damon T Brown  
Case No. 12-GS-08-1107 et al  
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1 add?

2 DEFENDANT: Yes, sir. First of  
3 all, I apologize to the Court because I  
4 shouldn't have gotten arrested. I'm ashamed,  
5 I'm embarrassed before all these people that  
6 I have with me here. I am just -- I am tired  
7 of hurting the people that mean the most to  
8 me. So I pray that you will grant mercy upon  
9 your sentencing, sir, and -- I will do better  
10 for our society. Thank you, sir.

11 THE COURT: Well, I'm glad that  
12 you've finally acknowledged certain things.  
13 What you have accepted will serve you well.  
14 But the beauty of -- and it is beautiful.  
15 You know, we've all studied it -- the Lord  
16 knows well in advance what we are going to  
17 choose to do.

18 I've often said, *'Well, if you know*  
19 *what I'm going to do in a given situation,*  
20 *Lord, why don't you just control it all and*  
21 *then I won't have to worry about it? Why*  
22 *make me have to make the choice?'*

23 But if you think about it, that's  
24 really what it is all about. You have to  
25 make the choice.

## State of South Carolina v Damon T Brown

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Case No. 12-GS-08-1107 et al

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Before The Honorable R. Markley Dennis

1 I'm sorry. Things that have  
2 happened are always lessons. Your lawyer  
3 taught me some when I was practicing law and  
4 had to go against him from time to time. He  
5 had a -- he was a tough solicitor. I commend  
6 him for that. I think he served this State  
7 well. He serves this State continually, now,  
8 well in representing persons who are accused.  
9 He understands it from both sides.

10 But he knows this gentleman, too.

11 I was -- in this courtroom and I --  
12 I don't think that Mr. Davis was the  
13 solicitor at that time, but I worked out a  
14 deal for a guy. I got him a pretty good  
15 deal. I was pleased. Murder down to  
16 involuntary manslaughter. I was asking, just  
17 like Mr. Davis is asking, 'Judge, give him a  
18 break.' I got out about two sentences, Mr.  
19 Davis, and Judge Fields looked at me and he  
20 said, 'Mr. Dennis, you've done a good job for  
21 your client but I can't help you much more  
22 than that.' I got the five-year sentence.

23 And, he's right. He's right.

24 I mean, if this was the first time  
25 you've faced the mandatory, I'd agree with

State of South Carolina v Damon T Brown  
Case No. 12-GS-08-1107 et al  
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1 Mr. Davis that the eighty-five percent means  
2 that. I'm glad, because it allows me to  
3 really and truly look at a sentence and try  
4 to fashion a sentence that I think is fair  
5 under all the circumstances.

6 I agree that the mandatory minimums,  
7 that we ought to do away with all of them. I  
8 think it's a disgrace what we do. I don't  
9 disagree with what your wife said.

10 I think thought that that book that  
11 you've now come to love talks about this,  
12 though. It talks about consequences of what  
13 we do wrong.

14 When we start saying, 'I understand  
15 the law but don't hit me so hard, don't  
16 punish me so bad', -- but that's not the way  
17 that it works.

18 Unfortunately what it says to me is  
19 that four months before you were looking at  
20 eighty-five percent then. You were looking  
21 at just what you are pleading to today. That  
22 lawyer worked out a pretty good deal for you,  
23 got it down. It obviously didn't register.

24 You led two lives. Boy, were you  
25 dishonest to that group of people there.

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1 Most importantly, to yourself and in your  
2 relationship with the man that is above all  
3 of us.

4 It got you in trouble.

5 There are consequences.

6 Your lawyer did a good job in  
7 getting the State to -- and you can thank Mr.  
8 Patterson, too, for his willingness to go  
9 along with that.

10 I don't think it's right, ma'am.  
11 But I've had to sentence two in my life. I  
12 looked at the man and he said, 'Why?' I said  
13 'because I don't have any option.'

14 Twenty-five years would have been  
15 it. That's it, that's the best that you  
16 could hope for.

17 Now, I hope that you understand that  
18 won't go away. Ten now and by the time he  
19 finished, it -- it may not -- he may not want  
20 to start over again.

21 I think probably you're right. In  
22 fact, we both had the same figure. But after  
23 reading all of this is here, I'm going to  
24 give him a little bit of a break.

25 MR. DAVIS: Thank you, Judge.

## State of South Carolina v Damon T Brown

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Case No. 12-GS-08-1107 et al

Hearing of October 3, 2013

Before The Honorable R. Markley Dennis

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THE COURT: But not much.

MR. DAVIS: Oh, Lord, thank you.

THE COURT: The sentence of the Court -- I think twelve (12) years is a good figure to be actually served, so the sentence of the Court is fourteen (14) years on each. They are concurrent. Good luck.

Probation is terminated.

(HEARING CONCLUDED)



FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of Berkeley )  
 )  
Damon T Brown 357300 )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

2014 CP-08-1003

APPLICATION FOR POST-CONVICTION RELIEF

FILED  
 2014 MAY -5 PM 2:51  
 MARY PERROW  
 CLERK OF COURT  
 RECEIVED COUNTY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution

---

2. Name and location of Court which imposed sentence Berkeley County Court  
300-B Calhoun Ave. Moncks Corner SC 29461

---

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) 2008-000717
  - (b) 2008-000717

118

(c) 2012 G-5 031107

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

(a) 11-23-11

(b) 10-3-13

(c) 10-3-13

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. N/A  
ii.   
iii.

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

i. N/A  
ii.   
iii.

(c) the date of each such result:

i. N/A  
ii.   
iii.

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

i. N/A  
ii.   
iii.

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

(a) Answer on separate sheet.

(b)

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

(a) Answer on separate sheet.  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_

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

(a) Answer on separate sheet.  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_

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

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

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

(a) the specific nature thereof:  
i. \_\_\_\_\_  
ii. N/A  
iii. \_\_\_\_\_  
iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:  
i. \_\_\_\_\_  
ii. N/A  
iii. \_\_\_\_\_  
iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

N/A

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

N/A

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

N/A

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

No

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

N/A

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

N/A

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

- (a) Answer on separate sheet.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? 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. Steve C. Davis  
4 East Main St. Moncks Corner, SC 29461
  - ii. \_\_\_\_\_
  - ii i. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. plea
  - ii. sentencing
  - iii. \_\_\_\_\_

4) IF you answered "no" to (7), state your reasons for not so appealing:

a) I knew that when the statement was made by the prosecutor, it coerced the judge. I'm no attorney. My counsel didn't object or even advise me that this couldn't be done. As well as having to adjust to incarceration, I had to study my case as well. I too have a family and cannot give up on or for them.

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

a) Failure to move to withdraw guilty plea and unkept plea. When someone pleads, they are bargaining for lesser offense or to one of multiple charges. There is some type of agreement that two parties come to before documents of agreement are to be authorized. I signed a plea agreement that was without negotiations or recommendations. The statements made by the prosecutor were clearly unlawful, therefore voiding the agreement that was made.

b) Ineffective assistance or counsel. My counsel didn't object to the prosecutor's statement. Therefore deeming him ineffective. His job was to support me to the fullest of his abilities and that was not done.

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

a) I checked off on my plea agreement showing that there was to be no negotiations. In the court room, in front of the judge, these statements were made.

b) When these statements were made in front of the judge, there was no objection made. I was never told by him that I could do something about what was said and done.

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'm no attorney. That's why I sought legal counsel during my situation. It wasn't until after my incarceration that I was able to truly look over the facts on my own.

b) Yet again, it is the job of an attorney to defend his clients. I was not given any options to go about correcting this matter. I then studied on my own and found there were grounds to move forward on.

19) State concisely the relief you seek in filing this application:

I seek the relief that my sentence be reduced to the minimum or shortened. Also that some plea agreement still be honored. It is truly unfair to and for defense the power that the prosecution uses and abuses. They let past issues guide their prosecution versus coming to the realization that the main goal is to serve justice. Yes we all make mistakes. I haven't met one perfect person other than Jesus. When judging one's life, the whole aspect of that person should be looked into. Not just the part that one chooses to use to lock down upon the other. I too have a family and all I wanted to do was provide for them. I never set out to hurt anyone.

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

I, Damon T. Brown, 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.

Damon T. Brown 4-29-14  
Applicant

SWORN or affirmed to and subscribed before me this

29th day of April, 2014

[Signature]  
Notary Public

My Commission Expires: April 12, 2013

FILED  
2014 MAY -5 PM 2:51  
MARY T. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

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

Answer on separate sheet.  
\_\_\_\_\_  
\_\_\_\_\_

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

No  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
County of Berkeley )

VERIFICATION

I, Damon T. Brown, 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.

[Signature] 4-29-14

SWORN to and subscribed before me this 29th day of April, 2014.

[Signature] (L.S.)  
Notary Public

My Commission Expires: April 12, 2013

FILED  
MAY -5 PM 2:51  
MAY 5 2014  
CLERK OF COURT  
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2014-CP-08-1003
Damon T. Brown, #357300,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 5, 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 June 2012 term of the Berkeley County Grand Jury for trafficking cocaine base 10-28g- second offense (2012-GS-08-1108) and distribution of cocaine (2012-GS-08-1107). The Applicant was represented by Steve C. Davis, Esquire.

On October 3, 2013, the Applicant pled guilty. The Honorable R. Markley Dennis sentenced the Applicant to confinement for a period of fourteen years for all charges. The sentences are to be served concurrently. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the Berkeley 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.
  - a. Failure to move to withdraw the guilty plea and unkempt plea.
  - b. Failure to object to the prosecutor's statement.

## 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.

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

V.

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

[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 16<sup>th</sup>, 2015.

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

2014-CP-08-1003

DAMON T. BROWN, #357300

Applicant,

vs

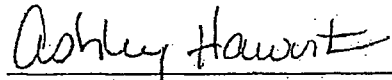
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,  
Respondent.

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

**Mr. Rodney D. Davis, Esquire**  
**Lowcountry Law Office**  
**4000 Faber Place Drive, Suite 300**  
**Charleston, South Carolina 29405**

DATED this 16<sup>th</sup> day of April, 2015.



Ashley Haworth, Legal Assistant  
For Respondent

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STATE OF SOUTH CAROLINA	)	
	)	Court of Common Pleas
COUNTY OF BERKELEY	)	Case No. 2014-CP-8-1003
<hr/>		
DAMON T. BROWN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	DATE: December 9, 2016
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B E F O R E:

THE HONORABLE G. THOMAS COOPER

A P P E A R A N C E:

RODNEY DUANE DAVIS  
Attorney for the Plaintiff

RUSTON W. NEELY  
Attorney for the Defendant

Karen V. Andersen, RMR, CRR  
Circuit Court Reporter

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**EXAMINATION**

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**EXHIBITS**

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1 THE COURT: The case of Damon Brown.

2 MR. NEELY: Yes, sir, Your Honor. This is Damon  
3 Brown vs. The State of South Carolina, Case No.  
4 2014-CP-08-1003. The applicant is presently in South  
5 Carolina Department of Corrections pursuant to orders coming  
6 from Charleston County Clerk of Court. Applicant was  
7 indicted in the June 2012 term by the Berkeley County Grand  
8 Jury for trafficking cocaine base on December 28th, that's  
9 Indictment No. 2012-GS-08-1108; and distribution of cocaine,  
10 2012-GS-08-1107.

11 Applicant is represented by Steve Davis. He pled  
12 guilty on October 3rd, 2013. The Honorable Markley Dennis  
13 sentenced the applicant to a period of 14 years for all  
14 charges.

15 THE COURT: Mr. Davis.

16 MR. DAVIS: Thank you very much, Your Honor.  
17 Judge, as is my request, I would ask you talk to Mr. Brown  
18 about this, that you advise him on the record about the  
19 risks of a PCR. We are prepared to go forward. It's my  
20 understanding he wishes to go forward.

21 THE COURT: Mr. Brown, has your lawyer explained to  
22 you the function of this hearing, that is, to determine  
23 whether you were properly represented, or if any other  
24 errors were made at trial, and that the only jurisdiction I  
25 have, the only power I have, is to grant you a new trial?

1 Do you understand that?

2 MR. BROWN: Yes, sir.

3 THE COURT: On all charges, which means that if I  
4 agree with you and your attorney, I would send this back and  
5 you would have to be -- you would have to face -- I am not  
6 really sure how many cases you had pending. I see you pled  
7 to two different ones, but there may have been others, all  
8 of which would be available to the State to bring back and  
9 try you on, since you've never been tried on those charges.  
10 Do you understand that?

11 MR. BROWN: Yes, sir.

12 THE COURT: And the penalty could be much greater  
13 than that which you received from Judge Dennis. Not knowing  
14 how many cases there were, I can't speculate as to how much  
15 time you would be facing if your PCR is successful. Do you  
16 understand that?

17 MR. BROWN: Yes, sir, I understand.

18 THE COURT: You still wish to go forward?

19 MR. BROWN: Yes, sir.

20 THE COURT: All right. You may do so. Have a  
21 seat.

22 MR. DAVIS: Thank you very much, Your Honor.

23 Because of the one we had earlier in the week, which had  
24 some very convoluted facts -- seems like I had a few of  
25 those this week -- if I could give you a preview, I think it

1 would help you, because I did an amended application on this  
2 one.

3 The State indicated, and they were correct, that at  
4 the time of conviction --

5 THE COURT: Hold on a minute. I do not have the  
6 amended application. Have you got the application?

7 MR. DAVIS: May I approach, Your Honor?

8 THE COURT: Sure. Absolutely. All right. You may  
9 proceed.

10 MR. DAVIS: Judge, the issue being on the second  
11 page of that, at conviction and sentencing, Mr. Brown was  
12 represented by Steve Davis. But prior to hiring Mr. Davis,  
13 for a decent portion of his pending case, Mr. Eduardo Curry  
14 was his attorney.

15 THE COURT: Both of those are retained or  
16 appointed?

17 MR. DAVIS: Retained, retained, Your Honor. So our  
18 overall thrust is going to be that the plea was the result  
19 of ineffective assistance. We ask you to undo the plea.

20 We have another argument at the same time, though,  
21 Your Honor, if you are not persuaded by that. We were going  
22 to present evidence and we have claimed it in the  
23 application, that there was an original offer that could and  
24 should have been taken but for the ineffective assistance of  
25 first counsel.

1           So the State has been aware of that. I know it's  
2           been a crazy week. And I had spoken to Ms. Olive, who was  
3           with us the entirety of the week until now, and even spoke  
4           to Mr. Johnson before that, because each time this has been  
5           scheduled before, the State has only put Mr. Steve Davis as  
6           their witness. And I just wanted to shout from the rooftops  
7           that I've complained against both. And so I just wanted  
8           that, so you can see where we are going.

9           THE COURT: Funny. They had it for exactly a year  
10          and a day.

11          MR. DAVIS: That's just a preview, because it is a  
12          unique argument. Your Honor, we would call Mr. Brown as our  
13          first witness.

14          MR. NEELY: Do you have a copy of the amended? I  
15          don't have a copy in my file. This is Mr. McCoy.

16          MR. DAVIS: May I approach?

17          THE COURT: Sure.

18          MR. DAVIS: Your Honor, the style of the case does  
19          have Mr. McCoy, but in the body of it is Mr. Brown. And the  
20          case number is Mr. Brown's. Scrivener's error as to the  
21          style of the case.

22          MR. NEELY: I just want to put on the record, I  
23          don't see that amendment in my file.

24          THE COURT: Well, I am not sure it was served, but  
25          it was certainly filed.

1 Can you run a copy?

2 THE CLERK: Yes, Your Honor. Come on around.

3 (Whereupon, the defendant is sworn.)

4 THE CLERK: State your full name for the record.

5 THE WITNESS: Damon Terelle Brown.

6 DAMON TERELLE BROWN,

7 having been duly sworn, testifies as follows;

8 DIRECT EXAMINATION

9 BY MR. DAVIS:

10 Q. Mr. Brown, can you tell Judge Cooper what all  
11 charges you were originally arrested on.

12 A. My charges were distribution of cocaine,  
13 trafficking cocaine, 10 grams or more, but less than 28,  
14 trafficking in proximity of a school, and I guess one more  
15 on there.

16 Q. Was there a second proximity?

17 A. Yes, I think it was second proximity.

18 Q. After you were arrested, did you hire an attorney?

19 A. Yes, sir.

20 Q. Who did you hire originally?

21 A. Eduardo Curry.

22 Q. I'm going to ask you, how much did you pay him  
23 originally to hire him?

24 A. Our original agreement was \$10,000.

25 Q. And during the course of his representation of you

1 on these charges, were there discussions about trying to  
2 negotiate a guilty plea rather than going to trial?

3 A. Yes, sir.

4 Q. Can you tell Judge Cooper about those discussions?

5 A. The discussions that we had was that we were going  
6 to go with the -- his job was to give me the best agreement  
7 that he could, which would have been second offense and a  
8 first offense, a second offense distribution and first  
9 offense trafficking charge.

10 THE COURT: Not combined to one?

11 THE WITNESS: Yes, sir.

12 BY MR. DAVIS:

13 Q. That's what he was attempting to obtain, right?

14 A. Yes, sir.

15 MR. NEELY: Judge, I am going to object. I don't  
16 know how an attorney that wasn't representing the applicant  
17 at the time of the plea is relevant to the PCR hearing.

18 THE COURT: Well, he said he's made a claim in his  
19 amended application against both counsel. I realize the  
20 other counsel isn't here, but that's not Mr. Davis's  
21 problem. So I'm going to allow it.

22 BY MR. DAVIS:

23 Q. So the question was, that's what you understood he  
24 was going to try to obtain as an offer?

25 A. Yes, sir, to the first offense.

1 Q. And was an offer ever conveyed to you from the  
2 State? Did the State ever make an offer while Mr. Curry was  
3 your attorney?

4 A. The offer that they gave me was 5 to 30 on the  
5 second offense.

6 Q. What was the last part?

7 A. On the second offense.

8 THE COURT: Second offense for what?

9 THE WITNESS: Trafficking charge.

10 THE COURT: On the 10 to 20?

11 THE WITNESS: Yes, sir.

12 BY MR. DAVIS:

13 Q. Did you have discussions with Mr. Curry about  
14 whether you should or should not accept that offer?

15 A. Yes, sir, I did. And it was up to his disposal up  
16 until we got in court that I shouldn't take it.

17 THE COURT: That you should or shouldn't?

18 THE WITNESS: We got in court and we already had  
19 the sentencing paper signed, the agreement. And at the last  
20 moment, he pulled me out back and said, don't take the plea  
21 today.

22 BY MR. DAVIS:

23 Q. Why?

24 A. It was his feeling that I was going to receive over  
25 15 or 20 years. So he instructed me to deny the plea, that

1 I would have to let them know that I was going to accept the  
2 trial and that he was going to do his work from there.

3 THE COURT: What happened?

4 THE WITNESS: Well, from then, I went to his office  
5 that following --

6 THE COURT: You withdrew the plea?

7 THE WITNESS: Yes, withdrew the plea, as he  
8 instructed me. I went to his office on the following  
9 Thursday after that. And he instructed me that in order for  
10 him to get this done, he was going to have to do a lot more  
11 work. So he asked that he receive more funds. So this was  
12 a Thursday. That following Friday, I went back to him, and  
13 I paid him an extra \$8,000, like he told me he needed. And  
14 he said that he was going to do all that he could do to get  
15 me a better deal done.

16 BY MR. DAVIS:

17 Q. Was it at that time, when you had come to court and  
18 signed the sentencing sheets, was that Judge Dennis?

19 A. Judge Dennis, yes, sir.

20 Q. Did you actually say something in court on the  
21 record that day?

22 A. Yes, sir. Judge Dennis went in on record and he  
23 stated that there would never be another plea offer given  
24 and the case was slated for trial.

25 Q. And it was after that when you went to Mr. Curry's

1 office and had a discussion?

2 A. Yes, sir.

3 Q. Paid him more money to do more work?

4 A. Yes, sir.

5 Q. Was another offer then provided to you after that?

6 A. Best he could come up then was a straight 15-year  
7 plea. And it was at that time that I talked to my family  
8 about it and they were like, no, we are not going to do  
9 that. It's time to retain new counsel.

10 Q. And did you? And did you?

11 A. Yes, sir.

12 Q. Who did you retain next?

13 A. We retained Mr. Davis.

14 Q. Steve Davis?

15 A. Yes, sir.

16 Q. Not me?

17 A. Mr. Steve Davis. I apologize.

18 Q. That's all right. And do you recall when that was  
19 that he was hired?

20 A. I don't have the actual date, but I believe it was  
21 in August.

22 Q. And that would have been August 2013?

23 A. Yes, sir, August 2013.

24 Q. And you recall the date you went to court and pled  
25 guilty?

1 A. I went to the court on October the 3rd, 2013.

2 Q. August, September, and then very beginning of  
3 October, right, so a couple of months?

4 A. Yes.

5 Q. In discussions with Mr. Steve Davis, what was  
6 discussed about the plea deal?

7 A. At first, he questioned me about the facts of the  
8 accident. And after that, the deal that we came up with was  
9 that based off of my prior record, he was inclined to take  
10 the State's offer, which was the second offense trafficking  
11 and the second offense distribution.

12 Q. Was there a discussion before that, though, when he  
13 was going to be hired, about what he could do if you did  
14 hire him?

15 A. He said that he could get me less than the 15 years  
16 that was the last offer that I received from Mr. Curry.

17 Q. Now, in the couple of months that Mr. Davis was  
18 your attorney, there was an offer from the State to avoid  
19 trial, right?

20 A. Yes, sir.

21 Q. What was that offer?

22 A. That offer was 5 to 30 years.

23 Q. On the second offense trafficking?

24 A. Second offense trafficking.

25 Q. And --

1           A.    And second offense distribution.  And they dropped  
2 the other two charges.

3           Q.    How many times would you say you met with  
4 Mr. Davis?

5           A.    Two times.

6           Q.    Does that include the day in court to plead guilty,  
7 or is that a third time then?

8           A.    That is a third in court.

9           Q.    Was there an informant involved in this case?

10          A.    Yes, sir.

11          Q.    What, if any, discussions did you and Mr. Davis  
12 have about that witness?

13          A.    Well, the discussion about that was we didn't  
14 know -- I was never told exactly who it was.  He questioned  
15 me about who the witness was.  And from there, that was all.

16          Q.    Were you provided any background on this witness?

17          A.    No, sir.

18          Q.    Any information about any detail with this witness?

19          A.    No, sir.  Only information that I was provided was  
20 the fact that, because of my prior record, that I would have  
21 been sentenced as a career offender.  So it would have been  
22 in my best interest to take the plea they were offering.

23          Q.    And we will get to your record in just a second.  
24 During these couple of meetings with Mr. Davis, was there  
25 any discussion about trial?

1 A. No, sir.

2 Q. Any discussions about defenses to these charges?

3 A. No, sir.

4 Q. During these meetings, were there discussions about  
5 the elements or the definitions of your different offenses?

6 A. No, sir.

7 Q. During these meetings, were there -- during the  
8 meetings, were there discussions about what level, meaning  
9 first offense, second offense, third offense? Were there  
10 any discussions about that?

11 A. No, sir.

12 Q. At some point, did Mr. Davis review your prior  
13 record with you?

14 A. Yes, he did.

15 Q. And for what purpose?

16 A. To prove to me that it would have been in my best  
17 interest to take the plea that was being offered. Because  
18 if I didn't, based on the charges I had, I could have been  
19 sentenced as a career offender.

20 Q. When reviewing your record with you, was there some  
21 way that you recall him noting your prior records --

22 A. Yes, sir.

23 Q. Prior convictions?

24 A. There were checkmarks that were made right beside  
25 the charges.

1 MR. DAVIS: Your Honor, may I approach the witness?

2 THE COURT: Yes, sir.

3 (Applicant's Exh. 1, Criminal Record of Damon  
4 Brown, was marked for identification.)

5 Q. Mr. Brown, I'm going to show you what's been marked  
6 as Applicant 1 for identification. It's six pages. Take a  
7 second and look at it. And the question is, do you  
8 recognize that document?

9 A. Yes, sir.

10 Q. Can you tell Judge Cooper what that document is?

11 A. This is the copy of the exact record that Mr. Davis  
12 went over with me and stated why I should take the plea.

13 Q. And is there something about that copy that let's  
14 you know it's the one y'all reviewed?

15 A. Yes, sir, because of the checkmarks beside each one  
16 of the charges.

17 Q. Who would have put the checkmarks there?

18 A. Mr. Davis.

19 MR. DAVIS: Your Honor, we would ask that that be  
20 admitted into evidence.

21 MR. NEELY: No objection.

22 THE COURT: Without objection.

23 (Applicant's Exhibit 1 is moved into evidence.)

24 BY MR. DAVIS:

25 Q. About how long did it take for Mr. Davis to review

1 that six-page document with you?

2 A. It might have been gone over this maybe five, ten  
3 minutes.

4 Q. It's part of the record. The judge gets a chance  
5 to review it, but are there any prior trafficking  
6 convictions?

7 A. No, sir, zero.

8 Q. At any time, did Mr. Davis review your trafficking  
9 indictment with you?

10 A. No, sir. I didn't receive it until after I was  
11 already at the Kirkland Correctional Detention Center.

12 Q. Do you recall signing this sentencing sheet for the  
13 trafficking indictment, however?

14 A. Yes, sir.

15 Q. Do you recall in the sentencing sheet whether you  
16 were pleading as charged or just some smaller offense?

17 A. It was my recollection that it was going to be a  
18 lesser-included offense.

19 Q. Was it your understanding you were pleading to a  
20 trafficking first, second or third?

21 A. First.

22 Q. Was there any discussion with Mr. Davis about the  
23 Grand Jury process?

24 A. No, sir.

25 Q. Was there any agreement before the plea about

1 whether the State would make a recommendation or not?

2 A. Yes, sir.

3 Q. What was that?

4 A. That they would not make any recommendation at all.

5 MR. DAVIS: And, Your Honor, you have a copy of the  
6 record. If I could, I would point out page 6, line 22

7 through 25: THE SOLICITOR: There is no other

8 recommendations. Without recommendation, the State will be  
9 asking for significant time.

10 THE COURT: Uh-huh.

11 BY MR. DAVIS:

12 Q. Do you recall Mr. Davis objecting --

13 A. No, sir.

14 Q. -- to that statement?

15 A. No, no objections.

16 MR. DAVIS: Your Honor, if I could have just one  
17 moment.

18 Thank you, Mr. Brown. That's all the questions I  
19 have.

20 THE COURT: Cross-examination.

21 MR. NEELY: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. NEELY:

24 Q. Mr. Brown, if I heard you correctly, the plea offer  
25 that you were given by your first attorney or by the State

1 to your first attorney was they offered you trafficking  
2 cocaine 10 to 28, second offense, which would be 5 to 30,  
3 and distribution of crack cocaine, second offense, which is  
4 be 10 to 30.

5 A. Yes, sir.

6 Q. So that is the deal that Mr. Davis, Mr. Steve  
7 Davis, got for you in the end; is that correct?

8 A. Yes, sir.

9 Q. So the plea deal that was originally given by the  
10 State to your first attorney was the same deal Mr. Davis got  
11 for you at your actual plea?

12 A. Yes, sir.

13 Q. And the only difference being your first attorney  
14 said he would obtain a recommendation from the State of 15  
15 years?

16 A. No, sir.

17 Q. No?

18 A. No. He did not relay any information to me about  
19 it. He said that that was the next offer to me.

20 Q. Right. So first offer was straight up to a second  
21 offense trafficking cocaine, 5 to 30; second offense  
22 distribution of cocaine, 10 to 30. And then after that  
23 offer was -- after you withdrew from that plea --

24 A. Both of the -- the distribution had a 5 and 30 as  
25 well, not 10 and 30.

1 Q. It was distribution, second offense?

2 A. Yes, sir.

3 Q. Okay. So that was your understanding of the first  
4 offer. And then you withdrew from that plea. And then the  
5 offer the State gave your first attorney after that was a  
6 recommendation of 15 years?

7 A. Yes, sir.

8 Q. Okay. And then you went and your family or you  
9 retained Mr. Steve Davis. And he said, I can do better than  
10 that?

11 A. Yes, sir.

12 Q. And then at the guilty plea, you pled to what was  
13 essentially that first deal, the trafficking cocaine, second  
14 offense; distribution, second offense?

15 A. Under expressed advice that based off of my record,  
16 that was the best that could be done.

17 Q. And he got you -- 14 years is what the judge  
18 sentenced you to?

19 A. Yes, sir.

20 Q. Okay. I just want to go over a few things with you  
21 that you said during your plea transcript. Do you recall  
22 the plea?

23 A. Yes, sir.

24 Q. And do you recall being sworn in by the clerk?

25 A. Yes, sir.

1 Q. To tell the whole truth, nothing but the truth?

2 A. Yes, sir.

3 Q. And did you tell the truth?

4 A. I sure did.

5 Q. Okay. And then --

6 A. I told exactly what my lawyer and I went over, and  
7 that is to agree to what was being said.

8 Q. Okay. And then let me just direct your attention  
9 to page 12 of the transcript. Do you recall the court  
10 asking you: And the answers to my questions are your  
11 answers, not what your lawyer has told you to tell me?

12 And you replied: They are my answers.

13 And the Court said: Those are your answers?

14 And in the reply, you said: Yes, sir.

15 A. Yes, sir, that's what I did, under the instruction  
16 of my attorney.

17 Q. Okay. And then on page 11, the Court goes over a  
18 colloquy of questions and asks you whether you were totally  
19 satisfied with your lawyer. And you said, yes, 'sir.' Do you  
20 remember that?

21 A. Yes, sir.

22 Q. And then he said: There are no complaints about  
23 anything he has done?

24 And you said, no, sir.

25 Do you recall that?

1           A.    Yes, sir.

2           Q.    And then the court even goes into post-conviction  
3 relief, which is what we are here for today.  And the Court  
4 advised you:  Post-conviction relief, that's where you say I  
5 want another trial because my lawyer didn't do what he was  
6 supposed to do.

7                    And that's 11, 23 through 12, 3.

8                    And in reply you say:  It ain't going to happen.  
9 Yes, sir, I understand.

10           MR. DAVIS:  Objection, Your Honor.

11           THE COURT:  Overruled.  I will hear it.  I'd like  
12 to hear the whole thing.

13 BY MR. NEELY:

14           Q.    And the court explained to you that he was just  
15 going over this because he wanted you to understand all of  
16 the implications of your plea.

17           A.    Like I said, I understood from my attorney at that  
18 time, Mr. Davis, to agree to all the terms because  
19 everything had been worked out.

20           Q.    Okay.  So you were going along with what the Court  
21 was saying because your understanding was, this is the best  
22 thing for you to do?

23           A.    Yes, sir.

24           Q.    Okay.  And then on page 27 of the transcript, after  
25 the State had given its case and all the colloquy had been

1 gone through, the court asked you if you had anything you  
2 wanted to say. And you told the Court that you were ashamed  
3 and embarrassed and you would do better for society; is that  
4 correct?

5 MR. DAVIS: Under relevancy, we would object.

6 THE COURT: Overruled.

7 BY MR. NEELY:

8 A. Yes, I did.

9 Q. Was that under the advice of your attorney?

10 A. That was what I said.

11 Q. That was you?

12 A. Yes, sir.

13 MR. NEELY: That is all the questions I have, Your  
14 Honor.

15 THE COURT: All right. Redirect?

16 MR. DAVIS: No, sir. Thank you, Your Honor.

17 THE COURT: You may come down. Thank you very  
18 much.

19 MR. DAVIS: We would call Steve Davis.

20 STEVE DAVIS,

21 having been duly sworn, testifies as follows:

22 THE CLERK: State your full name for the record.

23 THE WITNESS: Steven Christopher Davis.

24 DIRECT EXAMINATION

25 BY MR. DAVIS:

1 Q. Mr. Davis, do you recall when you were hired by  
2 Mr. Brown to represent him on these charges?

3 A. I don't recall specifically, but I do recall being  
4 retained. I looked through my file where I did a  
5 substitution of counsel and signed a retainer agreement,  
6 yes, sir.

7 Q. But you don't have the date? Let me ask you this.  
8 Did you file a substitution order with the Clerk of Court?

9 A. That's what I normally do.

10 Q. Would seeing the court date when that was filed --

11 A. Let me finish. August the 26th, 2013, Mr. Curry  
12 consented, and it's filed. And also, Mr. Damon T. Brown, he  
13 signed on it also.

14 Q. Did you receive a copy of the trafficking  
15 indictment in Mr. Brown's case?

16 A. I received a complete file.

17 Q. Okay. So did you receive a copy of the trafficking  
18 indictment --

19 A. It would have been in there if I received a  
20 complete file.

21 Q. Do you recall the code section referenced in the  
22 trafficking indictment?

23 A. I had the complete file.

24 Q. I'm sorry. I will try to ask more clearly. Do you  
25 recall what code section --

1           A.    I don't never recall no specific code.  I remember  
2 the whole file.  It was trafficking cocaine.  I'm not going  
3 to tell you no specific code, you know.

4           MR. DAVIS:  Okay.  May I approach the witness, Your  
5 Honor?

6           THE COURT:  All right.

7           (Applicant's Exh. 2, Indictment, was marked for  
8 identification.)

9 BY MR. DAVIS:

10          Q.    Mr. Davis, I'm going to show you what's been marked  
11 as Applicant's Exh. No. 2, and ask you if you recognize  
12 that?

13          A.    It's a trafficking cocaine indictment.

14          Q.    For Mr. Damon Brown?

15          A.    Yeah, and signed by Brian Alfaro.

16          Q.    And at the bottom of the code section, listed is  
17 44-53-375, correct?

18          A.    That's what the document says.

19          Q.    No subsections listed, correct?

20          A.    That's what the document says.

21          Q.    Okay.  You would have reviewed the sentence sheet  
22 with Mr. Brown before he signed it, correct?

23          A.    The sentencing sheet, yes.  Yes, definitely would  
24 have gone over it, yes.

25          Q.    Okay.  And are you able to tell by the face of that

1 indictment whether this is a first, second or third offense?

2 A. No, I cannot. To be quite honest with you, I can't  
3 today unless I take specific time to look at it, to be  
4 honest with you.

5 MR. DAVIS: Thank you, Mr. Davis. No other  
6 questions.

7 MR. NEELY: Brief redirect or recross-examination,  
8 Your Honor..

9 CROSS-EXAMINATION

10 BY MR. NEELY:

11 Q. Mr. Davis, you are aware that an indictment is not  
12 required to list whether it's a first, second or third  
13 offense?

14 A. I'm learning that today.

15 Q. And you are aware there's case law that represents  
16 that even if the CDR code on the indictment is incorrect for  
17 a first offense, that since the first, second or third is  
18 for sentencing matters, it doesn't matter; are you aware of  
19 that?

20 A. I will tell you, CDR code is a whole new process,  
21 to be honest with you. I have clients come back and they  
22 put the improper CDR code, and we go back and we amend it  
23 once it's brought to our attention. CDR code is controlled  
24 by the solicitor's office. Okay? And to be honest with  
25 you, as a defense lawyer, we really just don't pinpoint to

1 make sure they have the CDR. What I'm concerned about is  
2 person pleading and what we agree to plead to. Okay? And  
3 he pled to what we agreed to.

4 Q. And what you agreed to plead to was put on the  
5 record by the judge?

6 A. Yes.

7 Q. And that's what he agreed to when he pled guilty?

8 A. That's correct. Before I -- Judge, you said you  
9 want to hear the whole story?

10 THE COURT: I am not asking questions.

11 THE WITNESS: Okay. Okay. That's it.

12 THE COURT: If I want to ask a question, I will ask  
13 it.

14 THE WITNESS: Okay, Judge. That's it.

15 MR. DAVIS: I have no other questions.

16 THE COURT: You may come down.

17 THE WITNESS: Can I be excused?

18 THE COURT: Yes, sir.

19 MR. NEELY: No objection, Your Honor.

20 MR. DAVIS: And that's the applicant's case, Your  
21 Honor. If I could briefly touch on a couple of things we  
22 would ask you to consider?

23 THE COURT: Go ahead.

24 MR. DAVIS: Judge, you have the indictment and the  
25 sentencing sheet as part of the record already. If I may

1 approach, Your Honor, I would like you to also have  
2 Applicant's No. 1.

3           May I approach, Your Honor? This has been  
4 admitted. And that is the client's prior record. Briefly,  
5 we would argue that we do have a claim against his original  
6 attorney, Mr. Curry, for failing to finish a plea offer that  
7 was made. It was rejected by Mr. Brown on Mr. Curry's  
8 advice. That testimony is unopposed. So we would ask you  
9 to rely on the evidence before you as to the factual basis  
10 to it. It's unopposed. So we would ask you to take  
11 Mr. Brown's testimony on its face.

12           THE COURT: What basis for relief under our statute  
13 does that equate to for your client's benefit? I mean, tell  
14 me why you think that's grounds for granting post-conviction  
15 relief.

16           MR. DAVIS: And, Judge, forgive me. I have -- I'm  
17 going to tell you, very next thing we talked about is the  
18 solicitor speaking at the sentencing when she shouldn't  
19 have. I have a case law on that. I have a case on that. I  
20 don't recall the exact case.

21           It's this theory, Judge. The cases that have been  
22 decided on this issue have usually been similar to this  
23 *Thompson* case, which I will be happy to get a copy of. May  
24 I approach, Your Honor?

25           THE COURT: Yes, sir.

1           MR. DAVIS: This deals with an understanding  
2 between the parties that was not followed through on. Under  
3 this reasoning -- first of all, we would object, in the  
4 trial, it's Mr. Brown's understanding the State would stand  
5 silent. They actually said, we would want significant, I  
6 believe was the quote, significant time. And Mr. Davis  
7 didn't object.

8           THE COURT: There was no trial?

9           MR. DAVIS: Correct, correct, Your Honor.

10          THE COURT: At the plea?

11          MR. DAVIS: At the plea. I apologize. Yeah, at  
12 the plea. And under this reasoning, there are few cases,  
13 very few, there are cases in which PCR has been granted to  
14 enforce the deal that should have happened. As I tell my  
15 clients, it's threading a needle. I've tried it I think one  
16 other time in two and a half years, unsuccessfully. There  
17 are very few cases on the subject, but it's one of the few  
18 times you have an authority to do something other than  
19 simply overturn the convictions. It's basically a  
20 contractual thing, putting them back to the place they would  
21 had been had it been completed.

22                 So you do have that authority if you find that we  
23 have proved -- we've carried our burden to prove that a  
24 failure occurred under those facts. And the relief should  
25 be that specific.

1           If you are inclined, however, we are also making an  
2 argument that you have, by what Mr. Davis did, specifically  
3 on that -- it's two things. It's one, the solicitor said,  
4 we will be silent. And then he asked for maximum time. And  
5 he didn't object. The deal was agreed to. He didn't object  
6 to that.

7           The second part deals with the record, Judge. And  
8 we will let you review that as much as you need to. But the  
9 sentence sheet has specific subsection of trafficking. And  
10 there was no indication of that on the indictment. We are  
11 not arguing that the indictment is invalid. We are not.  
12 What we are arguing is, the conversation between Mr. Brown  
13 and his attorneys did not inform him correctly as to what he  
14 was facing. By looking through his record and applying that  
15 to the statutes, there's no prior trafficking in his record.  
16 And the review of his record does not support the threat  
17 that he was facing a higher drug charge if he had gone to  
18 trial. So the advisement of how his record applied to  
19 enhance the punishment of each of these charges was in  
20 error.

21           But because Mr. Brown believed, as I believe he  
22 referred to it, he will be a career criminal, that sounds  
23 like federal language, but he believed he was facing more  
24 time if he did not accept the plea. And that advice was  
25 incorrect on its face when you review his record. And you

1 will see the one that has been admitted is the one he  
2 testified. It has checkmarks beside the one Mr. Davis said  
3 would count to enhance this above what it actually would  
4 have. That was ineffective, erroneous advice.

5 And had he been given correct advice, he would not  
6 have pled to these charges. He would have requested a  
7 trial.

8 So we would ask that you consider overturning all  
9 of them. If you are not persuaded by that, we have the more  
10 specific relief request. But our primary request would be  
11 that you find that it was improper advice, just factually  
12 improper as to his prior record, and overturn these  
13 convictions.

14 Thank you, Your Honor.

15 THE COURT: Let me see if I follow you.  
16 Mr. Eduardo Curry, you said, got him a plea deal. They were  
17 second offense distribution and trafficking; is that  
18 correct?

19 MR. DAVIS: Correct, Your Honor.

20 THE COURT: And then Mr. Davis pled him guilty or  
21 he pled guilty to the same thing with Mr. Davis?

22 MR. DAVIS: The same charge, correct, same charge,  
23 yes, sir.

24 THE COURT: And got 14 years instead of the 15  
25 years that Mr. -- or was it 5 to 30 that Mr. Curry had told

1 him was his exposure?

2 MR. DAVIS: The original one he testified that he  
3 rejected in front of Judge Dennis was 5 to 30, yes, Your  
4 Honor.

5 THE COURT: So he comes back in front of Judge  
6 Dennis again.

7 MR. DAVIS: Correct, Your Honor.

8 THE COURT: Who says, there will be no more plea  
9 offers. But there was. I don't know what the time lapse  
10 was. And he pled guilty. And he had no promise at that  
11 point of anything less than -- the way I read it, still a  
12 straight-up plea.

13 MR. DAVIS: That's correct.

14 THE COURT: And the State asked for, based on his.  
15 record, a substantial sentence.

16 MR. DAVIS: The exact quote is "for significant  
17 time", yes, Your Honor.

18 THE COURT: Significant time?

19 MR. DAVIS: Yes, sir.

20 THE COURT: And then there's some colloquy in the  
21 transcript about a 15-year sentence. And Judge Dennis  
22 talked about it and said, I'm going to give you a break, I'm  
23 only going to give you 14, which sounds like another judge  
24 from the Lowcountry who, on a 30-year sentence says, but I'm  
25 going to give you a break, I'm going to sentence you to 29

1 and a half. I won't call his name particularly because we  
2 are on the record, but was rather famous for that.

3 So what's the -- if that's the factual scenario,  
4 what did the lawyers, either Curry or Davis, do that would  
5 entitle your client to the relief he's seeking?

6 MR. DAVIS: That's our weaker argument. But as to  
7 our first argument, we would argue, first of all, to three  
8 things, one --

9 THE COURT: You never get a promise without a  
10 negotiated sentence. You never get -- negotiated plea, you  
11 never get -- you never know what you are going to get.

12 MR. DAVIS: That's true, Your Honor.

13 THE COURT: And we don't do written plea agreements  
14 in this state, which I wish we did. But there's no way to  
15 hold the State to any standard if we don't have written plea  
16 agreements. So what's -- tell me why your client is  
17 entitled to the relief.

18 MR. DAVIS: In reverse order, at the hearing  
19 again --

20 THE COURT: At the plea.

21 MR. DAVIS: At the plea, I apologize, at the plea,  
22 it was Mr. Brown's understanding that at this point, it's  
23 straight-up. The State isn't going to dogpile on me. And  
24 they did. And his attorneys didn't object. That's one  
25 factor.

1 THE COURT: Okay. I understand that.

2 MR. DAVIS: Second of all, we would argue, I'll get  
3 into it, I don't generally, what he sacrificed financially.  
4 That would not have had happened had he not received the bad  
5 advice from Mr. Curry originally.

6 THE COURT: I understand that now. That bothers  
7 me, but it's not something that I can remedy in a  
8 post-conviction relief hearing.

9 MR. DAVIS: And then, finally, we would argue that  
10 the original range that was discussed when he had Mr. Curry  
11 originally and rejected it, that with that, as opposed to  
12 then the State asking for significant time, that that is a  
13 change, and he should be put back in the position he was  
14 originally to accept the original offer with Mr. Curry.

15 Give me one moment.

16 THE COURT: At which time, at which time, the  
17 judge, based on his record, could have given him 25 years?

18 MR. DAVIS: Yes, Your Honor.

19 THE COURT: Instead of 5?

20 MR. DAVIS: Yes, Your Honor.

21 THE COURT: Same difference.

22 MR. DAVIS: Correct.

23 THE COURT: All right. Give me your second point  
24 about his record.

25 MR. DAVIS: When you compare his actual record with

1 what is marked by Mr. Davis, these are what's going to  
2 enhance your charges, so when they offer us distribution  
3 second and trafficking --

4 THE COURT: Slow, slow, slow. What are you talking  
5 about enhanced?

6 MR. DAVIS: Make it a third or second or  
7 subsequent.

8 THE COURT: Is that what was done?

9 MR. DAVIS: Yeah. He pled to --

10 THE COURT: You are talking about enhancing the  
11 sentence or enhancing the charges?

12 MR. DAVIS: I would argue it's semantics. Whether  
13 it makes it a first trafficking, a second trafficking or  
14 third trafficking, this was his last discussion he gave us  
15 more time on, Your Honor. It's the issue that the  
16 trafficking statute, the offense, is defined in the first  
17 paragraph. The punishment subsections, the State argued  
18 this correctly, are the subsequent punishments. Those  
19 aren't elements of the trafficking. So, again, we are not  
20 arguing --

21 THE COURT: Well, if you take 375(C)(1)(b), it  
22 does. It is the elements.

23 MR. DAVIS: Correct.

24 THE COURT: I'm looking at it.

25 MR. DAVIS: Okay, towards punishment.

1           THE COURT: No. Any person who knowingly sells,  
2 manufactures, delivers, purchases or brings into this  
3 state -- I mean, that's not just punishment -- who provides  
4 financial assistance or otherwise aids, abets, attempts, or  
5 conspires to sell, manufacture, deliver, purchase or bring  
6 into this state, or who is knowingly in actual or  
7 constructive possession of. So it's the elements.

8           MR. DAVIS: Right. I'm so sorry, Judge, large (C),  
9 underneath that.

10          THE COURT: I just read it.

11          MR. DAVIS: Yes, sir, but underneath that (1) (A),  
12 (B), (C), lower case (a), (b), (c).

13          THE COURT: That's correct.

14          MR. DAVIS: Is the punishment part. So what we  
15 would be talking about is the lower case (a), (b), (c),  
16 first offense, second offense, third offense.

17          THE COURT: That just says 375, which is inclusive  
18 of all.

19          MR. DAVIS: Correct. When Mr. Davis is telling  
20 Mr. Brown, you've got to take this deal, you've got to plead  
21 to trafficking second and distribution second, the way  
22 Mr. Brown phrased it was, if I don't, my record is going to  
23 make me a career criminal, is what he testified about.

24          THE COURT: Okay.

25          MR. DAVIS: That he's facing higher charges. He

1 was led to believe because of his record --

2 THE COURT: The State never said that, did they?

3 MR. DAVIS: No, no, no. And it's the ineffective  
4 assistance, that he was under the impression from Mr. Davis  
5 that more of his record would count than would. He was  
6 interpreting his record wrongly to Mr. Brown.

7 I will make this simple, Judge. You could be  
8 facing a third. They are giving you a second. You better  
9 take it.

10 It's not a third, so that is incorrect advice. If  
11 an attorney makes an error factually on that, when a client  
12 thinks, I'm getting a break, they are not really getting a  
13 break.

14 THE COURT: Did Mr. Curry tell him the same thing?

15 MR. DAVIS: I'm sorry, Your Honor?

16 THE COURT: Did Mr. Curry tell him the same thing?

17 MR. DAVIS: I don't know if I asked about that on  
18 the record, Your Honor. I'm not sure.

19 THE COURT: Okay.

20 MR. DAVIS: But we would certainly argue at the  
21 time of the actual signing of the plea and going in and  
22 pleading, he did, and signing the sheet. So, again, if the  
23 client believes he's getting a bargain that is truly not a  
24 bargain and pleads to it based on that erroneous advice, we  
25 would argue that is ineffective. It's similar to not

1 talking about a collateral consequences.

2 THE COURT: I understand. Okay. I'm with you  
3 now.

4 MR. DAVIS: So you have the record. I will not go  
5 through each page of that six-page record, but you have  
6 that. You can interpret that as the statute instructs us to  
7 interpret it on what counts for enhancement, meaning first,  
8 second or third. It's in the record, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. DAVIS: Thank you, Judge.

11 THE COURT: Solicitor.

12 MR. NEELY: It's not like -- the State would ask  
13 for summary judgment. I don't think he's alleged anything  
14 that protects the voluntariness or knowingness (sic) of this  
15 plea. I think that he's stated he knew exactly what he's  
16 doing. He understood he was pleading to a second offense  
17 trafficking, second offense distribution. That was the  
18 original offer that he obtained. And that's the offer that  
19 he ended up pleading to.

20 It's -- there was no evidence that any of these  
21 actions would have changed the defendant's mind, would have  
22 had him plead not guilty and go to trial. That was never  
23 testified to.

24 It was a trafficking third offense. That was pled  
25 down to a trafficking second. That's the deal he wanted.

1 That's the deal he obtained. I don't think anything has  
2 been alleged that would even show evidence to grant a PCR.

3 THE COURT: Mr. Davis, any reply?

4 MR. DAVIS: Judge, I have to fall on the sword.  
5 I'm trying to remember. I don't recall if I asked him that.  
6 If I didn't, I would ask the Court to re-call him if I  
7 didn't ask the threshold question. Excuse me. This is a  
8 long week. I do not recall. Certainly, if need be, I would  
9 ask to re-call him. Certainly, I will proffer that he will  
10 testify that he did the plea based on the erroneous advice  
11 as far as to his record. And that had he gotten correct  
12 advice --

13 THE COURT: Call him. Let's get this thing we are  
14 talking about.

15 DAMON BROWN,

16 having been previously sworn, testifies as follows:

17 REDIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q. Mr. Brown, I'm sure the judge would tell you, you  
20 are still under oath, Mr. Brown.

21 A. Yes, sir.

22 Q. Very specifically, Mr. Brown, did you believe that  
23 your pleas were to lower charges?

24 A. Yes, sir.

25 Q. Okay. If that was incorrect and they were not

1 actually lowered for your plea, would you have pled or would  
2 you have requested a trial?

3 A. I would not have pled if I knew that they were  
4 actually higher. I wouldn't have. I was under my express  
5 advice to my attorney, from my attorney, that this was going  
6 to be a lesser offense than what I was already arrested  
7 under. That is why he instructed me to plea. If I knew it  
8 was going to go up on my offense, I wouldn't have pled to  
9 it.

10 MR. DAVIS: That's all I have, Your Honor. Thank  
11 you.

12 THE COURT: Okay. Any questions?

13 MR. NEELY: No, sir, Your Honor.

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

15 MR. DAVIS: In the record, you already have the  
16 sentencing sheet. It is marked lesser-included.

17 MR. NEELY: May I approach and take a look at the  
18 Exhibit No. 2, the sentencing sheet?

19 MR. DAVIS: Exhibit 1.

20 MR. NEELY: Exhibit 1?

21 Your Honor, the State would again ask for summary  
22 judgment. It is clear from the sentencing sheet that he had  
23 two prior cocaine charges. And that would advance it to a  
24 trafficking third offense. He pled down to a trafficking  
25 second offense. As a matter of law, one thing he said would

1 make him change his mind was actually accurate and he was  
2 advised correctly by the attorney.

3 THE COURT: All right. Thank you very much.  
4 Motion is denied. Thank you very much.

5 MR. DAVIS: Thank you, Your Honor.

6 THE COURT: Proposed order in 30 days.

7 MR. DAVIS: Yes, sir.


8 (Whereupon, proceedings are adjourned.)  
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at Large, do hereby certify that the foregoing transcript is  
a true, accurate and complete Transcript of Record of the  
proceedings.

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

  
Karen V. Andersen  
Registered Merit Reporter  
Certified Realtime Reporter



# Messages

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A-1  
12/9/12

Check messages (3) below for: BRKSL406

Date	Title
<input type="checkbox"/> April 4, 2012 at 12:35:34	QWA 0006F4E580 from NC2K
<input type="checkbox"/> April 4, 2012 at 12:35:32	ICHR 003FC04E19 from SCCH
<input type="checkbox"/> April 4, 2012 at 12:35:31	ICHR 003FC04E17 from SCCH

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**QWA 0006F4E580 from NC2K - April 4, 2012 at 12:35:34**

BRKSL406  
 .QWA.0006F4E580.NC2K.20120404 12:35:34  
 TO: BRKSL406-49380 20120404 12:35:34 0006F4E580  
 FROM: NC2K-16049536 20120404 12:35:34  
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 SCO08015A

NO NCIC WANT FBI/27150XB4  
 NO NCIC WANT SOC/247599788  
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**ICHR 003FC04E19 from SCCH - April 4, 2012 at 12:35:32**

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 .ICHR.003FC04E19.SCCH.20120404 12:35:32  
 TO: BRKSL406-49379 20120404 12:35:32 003FC04E19  
 FROM: SCCH-12602905 20120404 12:35:32

PAGE-02 DATE-04/04/2012 TIME-12:31:18  
 REQ ORI-SC008015A NINTH JUDICIAL CIRCU  
 SID-SC01437864 FBI- 27150XB4

-----  
 CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC  
 -----

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

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REQUESTED FOR CRIMINAL JUSTICE PURPOSES

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ICHR 003FC04E17 from SCCH - April 4, 2012 at 12:35:31

BRKSL406  
 .ICHR.003FC04E17.SCCH.20120404 12:35:31  
 TO: BRKSL406-49377 20120404 12:35:31 003FC04E17  
 FROM: SCCH-12602903 20120404 12:35:31

ICHR REQUEST FOR RAP SHEET  
 ORI-SC008015A FBI- 27150XB4 PUR-C  
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PAGE-01 DATE-04/04/2012 TIME-12:31:18  
 REQ ORI-SC008015A NINTH JUDICIAL CIRCU  
 SID-SC01437864 FBI- 27150XB4  
 NAME-BROWN, DAMON SEX-M RACE-B  
 HEIGHT-601 WEIGHT-170 EYES-BRO HAIR-BLK SKIN- BORN-SC  
 FPC- HENRY-  
 1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--08/29/2002 DATE OF LAST UPDATE--04/02/2012

ADDITIONAL IDENTIFIERS BIRTH  
 NAME DATES MARKS SOC SEC MISC NUM  
 BROWN, DAMON TERELLE TAT R ARM  
 BROWN, DAMON T

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC  
 BROWN, DAMON TERELLE 07/15/2004

SC0080100 MONCK'S CORNER PD  
CASE-040887  
ATN-980000525861  
WARR-80033CJ  
CIT-44-53-370(D) (3) -MISDEMEANOR

ARREST CHARGE 01-POSS 28G OR  
LESS MARIJ OR 10G OR LESS  
HASH 1ST  
OFFENSE DATE-07/15/2004  
PHOTOGRAPH AVAILABLE

CIT-44-53-370(D) (3) -MISDEMEANOR  
DOC-RB4 WARR-80033CJ

COURT CHARGE 01-POSS 28G OR  
LESS MARIJ OR 10G OR LESS  
HASH 1ST  
COURT DISP-CONVICTED;30 DAYS  
OR \$1187  
ATN-980000525861

BROWN, DAMON TERELLE  
SC0080000 BERKELEY CNTY SO  
CASE-NA  
ATN-990000171334  
WARR-KO60789  
CIT-44-53-370(B) (2) -FELONY

02/17/2006

ARREST CHARGE 01-MANUFT, POSSE  
SS OTHER SUB SCH I, II, III  
WITD-1ST  
OFFENSE DATE-02/17/2006  
PHOTOGRAPH AVAILABLE  
PALM PRINTS AVAILABLE

WARR-KO60790  
CIT-44-53-445(B) (2) -FELONY

ARREST CHARGE 02-DIST, SELL, ET  
C, CRACK COCAINE, OR PWID,  
NR SCHOOL  
OFFENSE DATE-02/17/2006

WARR-C414313 @  
CIT-44-53-370(D) (4) -MISDEMEANOR

ARREST CHARGE 03-POSS 28G OR  
LESS MARIJ OR 10G OR LESS  
HASH 1ST  
OFFENSE DATE-02/17/2006

CIT-44-53-370(B) (1) -FELONY  
DOC-00GS08 WARR-C414313

COURT CHARGE 01-MDP, DRUGS  
SCH I B,C, LSD AND SCH  
II, COCAINE-1ST  
COURT DISP-NON-CONVICTION;  
DISM/NOL PROS/PROS ENDED  
COURT DATE-11/16/2006  
ATN-990000171334

SC008015G BERKELEY PPP  
CASE-SCSHPO  
CIT-44-53-370(B) (1) -FELONY

11/16/2006 CUSTODY STATUS-PROBATION  
START DATE-11/16/2006

COURT CHARGE 01-MDP, DRUGS  
SCH I B,C, LSD AND SCH  
II, COCAINE-1ST  
COURT DISP-CONVICTED; 2 YEARS  
SS. 15 MONTHS PROBATION

ATN-08P000500076

11/06/2007

BROWN, DAMON TERELLE  
SCO080100 MONCK'S CORNER PD  
CASE-071128  
ATN-990000356073  
WARR-H757848  
CIT-44-53-445 (B) (2) -FELONY

ARREST CHARGE 01-DIST, SELL, ET  
C, CRACK COCAINE, OR PWID,  
NR SCHOOL  
OFFENSE DATE-08/15/2007  
PHOTOGRAPH AVAILABLE

WARR-H757847  
CIT-44-53-375 (B) (1) -FELONY

ARREST CHARGE 02-DRUGS/MAN, DI  
ST, ETC OF COCAINE BASE 1ST  
OFFENSE DATE-08/15/2007

WARR-H757849  
CIT-44-53-375 (B) (1) -FELONY

ARREST CHARGE 03-DRUGS/MAN, DI  
ST, ETC OF COCAINE BASE 1ST  
OFFENSE DATE-08/15/2007

CIT-44-53-375 (B) (1) -FELONY  
DOC-08GS0800728 WARR-H757847

COURT CHARGE 01-DRUGS/MAN, DIS  
T, ETC OF COCAINE BASE 1ST  
COURT DISP-CONVICTED; 10 Years  
SS 2 Years Probationtime  
to run concurren

COURT DATE-11/28/2011  
ATN-990000356073

CIT-44-53-445 (D) (1) -FELONY  
DOC-08GS0800726 WARR-H757848

COURT CHARGE 02-DRUGS/DIST, SE  
LL, MANUF OR PWID NEAR A  
SCHOOL  
COURT DISP-NON-CONVICTION;  
DISM/NOL PROS/PROS ENDED  
COURT DATE-11/28/2011

CIT-44-53-375 (B) (1) -FELONY  
DOC-08GS0800727 WARR-H757849

COURT CHARGE 03-DRUGS/MAN, DIS  
T, ETC OF COCAINE BASE 1ST  
COURT DISP-CONVICTED; 10 Years  
SS 7 Days & 2 Years Proba  
tion concurren

COURT DATE-11/28/2011

04/09/2008

BROWN, DAMON TERELLE  
SCO080000 BERKELEY CNTY SO  
CASE-200804013497  
ATN-08D000501021  
WARR-I729349

## SLED Check LEMS Messages

Page 5 of 6

CIT-44-53-370(B)(2)-FELONY

ARREST CHARGE 01-MANUFT, POSSE  
SS OTHER SUB SCH I, II, III  
WITD-1ST  
OFFENSE DATE-04/09/2008  
PHOTOGRAPH AVAILABLE  
PALM PRINTS AVAILABLE

WARR-I729348

CIT-44-53-370(B)(1)-FELONY

ARREST CHARGE 02-MDP, DRUGS  
SCH I B,C, LSD AND SCH  
II, COCAINE-1ST  
OFFENSE DATE-04/09/2008

CIT-44-53-370(D)(4)-MISDEMEANOR

DOC-08GS0801213 WARR-I729348

COURT CHARGE 01-POSS 28G OR  
LESS MARIJ/10G OR LESS  
HASH 1ST  
COURT DISP-NON-CONVICTION;  
DISM/NOL PROS/PROS ENDED  
COURT DATE-11/28/2011  
ATN-08D000501021

CIT-44-53-370(D)(4)-MISDEMEANOR

DOC-08GS0801214 WARR-I729349

COURT CHARGE 02-POSS 28G OR  
LESS MARIJ/10G OR LESS  
HASH 1ST  
COURT DISP-NON-CONVICTION;  
DISM/NOL PROS/PROS ENDED  
COURT DATE-11/28/2011

SC008015G BERKELEY PPP

CASE-SC0080

-----  
11/28/2011 CUSTODY STATUS-PROBATION

CIT-44-53-375(B)(1)-FELONY

COURT CHARGE 01-DRUGS/MAN, DIS  
T, ETC OF COCAINE BASE 1ST  
COURT DISP-CONVICTED; 10 YRS  
SS UPON 7 DAYS AND 2 YRS  
PROBATION  
ATN-08P000502272

CIT-44-53-375(B)(1)-FELONY

COURT CHARGE 02-DRUGS/MAN, DIS  
T, ETC OF COCAINE BASE 1ST  
COURT DISP-CONVICTED; 10 YRS  
SS UPON 2 YRS PROBATION

BROWN, DAMON TERELLE

-----  
03/30/2012

SC0080000 BERKELEY CNTY SO

CASE-20 1203012102

ATN-08D000531729

WARR-N1 60232

CIT-44-53-370(B)(1)-FELONY

ARREST CHARGE 01-MDP, DRUGS  
SCH I B,C, LSD AND SCH  
II, COCAINE-1ST  
OFFENSE DATE-03/30/2012  
PHOTOGRAPH AVAILABLE  
PALM PRINTS AVAILABLE

WARR-N1 60290

CIT-44-53-375(C)(A)-FELONY

ARREST CHARGE 02-TRAFFICKING

WAR-N160292 CIT -44-53-445 (D) (1) -FELONY	ICE, CRANK, CRACK, >10G BUT <2 8G-1ST OFFENSE DATE-03/30/2012
WAR-N160293 CIT -44-53-370 (B) (1) -FELONY	ARREST CHARGE 03-DRUGS/DIST, S ELL, MANUF OR PWID NEAR A SCHOOL OFFENSE DATE-03/30/2012
END OF PAGE                      01 - PAGE 02 TO FOLLOW	ARREST CHARGE 04-MDP, DRUGS SCH I B, C, LSD AND SCH II, COCAINE-1ST OFFENSE DATE-03/30/2012
Top of page or Menu	
<div style="text-align: center;"> <input type="button" value="Delete"/> <input type="button" value="Copy"/> <input type="button" value="Print"/> </div>	



ARREST WARRANT

N-160290

STATE OF SOUTH CAROLINA

County/  Municipality of

Berkeley

THE STATE 201203012102  
against

Damon Terelle Brown

Address: Hopkins Dr  
Moncks Corner, SC 29461-5231

Phone: SS [redacted]  
Sex: M Race: B Height: 6 I Weight: 180  
DL State: SC DL #: [redacted]

Agency ORI #: SC0080000

Prosecuting Agency: Berkeley County Sheriff Office

Prosecuting Officer: K G Milks - 0162

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

Offense Code: 0450

Code/Ordinance Sec: 44-53-0375(C)(1)

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 3-30-12

*[Signature]*  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
300 B California Avenue  
PO Box 219  
Moncks Corner, SC 29461

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/  Municipality of

Berkeley

Personally appeared before me the affiant K G Milks who being duly sworn deposes and says that defendant Damon Terelle Brown did within this county and state on or about 03/30/2012 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Berkeley)

In the following particulars:

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

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

That on 03-30-2012 while: Gaillard Drive, which is located in Moncks Corner S.C., and in the County of Berkeley and State aforesaid the defendant Damon Terelle Brown did willfully, unlawfully and feloniously violate Section 44-53-375 of the South Carolina Code of Laws for 1976 as amended, Trafficking Cocaine Base. The above defendant was driving a black in color 1996 Tahoe, bearing SC tag EVC-898. Agents with the driver, the defendant and placed him under arrest for an active warrant, during that time he stated that he had an amount of narcotics in his driver's door; agents located a plastic container containing approximately 15.9 gross grams of a rock like material that did field test positive for cocaine base in the driver's door. During the commission of the above offense, Sgt. Holbrook of the Berkeley County Sheriff's Office was present and witness to prove the same. All against the peace, law, and dignity of the State of South Carolina.

Signature of Affiant

*[Signature]*

STATE OF SOUTH CAROLINA

County/  Municipality of

Berkeley

Affiant's Address 223 North Live Oak Drive  
Moncks Corner, SC 29461-  
Affiant's Telephone (843)719-4465

ARREST WARRANT

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

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

on or about 3/30/2012 defendant Damon Terelle Brown

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

County/  Municipality of Berkeley) as set forth below:

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

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

Sworn to and subscribed before me

on 03/30/2012

*[Signature]* (L.S.)

Paula Fechhelm McElvogue

Judge Code: 5989

Judge's Address 223 North Live Oak Drive  
Moncks Corner, SC 29461-3748

Judge's Telephone (843)719-4050

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

FILED  
12 APR - 2 PM 1:51  
HARRY D. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 Damon Brown, #357300 )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2014-CP-08-100

ORDER OF DISMISSAL

2017 JUN 12 PM 2:48  
 FILED  
 MARY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, S.C.

This Court convened an evidentiary hearing into this matter on December 9, 2016, at the Berkeley County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel, Steve Davis, Esquire ("Counsel"), was present and testified. This Court had the opportunity to listen to the testimony of Applicant and counsel. This Court had before it a copy of the plea transcript, the records of the Berkeley County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the June 20 12 term of the Berkeley County Grand Jury for trafficking cocaine base, third offense 10-28g (20 12-GS-08-1108) and distribution of cocaine (2012-GS-08-1107).

After being charged, Applicant hired Eduardo Curry to represent him. Curry negotiated a plea deal for Applicant of fifteen years' incarceration to the lesser-included offense of trafficking cocaine base second offense. During that first plea proceeding, Applicant withdrew from the plea

and hired Steve Davis, who told Applicant he thought Applicant would get less than fifteen years incarceration on a straight up plea.

On October 3, 2013, the Applicant pled guilty with Steve Davis as his attorney. The Honorable R. Markley Dennis sentenced the Applicant to confinement for a period of fourteen years. The Applicant did not appeal his convictions or sentences.

## II. ALLEGATIONS

Applicant alleged the following grounds in his original application:

1. Ineffective assistance of counsel.
  - a. Failure to move to withdraw the guilty plea and unkempt plea.
  - b. Failure to object to the prosecutor's statement.

## III. SUMMARY OF FACTS

On March 20, 2012, law enforcement utilized a confidential informant, equipped with audio and video recording equipment, to purchase 1.2 grams of cocaine from Applicant. Law enforcement obtained warrants based on that drug purchase. During surveillance of Applicant's residence, law enforcement saw Applicant get into his vehicle. Based on Applicant's warrant, law enforcement stopped the vehicle and arrested Applicant. Pursuant Applicant's arrest, law enforcement conducted a search of the vehicle he was in and found 14.9 grams of cocaine in the vehicle. Applicant's criminal history contained multiple drug convictions including two counts of distribution of cocaine base (2008-GS08-0727 and 2008-GS08-0728) and possession of cocaine (2006-GS08-1308).

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v.

State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”) Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984). The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

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testimony accordingly. This Court finds counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**A. Ineffective Assistance of Counsel**

This Court finds that Applicant has failed to satisfy his burden to prove that counsel was deficient or that he was prejudiced by counsel's alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The Court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63. Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Here, counsel articulated valid reasons for his recommendation to Applicant that he plead guilty. Counsel reasonably explained the steps he undertook to mitigate Applicant's sentence and the discussions they had concerning the consequences of his choices. For the reasons set out below, this Court finds counsel was not ineffective.



1. Advice to Plead Guilty

Based on the evidence the State had against him and his conversations with Applicant, counsel advised Applicant that he should plead guilty. The evidence against Applicant was overwhelming. Law enforcement used a confidential informant, equipped with audio and video recording equipment, to purchase 1.2 grams of cocaine from Applicant. Law enforcement then arrested Applicant in his vehicle and, pursuant to that arrest, found 14.9 grams of cocaine in his vehicle.

Applicant attempted to plead guilty with Eduardo Curry as his attorney before withdrawing during the plea proceedings. Curry obtained a plea deal for Applicant for a recommendation of 15 years' incarceration. Applicant testified he was willing to plead guilty at that first plea proceeding, but believed he could obtain a better plea deal with a different attorney. "A defendant who pleads guilty upon the advice of counsel may attack the voluntary and intelligent character of the guilty plea only by showing the advice he received from counsel was not within the there is a reasonable probability that, but for counsel's alleged error, he would not have pleaded range of competence demanded of attorneys in criminal cases." Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). Applicant's testimony indicated he did not intend to insist on a trial, but rather sought to obtain the best possible plea deal.

After Applicant withdrew from that plea proceeding, Applicant's family dismissed Eduardo Curry from representing Applicant and hired counsel. Counsel's understanding of the situation was he was hired in order to negotiate Applicant a better plea deal. Counsel advised Applicant that mitigation was his best chance at a shorter sentence. Counsel told Applicant he believed Applicant would receive less than 15 years if he pleaded straight up and focused on mitigation. Applicant did plead guilty straight up and, after counsel's mitigation, was sentenced

to 14 years. Thus, counsel's advice was accurate because Applicant received 1 year less than the original plea deal. This Court finds Applicant has failed to meet his burden to prove counsel's advice was deficient. This Court finds counsel's advice was within the range of competence required of an attorney.

Applicant testified that he understood he was pleading straight up to Trafficking Cocaine Base 2<sup>nd</sup> offense and understood the potential sentence and collateral consequences he was facing. "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011). Applicant was a sophisticated defendant. As indicated by Applicant's record, he had been through serious criminal procedures before. Applicant understood the options available to him and chose to plead guilty to a lesser charge rather than proceeding to trial. This Court finds Applicant understood the consequences of pleading guilty and that he pleaded guilty freely, voluntarily, and knowingly. This Court finds there was no reasonable probability that Applicant would have insisted on a trial, but for counsel's advice.

This Court finds that Applicant failed to satisfy his burden to prove that counsel's advice was deficient. Counsel's advice was accurate and his representation was within the range of competence demanded of attorneys. Applicant also failed to prove he was prejudiced by the alleged deficiency. Applicant received the benefit he sought; he received a lesser sentence with counsel as his new attorney. Accordingly, Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation. Therefore, this allegation is denied and dismissed.



## 2. Sentence Reduction

Counsel correctly advised Applicant the State's plea deal was a reduction of his trafficking charge from a third offense to a second offense. Applicant alleged this advice is erroneous because he was originally charged with a second offense. The record does not support this contention and the Court finds this argument is without merit. Here, counsel advised Applicant the plea deal was a reduction in the charge from a third offense to a second offense of trafficking cocaine base and that the plea was straight up, without recommendation or negotiation. The record supports the accuracy of counsel's advice.

As required by S.C. Code Ann. §44-53-460 for enhancement to a third offense, Applicant had at least two prior qualifying drug offenses, shown by indictments 2006-GS08-1308 and 2008-GS08-0727. Per the statute, Applicant's record showed the charge was for a third offense of Trafficking Cocaine Base. As part of Applicant's plea bargain, the State allowed him to plead guilty to the lesser included second offense. The plea judge went over the complete colloquy with Applicant. Applicant knew the charge and sentence range to which he was pleading. Applicant pleaded guilty to Trafficking Cocaine Base 2<sup>nd</sup> offense without a recommendation or negotiation and received 14 years' incarceration. "[He] received the benefit of the agreement for which he bargained and cannot now complain." Rollison v. State, 346 S.C. 506, 511-12, 552 S.E.2d 290, 293 (2001).

Therefore, this Court finds Counsel's advice was not erroneous. Counsel advised Applicant the plea deal was for a reduction in charge from a 3<sup>rd</sup> offense of Trafficking Cocaine Base to a 2<sup>nd</sup> offense and the record proves this advice was correct. This Court finds Applicant has failed to meet his burden to prove counsel's advice was deficient. Therefore, this allegation is denied and dismissed.



3. Failure to Object to Improper Statements by the Solicitor

Applicant failed to present evidence or legal argument that any of the statements by the solicitor, during Applicant's plea proceeding, were improper or objectionable. Regardless, this Court finds and the record shows there were no objectionable statements made by the solicitor during Applicant's plea. This Court finds Applicant failed to satisfy his burden to prove counsel was deficient for failing to object to the statements made by the Solicitor. This Court also finds Applicant failed to prove he was prejudiced by any alleged deficiency. Therefore, this allegation is denied and dismissed.

V. CONCLUSION

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

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

**IT IS THEREFORE ORDERED THAT:**

- 1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
- 2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7 day of June, 2017.



THE HONORABLE G. THOMAS COOPER, JR.  
Presiding Judge  
9<sup>th</sup> Judicial Circuit

Cooper, South Carolina

ALF2012-04-00446

WITNESSES

Berkeley County Sheriff's Office

*[Signature]*

AGENCY CASE NUMBER

201203012102

ARREST WARRANT NUMBER

N160232

DATE OF ARREST

March 30, 2012

ACTION OF GRAND JURY

*[Signature]*  
Person of Grand Jury  
Date: 6/13/12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012-GS-08-1107

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

DAMON T. BROWN

DOB: [REDACTED]

B/M

Indictment for  
Distribution of Cocaine

HALLY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

12 JUN 13 AM 12:18

FILED

*[Signature]*



ALF2012-04-00446

WITNESSES

Berkeley County Sheriff's Office

*[Signature]*

AGENCY CASE NUMBER

201203012102

ARREST WARRANT NUMBER

N160290

DATE OF ARREST

March 30, 2012

ACTION OF GRAND JURY

*[Faint text]*

*[Signature]*  
Person of Grand Jury  
Date: 6/13/12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012-GS-08-1108

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

DAMON T. BROWN

DOB: I

B/M

Indictment for

Trafficking Cocaine Base

MARY R. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

12 JUN 13 AM 12:18

FILED *[Signature]*

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )

## INDICTMENT

At a Court of General Sessions, convened on June 13, 2012 the Grand Jurors of Berkeley County present upon their oath:

**Trafficking Cocaine Base**

That Damon T. Brown did in Berkeley County on or about the 30<sup>th</sup> day of March, 2012 knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State; or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a controlled substance or a controlled substance analogue, to wit: cocaine base, in excess of ten (10) grams. This is in violation of Section 44-53-375, 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.

  
 \_\_\_\_\_  
 BRYAN A. ALFARO  
 DEPUTY SOLICITOR