

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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APR 16 2018

Honorable Michael G. Nettles, Circuit Court Judge. SUPREME COURT

STEFANO TYSHAWN BROOKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001615

APPENDIX

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INDEX

INDEX i

TRANSCRIPT OF GUILTY PLEA HEARING (May 15, 2012)1

TRANSCRIPT OF SENTENCING HEARING (February 14, 2014).....16

MOTION TO RECONSIDER SENTENCE.....25

TRANSCRIPT OF RECONSIDERATION HEARING (March 24, 2015)27

APPLICATION FOR POST-CONVICTION RELIEF36

STATE’S RETURN.....42

CONSENT ORDER OF SUBSTITUTION.....48

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING (February 7, 2017)50

FORM 4 ORDER OF DISMISSAL102

ORDER OF DISMISSAL.....104

MOTION TO ALTER OR AMEND PURSUANT TO RULE 59(e), SCRCP115

TRANSCRIPT OF HEARING ON MOTION TO ALTER OR AMEND (June 1, 2017).....117

ORDERS DENYING MOTION.....141

INDICTMENT.....143

SENTENCING SHEET145

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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STATE OF SOUTH CAROLINA
COUNTY OF Horry

COURT OF GENERAL SESSIONS
2011-GS-26-218

STATE OF SOUTH CAROLINA,)
)
)
-vs-)
)
)
STEFANO BROOKS,)
)
Defendant.)

May 15, 2012

B E F O R E:
HONORABLE BENJAMIN H. CULBERTSON

A P P E A R A N C E S:
LAURA RICHARDSON, Esquire
Attorney for the State
CLIFFORD L. WELSH
Attorney for the Defendant

Henry P. Young
Court Reporter

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right.

3 MS. RICHARDSON: Your Honor, this is the
4 State of South Carolina versus Stefano Brooks,
5 indictment 2011-GS-26-217. He was originally
6 indicted for trafficking cocaine base 100 to 200
7 grams. He is here to plead guilty to the lesser
8 included of trafficking in cocaine 28 to a hundred
9 grams first offense.

10 Your Honor, Your Honor, we're here to qualify
11 the plea and he will be sentenced in June before
12 Your Honor.

13 THE COURT: Trafficking in cocaine first
14 offense 28 to a hundred grams?

15 MS. RICHARDSON: Yes, sir.

16 THE COURT: All right.

17 Mr. Welsh, Deshon Brooks on the charge of
18 trafficking cocaine 28 to a hundred grams first
19 offense?

20 MR. WELSH: Yes, sir.

21 THE COURT: Have you discussed with your
22 client the charges against him, his rights as a
23 defendant and the consequence of being convicted of
24 this crime?

25 MR. WELSH: Yes, sir.

1 THE COURT: In your opinion does your client
2 understand the charge against him --

3 MR. WELSH: I believe so.

4 THE COURT: -- his rights as a defendant and
5 the consequence of being convicted of this crime?

6 MR. WELSH: I believe he does, Your Honor.

7 THE COURT: Does he wish to plead guilty, or
8 not guilty?

9 MR. WELSH: He wants to plead guilty.

10 THE COURT: Okay. Do you agree with his
11 decision to plead guilty to this charge?

12 MR. WELSH: Yes. There are some other
13 charges that we understand are going to be
14 dismissed as a result of his plea, so there has
15 been negotiations back and forth and I now agree
16 with his plea.

17 THE COURT: All right. Based upon the
18 information you have, if this case proceeded to
19 trial do you feel the State could prove your
20 client's guilt beyond a reasonable doubt?

21 MR. WELSH: I do, Your Honor. Since he is
22 not going to be sentenced today, at the end of this
23 I would like to tell you a little bit more why I
24 feel that, just for the record.

25 THE COURT: All right. Has your client

1 received a competency evaluation?

2 MR. WELSH: That wasn't, no, that wasn't
3 necessary.

4 THE COURT: All right. You don't feel he
5 needs a competency evaluation?

6 MR. WELSH: No, sir.

7 THE COURT: All right.

8 Sir, your name is Stefano DeShon Brooks?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Mr. Brooks, you have
11 been charged and indicted by the grand jury on
12 trafficking -- wait a minute, this is trafficking
13 in ecstasy?

14 MR. WELSH: Wrong indictment.

15 THE COURT: 2011-GS-26-217, trafficking in
16 ecstasy?

17 MS. RICHARDSON: 218, I apologize, Your
18 Honor.

19 THE COURT: Okay.

20 MS. RICHARDSON: May I approach?

21 THE COURT: Yes.

22 All right, thank you.

23 Sir, you're Stefano DeShon Brooks?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right, Mr. Brooks, you have

1 been charged and indicted by the grand jury on
2 trafficking in cocaine base 100 to 200 grams. Now,
3 this indictment covers all lesser included
4 offenses. A lesser included offense is trafficking
5 cocaine 28 to a hundred grams first offense and
6 according to your attorney you wish to plead guilty
7 to trafficking in cocaine first offense.

8 Is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Before I can accept
11 your guilty plea I've got to go over some questions
12 with you to be sure that you understand the charge
13 against you, that you understand your rights as a
14 defendant, that you understand the consequences of
15 pleading guilty and I must be sure that you're
16 pleading guilty voluntarily.

17 During the past 72 hours have you taken any
18 medication, consumed any alcohol or drugs or been
19 under any influence that would affect your ability
20 to know why you're here?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Do you understand why
23 you're here today?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is there anything about this

1 hearing that you want to ask your lawyer or ask me
2 before we proceed?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. Even though you have
5 been indicted by the grand jury, under the
6 Constitution of the United States you're presumed
7 innocent of this crime and you have the right to
8 have your guilt or innocence determined by a jury
9 trial of your peers. The State bears the burden of
10 proving your guilt beyond a reasonable doubt. You
11 do not have to prove your innocence and you cannot
12 be compelled to testify against yourself.

13 You also have the right to confront and
14 cross-examine anybody who testifies against you.
15 If you choose, you can present a defense to this
16 charge but when you plead guilty you give up all
17 those rights.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you want to give up those
21 rights and plead guilty to this charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Now, you understand
24 that this crime carries a maximum sentence of
25 twenty-five years in prison and a \$50,000 fine?

1 THE DEFENDANT: Yes, sir.

2 MR. WELSH: Seven to twenty.

3 THE COURT: It carries a maximum sentence --

4 MR. WELSH: I'm sorry.

5 THE COURT: -- maximum sentence of
6 twenty-five years and a \$50,000 fine. Do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Do you understand
10 that this crime also carries a mandatory minimum
11 sentence which means that the absolute minimum
12 sentence that can be imposed on you is seven years
13 in prison and a \$50,000 fine? Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand that no
17 part of your sentence can be suspended, you cannot
18 be put on probation and you will not be eligible
19 for parole. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Do you also
22 understand this crime carries an enhanced sentence,
23 which means if you're ever convicted of another
24 drug possession charge then the sentence you could
25 receive for that subsequent conviction will be

1 enhanced from the possible sentence you now face
2 for a first offense and the State can use this
3 guilty plea against you to show a conviction for a
4 drug possession crime?

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Knowing your rights as a
8 defendant, knowing the maximum sentence that you
9 could receive, knowing the mandatory minimum
10 sentence that must be imposed, knowing that you're
11 not eligible for probation, not eligible for parole
12 and knowing the enhanced sentence you could get for
13 any future drug possession convictions do you wish
14 to plead guilty, or not guilty to trafficking in
15 cocaine 28 to a hundred grams first offense?

16 THE DEFENDANT: Guilty.

17 THE COURT: Has anybody promised you anything
18 or threatened you in any way to get you to plead
19 guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you pleading guilty
22 voluntarily?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you satisfied with the
25 services of your lawyer?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you pleading guilty to this
3 crime because you committed this crime?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I need you to listen carefully
6 while the Solicitor gives me the facts of your
7 case. Okay?

8 All right.

9 MS. RICHARDSON: Thank you, Your Honor. On
10 July 30, 2010, police responded to the Little River
11 section of Horry County. Your Honor, it was a
12 license check point. During that check point they
13 observed an alcoholic beverage in the vehicle, they
14 asked Mr. Bennett to step out, at which time he
15 did. When he stepped out of the car, Your Honor, a
16 clear plastic bag fell between the door and the
17 seat. Your Honor, that did test positive for
18 cocaine. It came back at 102 grams.

19 THE COURT: All right. You said Mr. Bennett.
20 You mean Mr. Brooks?

21 MS. RICHARDSON: Yes, sir, I'm sorry.

22 THE COURT: Mr. Brooks, is that what happened
23 in this case?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. You understand if you

1 went to trial you could challenge whether or not
2 your vehicle was legally stopped and whether or not
3 you were legally detained and if it was determined
4 that you were stopped illegally or detained
5 illegally, then the drugs found could not be used
6 as evidence against you? Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. I mean, I don't know
9 if you were stopped illegally, I don't know if you
10 were searched illegally but you understand that you
11 are waiving that defense by pleading guilty here
12 today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And you also
15 understand that you're waiving any defenses you
16 have to this charge, if there are any defenses? Do
17 you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Is that what you want
20 to do?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right.

23 All right, Mr. Welsh, anything in mitigation?

24 MR. WELSH: Well, since we're not sentencing
25 today, it is not so much in mitigation, just more

1 or less in explanation of why we're here doing this
2 today.

3 Mr. Brooks was actually a passenger in the
4 vehicle and so it would affect his standing to
5 challenge any search. The other problem was a lot
6 of the problems that the Highway Patrol would
7 normally have in a check point were not present
8 here. They had the captain of the district on the
9 scene, which takes out a lot of the problems they
10 usually have with a check point, and there seems to
11 also be testimony in the discovery that they saw a
12 beer can in plain view. So, I just wanted to put
13 that in the record to explain why we're here as
14 opposed to attempting to suppress the evidence that
15 was found, which was the only real defense after
16 hearing the facts of this case, Your Honor, we
17 would have.

18 THE COURT: All right. Mr. Brooks, anything
19 you want to say?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Now, you understand
22 that we're going to defer sentencing on you but if
23 I accept this guilty plea today, then when you come
24 back for sentencing the only issue before the Court
25 will be to impose a sentence. Do you understand

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And the issue of your guilt or
4 innocence will be decided at this point in time.
5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you still want, knowing
8 that, do you still want to plead guilty to this
9 charge?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. I will accept the
12 guilty plea, I find that it is made knowingly,
13 voluntarily, fully advised of your rights as a
14 defendant.

15 Is this classified as a serious crime?

16 MS. RICHARDSON: Yes, sir, it should be.

17 THE COURT: Okay, I need to go over that and
18 question you with that regard.

19 All right, Mr. Brooks, you understand that
20 this crime is also classified as a violent crime.
21 What that means, if you're ever convicted of
22 another violent crime, then that second violent
23 crime conviction, you likewise would not be
24 eligible for probation and you would not be
25 eligible for parole. The State would use this

1 guilty plea against you to show that you have a
2 violent crime conviction.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you also understand that this
6 crime is classified as a serious crime? What that
7 means is if you're ever convicted of three serious
8 crimes, then the sentence you could receive for
9 that third conviction can be enhanced to life in
10 prison without the possibility of parole and the
11 State would use this guilty plea against you to
12 show a serious crime conviction.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Knowing that this is
16 classified as a violent crime and a serious crime
17 and the consequences of those classifications, do
18 you still wish to plead guilty to trafficking in
19 cocaine 28 to a hundred grams?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. I'll accept your
22 guilty plea, find that it is made knowingly,
23 voluntarily, fully advised of your rights as a
24 defendant, the nature of the charge against you and
25 the consequences of your guilty plea. I also find

1 that there is a factual basis to support the charge
2 against you.

3 We'll defer sentencing until when?

4 MS. RICHARDSON: June 14th, Your Honor.

5 THE COURT: All right, defer sentencing and
6 bring you back on sentencing on June 14th, okay?

7 All right.

8 MR. WELSH: Thank you.

9 THE COURT: Will he be taken into custody
10 now?

11 MS. RICHARDSON: No, sir, Your Honor.

12 THE COURT: All right.

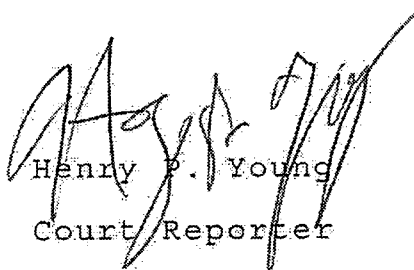
13 (Hearing Concluded).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 14th day of May, 2012.

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

May 7, 2015


Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2011-GS-26-218

The State,)	
)	
Plaintiff,	)	Transcript of Record
)	
vs.	)	February 14, 2014
)	
Stefano Tyshawn Brooks,	)	Sentencing
)	
Defendant.)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Lauree Richardson, Esquire
Attorney for Plaintiff

Clifford Leon Welsh, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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E X H I B I T S

(There were no exhibits marked during the hearing.)

1 (On the record, February 14, 2014. Defendant is sworn by
2 clerk.)

3 MS. RICHARDSON: Your Honor, this is the State of South
4 Carolina versus Stefano Brooks. He was before Your Honor on
5 May 14th, 2012, it looks like, Your Honor. You qualified his
6 plea at that point in time. He was, he was supposed to come
7 back to be sentenced on June 14th. Your Honor gave him some
8 time to get his priorities in order since he would be going to
9 jail for a substantial period of time.

10 Your Honor, at that point in time, he did not show. He
11 was on the run. He ran for up until now, Your Honor. We
12 ended up having to get the marshals after him. He was found
13 in Louisiana.

14 Your Honor, at that time I was perfectly clear to Mr.
15 Brooks that our recommendation it was based on the fact that
16 he would show up for his sentencing hearing. He did not show
17 up. We would be requesting something in addition of that 12
18 years.

19 Your Honor, just briefly the facts are that it was a
20 traffic stop. It was a checkpoint, Your Honor, and the
21 cocaine that he possessed at that point was 102 grams. We
22 gave him some benefit in reducing that, Your Honor, to the 10
23 to 28 grams. So as far as his prior record is concerned, it's
24 a 2002 A and B, 2005 conspiracy to commit armed robbery and
25 armed robbery, and a 2007 eluding arrest.

State v. Brooks

4

1 THE COURT: All right.

2 MS. RICHARDSON: And I'm sorry, Your Honor, just so the
3 record's perfectly clear, there's also an attempted murder
4 charge from 2011 and an assault and battery charge that's
5 being dismissed as a result of his plea here today. We have
6 notified those victims. They are not present. They did have
7 some restitution, Your Honor. We have explained to them that
8 with him going to SCDC for an extended period of time he would
9 have no way to pay that restitution to them. They have
10 applied for SOVA, for SOVA to help pay their medical bills.

11 THE COURT: All right.

12 MR. WELSH: Your Honor, I think there was also a -- an
13 MDMA possession with intent charge ---

14 MS. RICHARDSON: That is correct.

15 MR. WELSH: --- that was dismissed.

16 MS. RICHARDSON: That is correct.

17 THE COURT: Okay. All right. So all we're dealing with
18 is the trafficking in cocaine 28 to a hundred grams first
19 offense?

20 MS. RICHARDSON: That is, that is correct.

21 THE COURT: All right. Mr. Welsh, you represent Stefano
22 or Stefano Tyshawn Brooks on this charge?

23 MR. WELSH: Yes, sir.

24 THE COURT: All right. I, according to the sentencing
25 sheet, I accepted the guilty plea on May the 15th, 2012.

1 Anything in mitigation?

2 MR. WELSH: Yes, sir. Your Honor, I, I want to point out
3 that this is Mr. Brooks' first drug conviction. He, he has
4 got a little bit of a prior record, but this is his first drug
5 conviction, and I, I can, not as way of an excuse, but as a
6 way of explanation, I can tell you pretty much a good bit
7 about Stefano's life because I've known his family for 15, 20
8 years. I first started representing the Brookses when his
9 brother had a, had a construction company and a trucking
10 company, and I was -- he consulted me on regulatory issues
11 because he was hoping to move those companies into the State
12 of South Carolina or at least expand them into the State of
13 South Carolina. He -- his family has been in the construction
14 business for -- well, for generations. His father was in
15 construction as well as his brother.

16 I've also represented a fair number of his cousins, but
17 on a little bit different issues than I did his brother, but
18 his, his life kind of took a turn at the time, and this is my
19 -- through my observations. This isn't what Mr. Brooks has
20 told me, but I've been involved with the family. I've, I've
21 kind of observed this throughout the years. His brother had a
22 motorcycle accident and suffered quite a few damages, some --
23 one of which was a head injury, and it kind of -- he went from
24 running a trucking company, a construction company and being
25 married to a CPA to taking a little bit -- shooting a little

State v. Brooks

6

1 lower in life. I mean, he has never been involved in this
2 kind of, kind of conduct, but I think at the time his brother
3 was injured, Stefano was really followed in the footsteps of
4 one of his cousins that I've also represented a little bit
5 more and was -- fell under his influence, and I think that's
6 kind of what brought us here today as opposed to being able to
7 stay in the, in the family business and, and because it --
8 when the brother was injured, it kind of went downhill, but
9 anyway, that's, that's, like I say, that's not, not an excuse,
10 but it's just what -- an explanation. Once again, I'd like to
11 emphasize he has no prior drug convictions.

12 What happened after his guilty plea was the reason, and
13 Ms. Richardson may have forgot, he was having a baby. He got
14 out for the birth of the baby, and it was just, after that it
15 was just hard to, to come back, and I mean, for the first drug
16 conviction I know the recommendation was 12 years. I, I would
17 ask -- I know the minimum is seven for what he pled to. I
18 would ask, while she's asking for a penalty greater than 12, I
19 would ask for one less than 12, closer to seven, just because
20 of the fact it is his first drug conviction. He has a family
21 now, and really, it was his wanting to be with his family that
22 kept him from turning himself back in, and I don't know, do
23 you have anything you'd like to tell the Judge?

24 MR. BROOKS: Well, I wanted to see if I can get drug
25 court.

1 MR. WELSH: The ship sailed on that.

2 THE COURT: All right. What is his prior record?

3 MS. RICHARDSON: Your Honor, he has a 2002 assault and
4 battery, a 2005 armed robbery and conspiracy to commit armed
5 robbery and a 2007 eluding arrest.

6 THE COURT: Okay.

7 MR. WELSH: Your Honor, could I point out one other
8 thing?

9 THE COURT: All right, sir.

10 MR. WELSH: He has been in custody since August 2nd, 2013,
11 when he was arrested in Louisiana. He was transported back
12 here in in -- or picked up in Louisiana in October, but he's
13 been in custody since August 2nd, and it was primarily on these
14 charges. There were other charges that were possible in
15 Louisiana but they were never, never pursued, and so he's
16 basically been in custody since August 2nd on, on this.

17 THE COURT: All right.

18 All right. Mr. Brooks, you pled guilty on February 15th,
19 2012. The issue before the Court at this time is the
20 sentencing. The sentence of the Court is that you be confined
21 to the State Department of Corrections for 25 years and pay a
22 \$50,000 fine.

23 MS. RICHARDSON: Thank you, Your Honor.

24 THE COURT: All right. All right. It looks like that
25 there are two bench warrants in this case that I'm also going

1 to be lifting.

(Adjourned.)

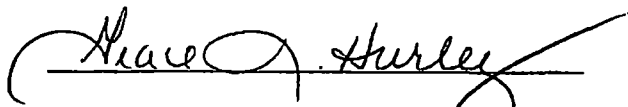
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C E R T I F I C A T E

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I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Sentencing Hearing held in the case of State v. Stefano Tyshawn Brooks, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 14, 2014.

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


Grace L. Hurley, CVR-CM-M
Official Reporter

February 11, 2015.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 11-GS-26-00218

STATE,)
)
)
v.)
)
STEFANO T. BROOKS,)
)
)
Defendant,)
)

**MOTION FOR RECONSIDERATION
OF THE SENTENCE OF THE COURT**

14 FEB 24 PM 4:59
CLERK OF COURT

The Defendant, STEFANO T. BROOKS respectfully moves the Court to reconsider its sentence of February 14, 2014. The grounds for the Motion for Reconsideration are that the Court, was not informed of, or misconstrued, several important facts, that should be considered, in determining Defendant's sentence.

The defendant entered a plea on May 15, 2012, to Trafficking Cocaine, 28-100g., 1st. offense, §44-53-370(e)(2)(b), CDR code 2359, which carries a sentence of seven (7) to twenty five (25) years. This guilty plea was accompanied with a recommendation by the Solicitor of twelve (12) years. The Defendant was not given the opportunity to withdraw his plea, when the Court determined that it did not intend to follow the recommendation of the Solicitor. The sentence of the Court was the maximum twenty five (25) years.

There were several facts the Court may have misconstrued, such as:

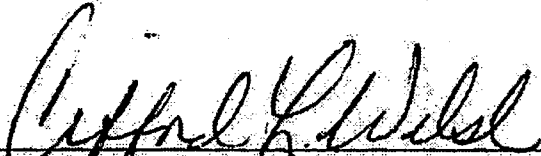
1. The Defendant did not have any prior drug convictions and this was truly a first offence. Further, the actual drug weight was only 2.19 grams over the range

for the charge to which the Defendant entered a plea, so the reduction in the charge was not a major change in the criminal conduct the Defendant was involved.

2. The other drug offence that was dismissed, as a part of this plea bargain, was a result of the same stop as the charge that the Defendant pled to, and not a separate arrest.

3. The attempted murder case that was dismissed as a part of this plea bargain was the result of the Defendant defending himself, after two individuals jumped him in a club, and one of the attackers was hurt in the struggle. The alleged victim was cut by a bottle, the Defendant was able to find, and use in his defense against the attack by two individuals. This case the Defendant intended to take to trial, until a deal was reached to dismiss the charge.

All of which is respectfully submitted,



Clifford L. Welsh, Esquire (SC Bar No.: 6024)
Attorney for the Defendant

457 Main Street
North Myrtle Beach, SC 29582

(843) 249-1441

February 21, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2011-GS-26-00218

The State,)

Plaintiff,)

vs.)

Stefano Tyshawn Brooks,)

Defendant.)

Transcript of Record

Motion for Reconsideration

March 24, 2015

B E F O R E :

Honorable Benjamin H. Culbertson
 Horry County Courthouse
 Conway, South Carolina

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

Thomas Terrell, Esquire
 Attorney for Plaintiff

Clifford Welsh, Esquire
 Attorney for Defendant

Grace L. Hurley, CVR-CM-M
 Circuit Court Reporter

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E X H I B I T S

(There were no exhibits marked during the hearing.)

State v. Brooks

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1 (On the record, March 24, 2015.)

2 THE COURT: Do you want to go ahead and put the
3 indictment number? I mean, I've got a warrant number. I
4 don't have an indictment.

5 MR. TERRELL: Yes, sir. This is State of South Carolina
6 versus Stefano Tyshawn Brooks. He pled guilty on indictment
7 2011-GS-26-00218, that being for trafficking cocaine. The
8 indictment was for 100 to 200 grams. He pled guilty to the
9 lesser included 28 to a hundred grams. He pled guilty before
10 Your Honor on May 15th, 2012. That's when the plea was
11 qualified. The sentencing was held -- the sentencing was held
12 on a later date. The recommendation was contingent on him
13 pleading guilty and him showing back up for the sentencing
14 hearing that was scheduled in front of Your Honor. When he
15 finally was located and brought in, Your Honor sentenced him
16 to 25 years, which is the maximum on the charge that he pled
17 guilty to. We're here on Defense motion to reconsider the
18 sentence. It was timely filed, Your Honor.

19 THE COURT: Okay. And what was the charge he pled guilty
20 to?

21 MR. TERRELL: Trafficking cocaine, 100 to 200 grams.

22 THE COURT: Okay.

23 MR. TERRELL: Or I'm sorry. He pled guilty to the 28 to
24 100 grams.

25 THE COURT: Okay. And I accepted the guilty plea and

1 then we sentenced him at a later date?

2 MR. TERRELL: Yes, sir. Your Honor sentenced him on May
3 15th, 2012. The recommendation was for 12 years, and it was
4 put on the record that that recommendation hinged on him
5 showing back up for his sentencing. He was to report back on
6 June 14th, 2012. He did not appear. He wasn't picked up until
7 November of 2013 where he was found by the federal marshals in
8 Louisiana --

9 THE COURT: Okay.

10 MR. TERRELL: -- and brought back here to face sentencing
11 from Your Honor.

12 THE COURT: Okay. All right. All right. Mr. Welsh,
13 this is your motion?

14 MR. WELSH: Yes, sir.

15 THE COURT: All right. Let me hear from you.

16 MR. WELSH: The date of sentencing was, was February the
17 14th, 2014.

18 THE COURT: Okay.

19 MR. WELSH: And I base the motion on, on some of the
20 matters in mitigation I think may have been either misstated
21 or possibly misunderstood at the time because this was his
22 first drug conviction. He had never been convicted of a drug
23 charge before and he had some record before and there was a
24 charge that was dismissed at the time of this plea that was
25 pending that I think maybe was -- we didn't spend enough time

1 actually explaining. It was an attempted murder charge, but
2 it was actually one that he had a good self defense, self
3 defense defense to it. It happened at the Poor House in
4 Little River. Even the, even the incident report that, that
5 the officer -- the responding officer did at the time
6 described the incident as a mutual affray. In other words, it
7 was a fight, and the weapon that, that the victim said was
8 used was a bottle. In other words, Stefano was in the club.
9 He was jumped and he got a -- that he protected himself and
10 grabbed the first thing he could find. It was, it was two
11 guys that one got stabbed and that was the basis for that
12 particular offense. In retrospect I know it sounded terrible
13 to have attempted murder that was dismissed, and we may not
14 have spent enough time discussing that at the time that it was
15 a matter of self defense and we had intended to try that case.
16 In fact, Stefano had turned himself in on that. I went with
17 him to turn himself in on that particular charge and because
18 we had intended to try that from the time it was, was made.

19 His other, his other record, like I say, he had no drug
20 charges. His other record was somewhat minimal as well. He
21 had a simple assault and battery conviction in 2002 and a
22 conspiracy charge in 2005 and then in 2007 an eluding arrest
23 charge with no substantive offense attached to it, but and I
24 think it should be emphasized, you know, it was the 28 to a
25 hundred gram offense he pled to. It carries, as His Honor

1 knows, carries a penalty of seven to 25 years. The
2 recommendation of the State was 12, and he actually had in his
3 possession at the time of arrest 102 grams of cocaine, which,
4 you know, two, two grams more than what -- that would have
5 been the actual charge he would have been guilty of, the 28 to
6 100 gram. I mean, it wasn't like it was a huge amount that
7 was -- and it was reduced down two levels, but anyway, we just
8 felt that the charge -- I understand that, that he didn't show
9 up for sentencing and at least not voluntarily and but that
10 with a recommendation of, of 12 years and with, with --

11 THE COURT: Now, they're saying the recommendation was
12 based upon him coming back in June 2013 and --

13 MR. WELSH: Well --

14 THE COURT: -- and that he absconded for over a year; is
15 that correct?

16 MR. WELSH: Well, he, he was -- well, it was true that he
17 absconded for over a year but --

18 THE COURT: Okay.

19 MR. WELSH: -- I don't know that the condition was -- it
20 was a little different than that --

21 THE COURT: Okay.

22 MR. WELSH: -- because he was -- he had a court date in
23 June of that year, but I was out of the country. He was just
24 supposed to show up. He had just had a baby, and that's the
25 reason that the sentencing had been put off. He got out and

State v. Brooks

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1 was with his wife and baby, and he was afraid to come back
2 without me being here even though it was just to more or less
3 check in and got down to Louisiana with his -- where his
4 family -- where his mother, wife and baby were and just didn't
5 come back. I mean, that's --

6 THE COURT: All right.

7 MR. WELSH: -- and to increase the recommendation two-
8 fold based on that, I could understand maybe a little bit, bit
9 more but to have a maximum sentence on this particular offense
10 because it was a -- what it was is a safety check. He was a
11 passenger in a car. They stopped, stopped the car. There
12 were search issues involved, probably not, I mean, in all
13 truthfulness they probably would -- suppression motion
14 probably would not have been granted because of the amount of,
15 amount of drugs involved, but there were some issues that,
16 that were -- that could have been argued. We made a decision
17 for the plea based on the recommendation and because for a
18 long time he had, he had wanted to try the case based on the,
19 on the suppression issues, but we would just ask His, His
20 Honor to reconsider the sentence based on the matters in
21 mitigation I laid out today or further explain from the
22 hearing in February of '14 and ask that you reduce the
23 sentence.

24 THE COURT: All right. What's the State's position?

25 MR. TERRELL: I think at the time Your Honor was, was

1 correct in sentencing the way, the way he did. The charge as
2 originally charged and as properly charged carried a minimum
3 of 25 years. It appears here that Ms. Richardson was also
4 debating the idea of discretionary life without parole as he
5 does have two most serious offenses on his record. I think
6 that combined with the fact that he didn't show up and he
7 wasn't brought back up until after he had already been
8 arrested in Louisiana I believe on a separate set of charges
9 and that's how the federal marshals were able to find him, we
10 had to spend those resources to bring him back here to be
11 sentenced before Your Honor, he didn't come voluntarily. I
12 think Your Honor was well within your right to sentence him as
13 he did. I mean, I don't believe it's inappropriate.

14 THE COURT: All right. Anything in reply?

15 MR. WELSH: Well, just that obviously that the sentence
16 was within the range available, but I think the, the
17 solicitor's office was as shocked by the sentence as I was at
18 the time, but I would just ask that His Honor show as much
19 compassion as possible.

20 THE COURT: All right. I understand your motion. I'm
21 going to deny it. I'm going to leave the sentence in place.
22 All right. Thank you.

23 MR. TERRELL: Thank you, Your Honor.

24 (Adjourned.)

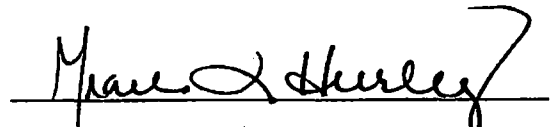
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State versus Stefano Tyshawn Brooks, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on March 24, 2015.

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


Grace L. Hurley, CVR-CM-M
Official Reporter

July 21, 2015.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 STEFANO BROOKS, #358949)
 Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

2015-CP-26-0259

v.

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Horry County Court of General Sessions; 1301 Second Avenue, Conway, SC 29526
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-26-00028; Trafficking in Cocaine
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2/14/14; Twenty-five years' imprisonment
 - (b) _____
 - (c) _____

FILED
 Horry County
 2015 JAN 13 AM 10:31
 CLERK OF COURT
 JENNIFER HUGHES-WARD

6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (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. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Collateral relief presents the first opportunity to present these claims
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Involuntary Guilty Plea

(c) _____

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

(a) Defense counsel failed to conduct an adequate investigation into the Applicant's case.

(b) Defense counsel failed to adequately advise the Applicant of all possible defenses and legal and factual claims that could be made at trial, and failed to adequately advise the Applicant of all available plea offers.

(c) The Applicant's pleas of guilty were not knowingly, voluntarily, or intelligently entered.

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. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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) This Application for Post-Conviction Relief provides the first opportunity to present these issues.

(b) _____

(c) _____

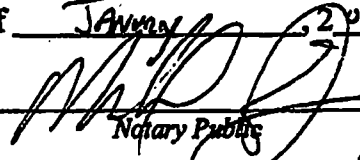
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? _____
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. James Cullen Galmore, III, Esquire; Fifteenth Circuit Public Defender's Office;
P.O. Box 1666, Conway, SC 29258
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea and sentencing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
To vacate the Applicant's convictions and sentences and to remand for a new trial.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
)
County of Horry)

VERIFICATION

I, Jeremy A. Thompson, 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.

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



Notary Public (L.S.)

My Commission Expires: 7/10/2022

FILED
Horry County
2015 JAN 13 AM 10:31
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Stefano T. Brooks, #358949,	)	Case No. 2015-CP-26-259
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief filed January 13, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In January 2011, the Horry County Grand Jury indicted Applicant for trafficking cocaine base, 100-200 grams (2011-GS-26-218). Clifford L. Welsh, Esquire, represented Applicant. On May 15, 2012, Applicant pled guilty to the lesser included offense of trafficking cocaine, 28-100 grams. In exchange for the plea, the State dismissed other pending charges of assault and battery, attempted murder, and trafficking ecstasy. On February 14, 2014, the Honorable Benjamin H. Culbertson sentenced Applicant to twenty-five years imprisonment. On March 31, 2015, Judge Culbertson denied Applicant's motion for reconsideration of his sentence. Applicant did not appeal his plea or sentence.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Defense counsel failed to conduct an adequate investigation into the Applicant's case."
 - b. "Defense counsel failed to adequately advise the Applicant of all possible defenses and legal and factual claims that could be made at trial, and failed to adequately advise the Applicant of all available plea offers."
2. "Involuntary Guilty Plea"
 - a. "The Applicant's pleas of guilty were not knowingly, voluntarily, or intelligently entered."

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the transcripts. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea

proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact the record does not conclusively refute. Accordingly, 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.

Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise

questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

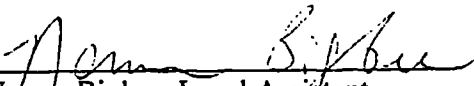
July 31, 2015

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	
)	
	)	2015-CP-26-259
STEFANO T. BROOKS, #358949)	
)	
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 on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jeremy Adam Thompson, Esquire
1612 Marion St. Suite 210
Columbia, SC 29201

DATED this 31st day of July, 2015.



 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 STEFANO BROOKS, #358949,)
)
 Applicant,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

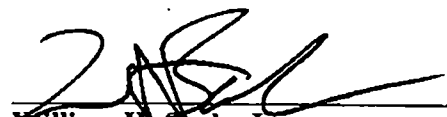
CASE NO.: 2015-CP-26-259

**CONSENT ORDER OF
 SUBSTITUTION**

THIS MATTER comes before the Court by way of a request to substitute counsel. Jeremy A. Thompson, Esquire, was retained to represent the Applicant in this Post-Conviction Relief matter. This Court is now advised that L. Morgan Martin, Esquire, has been retained to represent the Applicant in this matter. Attorneys Thompson and Martin have indicated their consent to this substitution by their signatures below. Accordingly, Jeremy A. Thompson, Esquire, is hereby relieved as counsel in this case and L. Morgan Martin, Esquire, is substituted as counsel of record for the Applicant. The Office of the Clerk of Court and the South Carolina Attorney General's Office are directed to address all future pleadings and correspondence in this matter to the attention of L. Morgan Martin as counsel of record in this case.

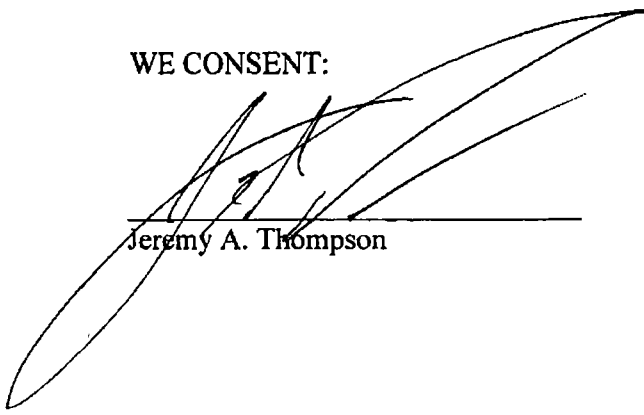
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 COUNTY
 2016 FEB 29 AM 8:22
 CLERK OF COURT

IT IS SO ORDERED.

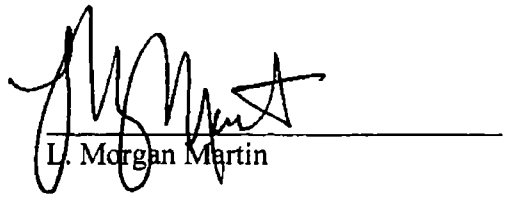

 William H. Stals, Jr.
 Chief Administrative Judge
 Court of Common Pleas
 Fifteenth Judicial Circuit

This 24 day of Feb, 2016.
Mu, South Carolina.

WE CONSENT:



Jeremy A. Thompson



L. Morgan Martin

FILED
COMMUNITY
2016 FEB 29 AM 8:22
CLERK OF COURT

1 State of South Carolina) Court of Common Pleas
 2 County of Horry) 2015-CP-26-00259

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4

Stefano T. Brooks)

5)

vs.)

6)

State of South Carolina)

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8

9

February 7, 2017
Conway, South Carolina

10

11 BEFORE:

12 Honorable Michael G. Nettles, Judge.

13

14 APPEARANCES:

15 L. Morgan Martin, Esq.
Attorney for the Plaintiff

16

17 Ralph Prioleau, Esq. and
Rutledge Johnson, Esq.
Attorneys for the State

18

19

20

21

22

Teresa J. F. Bautz, RPR
Official Court Reporter

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I N D E X						
1	WITNESS		DIRECT	CROSS	REDIRECT	RE CROSS
2	Stefano T. Brooks					
3	Mr. Martin	6	--	--	--	
4	Mr. Prioleau	--	9	--	--	
5	Clifford Leon Welsh					
6	Mr. Martin	13	--	26	--	
7	Mr. Prioleau	--	20	--	--	
8	William M. Clemmons					
9	Mr. Martin	32	--	--	--	
10	Mr. Prioleau	--	36	--	--	
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E X H I B I T S					
15	NO.	DESCRIPTION		ID	EV
16	Plaintiff's-1	Transcript 5.15.2012		15	--
17	Plaintiff's-2	Sentence Sheet		25	--
18	Plaintiff's-3	Affidavit		29	--
19	Plaintiff's-4	Subpoena		33	--
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25 Exhibits retained by Clerk of Court.

1 (The hearing commenced at approximately
2 10:44 a.m.)

3 MR. JOHNSON: May it please, the Court, Your
4 Honor?

5 THE COURT: Yes.

6 MR. JOHNSON: I am Rutledge Johnson with the
7 Charleston School of Law, I'm the clinics professor.
8 And under the student practice rule, we have three L's
9 arguing their first case before you this morning. And
10 first up would be a Stefano Brooks versus State of
11 South Carolina, which is going to be handled by Mr.
12 Ralph Prioleau. He's straight out of the Charleston
13 School of Law.

14 THE COURT: Your full name, sir?

15 MR. PRIOLEAU: Ralph Prioleau, sir.

16 THE COURT: And how do you spell your last name?

17 MR. PRIOLEAU: P-R-I-O-L-E-A-U.

18 THE COURT: One more time.

19 MR. PRIOLEAU: P-R-I-O-L-E-A-U.

20 THE COURT: All right, very good. Mr. Prioleau,
21 I'm going to recognize Mr. Martin who is the moving
22 party, and I'll hear from you momentarily.

23 MR. PRIOLEAU: Yes, sir.

24 THE COURT: Mr. Martin.

25 MR. MARTIN: Good morning, judge.

1 THE COURT: Good morning.

2 MR. MARTIN: Judge, I guess as the previous case,
3 you would like to have an outline of what this about?

4 THE COURT: That's correct.

5 MR. MARTIN: All right. I represent Stefano
6 Brooks who pled guilty in 2010 at this courthouse for
7 drug trafficking. He was represented by Mr. -- well,
8 Judge Cliff Welsh -- here, and he was sentenced to
9 eventually to 25 years on that charge.

10 It was a situation which he pled, he was supposed
11 to appear back in court. He did not. When he was
12 located, instead of getting something like a ten or
13 12-year sentence, he got a 25-year sentence. But the
14 basis of our petition today is that he received
15 ineffective assistance of counsel in that his attorney
16 failed to file a motion to suppress the search and
17 seizure of Mr. Brooks.

18 That occurred at a road block checkpoint in Horry
19 County, Highway 111 and 57 in which the South Carolina
20 Highway Patrol set up a road block. And Mr. Brooks, a
21 passenger in an automobile driven by another individual
22 who was not arrested as a result of that checkpoint
23 stop, they were stopped there, the car was searched,
24 there was drugs found in the car, some drugs found on
25 Mr. Brooks, and he was arrested for possession of those

1 drugs.

2 Now, the basis of our case, again, is that this is
3 a unique kind of search and seizure case in which it is
4 a licensed checkpoint. And the United States Supreme
5 Court and the State of South Carolina's Supreme Court
6 has laid down some basis for how you must conduct those
7 and what you must do. And our position is that in this
8 case the failure to file a motion to suppress the
9 unreasonable search and seizure at the driver's license
10 checkpoint was ineffective and prejudicial to this
11 Defendant because we believe it was an illegal seizure
12 and subsequent search.

13 THE COURT: Very good. All right. Mr. Prioleau,
14 be glad to hear from you with regard to that position.
15 Or if you would like to call your first witness, that
16 will be fine as well. I'll leave it up to you.

17 MR. JOHNSON: Your Honor, it's his burden of
18 proof, so I think he needs to call his first witness.

19 THE COURT: Yes, yes.

20 MR. JOHNSON: Thank you, Your Honor.

21 THE COURT: Mr. Martin, be glad to hear from you.

22 MR. MARTIN: I'd call Mr. Brooks.

23 THE COURT: Mr. Brooks, please come forward. I
24 ask if you could, place your left hand on the Bible and
25 raise your right hand as the clerk administers the

STEFANO T. BROOKS-DIRECT BY MR. MARTIN

1 oath.

2 STEFANO T. BROOKS, after being duly sworn,
3 testified as follows:

4 THE CLERK: You may be seated.

5 MR. MARTIN: Your Honor, if I could approach the
6 bench, I would hand up a couple of cases and the
7 transcript of his plea.

8 THE COURT: I ask if you could to pull up real
9 close to that microphone and speak loudly, clearly and
10 slowly in order that we can hear everything that you
11 have to say. Let's start with your full name.

12 THE APPLICANT: Stefano Tyshawn Brooks.

13 THE COURT: Thank you, Mr. Brooks. Mr. Martin,
14 you're recognized.

15 DIRECT EXAMINATION

16 BY MR. MARTIN:

17 Q All right. Stefano, you were arrested back in
18 June of 2000 -- July of 2010 at a driver's license
19 checkpoint?

20 A Yes, sir.

21 Q All right. Were you driving the car or a
22 passenger in the car?

23 A Passenger.

24 Q This was on highway -- were you on Highway 57 or
25 111?

1 A Highway 57.

2 Q All right. And the reason that the driver of the
3 car you were in stopped was what?

4 A Was a checkpoint.

5 Q A checkpoint, all right. Now, you were in the
6 automobile at that time, and were you arrested as a
7 result of that stop?

8 A Yes, sir.

9 Q All right. If you would, tell the Court what you
10 recall about how the stop and a subsequent search
11 occurred.

12 A Well, as we approached the checkpoint, the officer
13 asked for license, registration, they presented -- the
14 driver presented license and registration. And they
15 asked him to step out of the vehicle. And when he
16 stepped out of the vehicle, they came around to my door
17 and they opened my door. And that's whenever
18 everything else transpired.

19 Q All right. Was there any open container visible
20 in your automobile before the doors were opened?

21 A No, sir.

22 Q Was there anything illegal visible in your vehicle
23 before the doors were opened?

24 A No, sir.

25 Q All right. You then hired an attorney to

STEFANO T. BROOKS-DIRECT BY MR. MARTIN

8

1 represent you?

2 A Yes, sir.

3 Q And that was Mr. Cliff Welsh?

4 A Yes, sir.

5 Q All right. And then you ultimately pled guilty to
6 this offense; is that correct?

7 A Yes, sir, I pled guilty.

8 Q All right. Now, did you have a discussion of any
9 sort with Mr. Welsh about the search, the stop, the
10 seizure and the search that resulted in your arrest?

11 A Yes, sir.

12 Q All right. Did you want him to file any motions
13 that would have resulted in the evidence being
14 suppressed in your case?

15 A I mean, at that point I really -- I just asked him
16 because I wasn't familiar with my case, I just asked
17 him to file the motions that I needed to file. I
18 didn't really know what I needed to file.

19 Q All right. Is it fair to say that you would have
20 then liked for any motion that would have resulted in
21 the evidence being suppressed and the case dismissed
22 filed?

23 A Could you ask me that again.

24 Q Is it a fair statement that you would have wanted
25 him to file any motion that would have led to --

1 A Yes, sir.

2 Q -- the dismissal of the charges against you?

3 A Yes, sir.

4 MR. MARTIN: Answer any questions they have for
5 you.

6 THE COURT: Mr. Prioleau, you're recognized.

7 MR. PRIOLEAU: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PRIOLEAU:

10 Q Good morning, Mr. Brooks.

11 A Good morning.

12 Q At the time that you pled guilty, were you under
13 oath?

14 A Was I under oath?

15 Q Yes, sir.

16 A I'm confused at what you're asking me.

17 Q Just like you stepped in front of the clerk and
18 she presented you?

19 A Yes.

20 Q So you was under oath at that time?

21 A Yes, sir, I think.

22 Q So when you pled guilty you did realize that the
23 solicitor presented facts before the Court stating
24 exactly what happened during that time that led
25 ultimately to your guilty plea?

STEFANO T. BROOKS-CROSS BY MR. PRIOLEAU

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1 A No, sir. My lawyer told me it was in my best
2 interest to take the plea.

3 MR. PRIOLEAU: Your Honor, can I approach.

4 THE COURT: You may.

5 Q If you could, could you read from lines 9 through
6 17, sir.

7 A Ms. Richardson: Thank you, Your Honor. On
8 July 30th, 2010, police responded to the Little River
9 section of Horry County. Your Honor, it was a license
10 checkpoint. During that checkpoint they observed an
11 alcoholic beverage in the vehicle, they asked
12 Mr. Bennett to step out at which time he did. When he
13 stepped out of the car, Your Honor, a clear plastic bag
14 fell between the door and the seat. Your Honor, that
15 did test positive for cocaine and came back at 102
16 grams.

17 Q Thank you, sir. And could you read line 22.

18 A The Court: Mr. Brooks, is that what happened in
19 this case?

20 Q And what was your response?

21 A Yes, sir.

22 Q Thank you. So, once again, you testified just now
23 that there was no open container. Yet you said in the
24 record that there was an open container?

25 A I said in the record that it wasn't.

1 Q But it was?

2 A Yes.

3 Q Okay. So and at that time Mr. Welsh was your
4 attorney?

5 A Yes, sir.

6 Q And did he consult you on your rights that you had
7 at that time?

8 A I don't recall.

9 Q But you do recall your plea negotiation?

10 A My plea negotiation was brought to me the day that
11 I came in and took the plea. I didn't know about the
12 plea until that day that I came into the courtroom.

13 Q Okay. So --

14 MR. PRIOLEAU: And beg the Court's indulgence,
15 Your Honor.

16 THE COURT: Certainly.

17 MR. PRIOLEAU: Thank you, Your Honor.

18 Q At the time of your plea negotiation, you do
19 realize that you had a sentence that would have
20 probably carried a maximum of 12 years?

21 A Whenever I signed the plea, I was told that the
22 judge, I would sign the plea for seven to ten years,
23 and I couldn't get no less than seven, no more than
24 ten.

25 Q But you do realize at that time that when you

STEFANO T. BROOKS-CROSS BY MR. PRIOLEAU

12

1 accepted that plea which is on the record, you do
2 realize that you had to come back for sentencing
3 because you --

4 A Right.

5 Q And when did you come back? Because sentencing
6 was on June 12, so when did you arrive back?

7 A Whenever the US Marshals got me.

8 Q And where did they pick you up?

9 A Louisiana.

10 Q And how long in between your sentencing and your
11 arrival back here?

12 A I don't know exactly how much time it was.

13 Q The record shows that --

14 MR. PRIOLEAU: If I may, Your Honor.

15 Q If you could read lines 3 through 5, three and
16 four.

17 A We'll defer sentencing until when.

18 Mrs. Richardson: June 14th, Your Honor.

19 Q June 14th. And you arrived back almost year and a
20 half later, if I'm correct; am I correct?

21 A Yes, sir.

22 MR. PRIOLEAU: No further questions, Your Honor.

23 THE COURT: Yes, sir.

24 MR. MARTIN: That's all the questions I have at
25 this time.

1 THE COURT: Very good. You may step down. Thank
2 you sir.

3 (Witness excused.)

4 MR. MARTIN: I'd call attorney Cliff Welsh.

5 THE COURT: Mr. Welsh, please come forward. I'm
6 going to ask you, if you could, to take your time, set
7 your paperwork down and place your left hand on the
8 Bible, raise your right hand as the clerk administers
9 the oath.

10 CLIFFORD LEON WELSH, after being duly sworn,
11 testified as follows:

12 THE CLERK: You may be seated.

13 THE COURT: Yes, sir. I'm going to ask you to
14 speak loudly, clearly and slowly in order that we hear
15 everything you have to say. And let's start with your
16 full name, Mr. Welsh.

17 THE WITNESS: It's Clifford Leon Welsh.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MR. MARTIN:

21 Q Okay. And Mr. Welsh, you're a practicing attorney
22 down in North Myrtle Beach?

23 A That is correct.

24 Q All right. And you're currently serving as city
25 judge at the City of Myrtle Beach?

CLIFFORD L. WELSH-DIRECT BY MR. MARTIN

14

1 A I've been a municipal court judge for about 15
2 years.

3 Q About 15 years now. You did represent Stefano
4 Brooks, I believe?

5 A I did.

6 Q Okay. And with regards to his case, did you file
7 a motion to suppress the evidence that resulted from
8 the seizure and subsequent search of Mr. Brooks?

9 A I did not.

10 Q All right. Did you file any motions with the
11 Court or with the solicitor's office for them to
12 produce any information relating to the South Carolina
13 Highway Patrol's basis for initiating a license
14 checkpoint at the location they did?

15 A No, no, I did not.

16 Q Okay. Did you talk to any of the highway patrol
17 men that were involved in the search and seizure to
18 inquire of them as to what the basis for that
19 checkpoint was?

20 A I can't tell you that I didn't -- there were so
21 many of them there that I can't tell you if I ever --
22 we probably didn't talk about the basis of why it was
23 there, though.

24 Q Okay, all right. Were you under the impression
25 that the fact that Mr. Brooks was a passenger in the

1 automobile would affect his ability to have standing to
2 object to an illegal stop and search?

3 A There was some question. I knew he would -- as a
4 passenger he would have standing to object to the
5 initial seizure if it was improper. But I was not sure
6 how far his standing would go because it's still kind
7 of an open question, I think, under the law.

8 Q Let me just hand you -- I guess I need to mark
9 this, but --

10 MR. MARTIN: Let me just mark this as
11 Petitioner's-1.

12 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
13 for identification only.)

14 Q Judge, let me hand you and just ask you to review
15 page 11 of the plea transcript of Mr. Brooks there.

16 A Um-hum. Oh, I see what you mean.

17 Q Okay. What did you tell the Court at the time of
18 his plea concerning his plea and a motion to suppress?

19 A Well, from what I know about, or I should say knew
20 about checkpoints and the search and seizure that
21 sometimes follows, we're not -- that's improper. Now,
22 what I knew about what they would usually have to do to
23 have a checkpoint that the fact that the captain of the
24 district was present at the checkpoint, I felt like had
25 a lot of the issues -- answered a lot of the issues

CLIFFORD L. WELSH-DIRECT BY MR. MARTIN

16

1 that the prerequisites for a licensed checkpoint need.

2 And yesterday I found out, well, when I was
3 talking to you, I didn't know the major of the highway
4 patrol was there that night as well. And I mean, to
5 me, that takes care of a lot of the notice, the
6 authority, and all of that that would be required for a
7 checkpoint.

8 Q Well, that having been said, before we leave this,
9 again, and I'm trying just to establish this for the
10 record --

11 A I understand.

12 Q -- is there wasn't a motion to suppress filed?

13 A No, there was not.

14 Q And that's the issue that we're dealing with. So
15 I believe on page 11, what you tell the Court is that
16 Mr. Brooks was actually a passenger in a vehicle, and
17 so it would affect his standing to challenge any
18 search. That's the first thing you told him; wasn't
19 it?

20 A Oh, yeah, yes, I did. I'm sorry, I started
21 reading later than that.

22 Q Yeah. And then, you do say there that -- you say
23 that, quote, "the other problem was a lot of the
24 problems that the highway patrol normally has with a
25 checkpoint were not present here. They had the captain

1 of the district on the scene, which takes out a lot of
2 the problems they usually have on a checkpoint. And
3 there seems to be testimony in the discovery that a
4 beer can was seen in plain view.

5 But let me ask you, you would agree with me that
6 you know that when the highway patrol does a driver's
7 license checkpoint, that there are constitutional
8 requirements by the United States Supreme Court and the
9 State of South Carolina courts that they lay a
10 foundation for what they're doing. Would you agree
11 with me?

12 A Yes, that's correct.

13 Q And that if they are going to have a checkpoint,
14 that they have to have some pre-checkpoint data basis
15 or verification to justify that checkpoint in a
16 constitutional manner?

17 A That's correct.

18 Q All right. And in this case, you didn't take the
19 extra step of finding out if that existed in this case;
20 did you?

21 A Not in this particular case, no. That area where
22 they had the checkpoint is a common area for license
23 checkpoints just because of its location. But no, I
24 didn't take -- I didn't take any step, extra step in
25 this --

CLIFFORD L. WELSH-DIRECT BY MR. MARTIN

1 Q Okay.

2 A -- case.

3 Q And, again, you would agree with me that the law
4 requires that the highway patrol have a basis and
5 maintain records of a basis for why they would have a
6 checkpoint at a certain location?

7 A Well, I know it has -- I think the standard is
8 reasonableness, but yes.

9 Q Even a driver's license checkpoint?

10 A Correct.

11 Q Okay, all right. And so the fact of the matter
12 is, and I guess what I'm trying to get, did you advise
13 Mr. Brooks here that since he was a passenger in the
14 automobile that he didn't have any standing to object
15 to the search and seizure that occurred?

16 A I told him it's unclear as to how far his standing
17 would go. Now, whether he understood that or not -- I
18 mean, I know that a passenger when they're -- has the
19 standing to object to the initial seizure. But then
20 again, on the other hand, I think that the officer
21 would have the ability of having both the driver and
22 the passenger get out of the car, that would be a
23 reasonable act at a checkpoint.

24 So it was kind of, it was kind of iffy of where
25 his standing would end or how much you could base

1 standing as a reasonable reason for suppression,
2 because...

3 Q Well, I guess I'm trying, and I'm trying not to be
4 tricky with you.

5 A Oh, I know.

6 Q But the fact that he was a passenger, and we all
7 research every day and find out different things, and I
8 obviously learned a lot I didn't know by preparing for
9 this PCR. But having said that, it is clear that a
10 passenger has just as much right to object to the
11 search and seizure in this particular case as the
12 driver did. Would you agree with that?

13 A To a point, yes.

14 Q Well, to what point wouldn't he?

15 A Well, therein lies the question.

16 Q So to the extent if you advised Mr. Brooks that as
17 a passenger in the vehicle it would affect his standing
18 to challenge the search, that's not really accurate; is
19 it?

20 A Probably not entirely accurate. I just didn't
21 think it would be a successful suppression of...

22 Q Okay.

23 A I mean...

24 Q Okay. All right. And, again, just to sum up
25 where I am, in this case, after the case you did not

CLIFFORD L. WELSH-CROSS BY MR. PRIOLEAU

1 file a motion to suppress, you did not file any --
2 issue any subpoenas or file any motions to have the
3 State produce any documentation that would justify this
4 particular search; did you?

5 A No. But they don't really main -- they don't
6 maintain these records for --

7 Q And if they didn't maintain them, might that not
8 be a constitutional problem that the State of South
9 Carolina Highway Patrol has?

10 A It could be.

11 MR. MARTIN: That's all the questions I have at
12 this time.

13 THE COURT: Okay, yes, sir, Mr. Prioleau.

14 MR. PRIOLEAU: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. PRIOLEAU:

17 Q Thank you, Judge Welsh, for being here today.
18 Could you explain to the Court about your discovery
19 that you found dealing with Mr. Brooks' case back in
20 2011.

21 A You mean the discovery I received from the
22 solicitor?

23 Q Yes, sir.

24 A Well, the problem we had which, whether this came
25 from the discovery or not, was he had not a multitude,

1 but had quite a few charges. He had the trafficking in
2 cocaine base which started out as a mandatory minimum
3 of 25. And that was what he pled to. He pled to a
4 lesser charge of powder cocaine. He also had attempted
5 murder from a different incident.

6 He had a trafficking in MDMA, that carried a
7 mandatory minimum of three years up to ten. He had a
8 marijuana charge as well as a separate assault and
9 battery, all of which were dismissed in return for this
10 plea with a recommendation of 12 years. Therein lies
11 the whole deal.

12 And the problem is we were in a position that they
13 were pushing for the 25-year sentence. They finally
14 recommended the 12 and dismissal of all these charges.
15 Then it seemed like -- and I, quite frankly, didn't
16 really believe the judge was going to suppress the
17 evidence on a motion based on the facts of this case.
18 But that, I guess, that's a discussion of the
19 discovery. But I'm not sure what else you want.

20 Q Well, could you explain to the Court why you
21 didn't file a motion to suppress, what was your
22 strategic reason?

23 A Well, quite frankly, I was afraid that the deal
24 that we finally did get would be taken off the table.
25 It's kind of an unspoken rule in criminal prosecution

1 that, okay, you can file your motion, but forget the
2 plea offer. And he was looking at a lot of time.

3 Q So --

4 A And quite frankly, I thought, you know, knowing
5 Judge Culbertson, the recommendation was 12 years from
6 the solicitor, I've never had him not cut a year or two
7 off a recommendation. I thought he -- as he said, we
8 were talking about him possibly getting a ten-year
9 sentence. I didn't know he was going to take an 18 to
10 24-month vacation after the plea, and so it kind of
11 complicated matters somewhat.

12 Q As far as your plea negotiations that you did
13 under Mr. Brooks, did you discuss these findings with
14 him?

15 A I'm sure I did. I mean, I have no independent
16 recollection.

17 Q Okay.

18 A He was out on bond, and so he'd come by the office
19 from time to time. And I -- I'm trying to remember
20 when his associate was sent to prison, that he used to
21 come by much more than Mr. Brooks because I had had a
22 longstanding relationship with him. And I can't
23 remember. He somewhere along, during my representation
24 of Mr. Brooks went to prison, so he stopped --
25 obviously stopped stopping by. But and a lot of the

1 information, quite frankly, was transferred through
2 him. Because he's the one that I think hired me to
3 represent Mr. Brooks but, or at least introduced me
4 maybe.

5 THE COURT: Let me clarify one thing,
6 Mr. Prioleau. Apparently there was a negotiation for a
7 recommendation of 12 years. It was not a negotiated 12
8 years; is that correct?

9 MR. PRIOLEAU: Yes, sir.

10 THE COURT: All right. Once the US Marshal
11 finally caught up with him in Louisiana, wherever they
12 caught up with him, was he allowed to proceed forward
13 with that same recommendation or was it withdrawn
14 because of his conduct?

15 MR. PRIOLEAU: Mr. Welsh can answer that question
16 better than I can.

17 THE WITNESS: The -- it was more or less
18 withdrawn. What happened was --

19 THE COURT: Well, didn't the solicitor stand up at
20 the plea and say, I recommend 12 years, these are
21 facts. And he gave more than the 12 years, you know.
22 And of course the judge can do that, he can go over
23 recommendation if he wants to. My question to you is,
24 was that recommended in the plea?

25 THE WITNESS: At the time of the plea, it was

CLIFFORD L. WELSH-CROSS BY MR. PRIOLEAU

1 recommended, said that was the basis of it. When he
2 finally was expedited back from Louisiana, they said
3 that -- the solicitor got up and just said -- she
4 didn't make a specific recommendation, she just said
5 that she thought it should be more than the 12 based
6 on...

7 THE COURT: Based on his conduct.

8 THE WITNESS: Yeah.

9 THE COURT: Okay. Yes, sir, very good.

10 MR. MARTIN: Yes, sir.

11 THE WITNESS: And I don't think anybody in the
12 courtroom, including myself, thought it was going to be
13 quite that number, but...

14 THE COURT: All right, very good. Proceed
15 forward, Mr. Prioleau.

16 MR. PRIOLEAU: Yes, sir.

17 Q Judge Welsh, at any time did you force him into
18 taking -- for him to plead guilty?

19 A I didn't force him. I highly recommended it.

20 Q So ultimately it was his decision to enter that
21 plea?

22 A He's the one that stood up there and did it, yes.

23 Q And just one more question. Did you have any
24 knowledge at any time that he was going to skip town
25 and not return for almost two years?

1 A No.

2 Q So you expected him to return for sentencing
3 June 14th?

4 A Yes. Well, actually, the June 14th sentencing
5 date wasn't really his sentencing date. He was
6 supposed to check in at that time. Because I think
7 they just wanted to make sure they still had a little
8 contact with him. Because, in fact, I was -- they knew
9 we couldn't -- he couldn't be sentenced at that time
10 because I was -- I think I was in Ireland at the time.
11 But he was supposed to check in for the roll call just
12 so they knew he was still around.

13 Q And he was not -- he did not check in at that
14 time?

15 A No. He was given the extra time between the plea
16 and the sentencing, whenever it was going to be,
17 because I think his wife was having a baby or had just
18 had a baby, and they were giving him personal time to
19 get his affairs in order and all.

20 MR. PRIOLEAU: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MR. MARTIN: Just a couple questions. Judge, this
23 will clear up some of the questions that you had with
24 this. Well, let me mark this.

25 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked

1 for identification only.)

2 REDIRECT EXAMINATION

3 BY MR. MARTIN:

4 Q And, Mr. Welsh, I think to encapsulate what we
5 just said -- as to any relevance to it would be up to
6 the Court, but he was not sentenced until he came back
7 after having been rearrested. What I'm curious about,
8 the date that he was supposed to be sentenced that --
9 but there never was a date that he was supposed to be
10 sentenced, you said, there was a date he was supposed
11 to be back in court, but you were in Ireland. Explain
12 that to me.

13 A They had just told him to come back on that date.
14 And I think it was basically -- I don't remember why.
15 I think it was just because they wanted to be sure he
16 was still available. And plus, that's what the judge
17 told him to do, I mean.

18 Q All right. Okay. You weren't here that day?

19 A No, I was not.

20 Q And apparently he didn't show up either?

21 A Correct, is my understanding.

22 Q Even though it wasn't a date that he was to be
23 sentenced?

24 A That's correct.

25 Q Because you weren't here so he couldn't be

1 sentenced?

2 A Correct.

3 Q Okay.

4 A I just thought that I should bring that up because
5 that...

6 Q And one thing I want to clear up with you, again,
7 as to the relevance I'll leave to the judge, but since
8 I want the record to be complete, the investigative
9 file that was turned over to you by the solicitor's
10 office?

11 A Um-hum.

12 Q It did not have a statement from Captain Nell,
13 N-E-L-L, of the highway patrol about what he did in
14 connection with this arrest; did it?

15 A No, it did not.

16 MR. PRIOLEAU: Objection, Your Honor, that's
17 outside the scope.

18 THE COURT: Pardon?

19 MR. PRIOLEAU: Outside the scope.

20 THE COURT: I'm going to allow him some leeway in
21 this instance. Good objection, very good.

22 Q And Nell is the one that opened the door and
23 searched the passenger Brooks, according to the reports
24 that we got?

25 A Well, he opened the door. Now, there were so many

CLIFFORD L. WELSH-REDIRECT BY MR. MARTIN

1 troopers there, I'm not so sure that just knowing how
2 things usually work, I doubt the captain did the
3 search.

4 Q I know it's hard to remember, it's hard. Let me
5 mark the statement from Highway Patrolman Sarvis and
6 let you look at that. That will help you, I think.

7 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked
8 for identification only.)

9 Q Let me show you what's identified as a South
10 Carolina Department of Public Safety affidavit of Doug
11 Sarvis who was the highway patrolman on the scene.
12 Without reading all of it and just using it to refresh
13 your memory, Captain Nell was the one who initiated the
14 search of Mr. Brooks?

15 A Well, even this, I think Nell opened the door, the
16 passenger side door. And I think he was sitting on the
17 cocaine. And then the MDMA, that was discovered later,
18 I think that was on his person, but --

19 Q Well, what I'm looking for, Nell's the one opened
20 the door to the passenger side?

21 A Correct.

22 Q Correct?

23 A Yes. And then, I think, Sarvis --

24 Q That is according to Sarvis?

25 A Yes.

1 Q But we don't have any reports from Nell himself
2 about why he did what he did or what he did?

3 A Not that I'm aware of.

4 MR. MARTIN: Okay. That's all the questions I
5 have.

6 THE COURT: Okay, all right. You may step down.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 MR. MARTIN: Mr. Clemmons.

10 WILLIAM M. CLEMMONS, after being duly sworn,
11 testified as follows:

12 MR. JOHNSON: Your Honor, I must make an objection
13 at this point. This is the first time I've heard of
14 this witness, the State has no notice of what his
15 testimony is going to be, I was not alerted by
16 Mr. Martin. We'd ask that you strike his testimony
17 from the record.

18 THE COURT: Mr. Martin, what do you have to say
19 about that?

20 MR. MARTIN: Well, I thought I had provided that
21 information. But at any rate, what he's got is just a
22 matter of public record anyway.

23 THE COURT: All right. Well, I'm going to allow
24 him to testify, and if it puts you in an unusual
25 situation, I might afford you the opportunity to

1 revisit the matter.

2 MR. MARTIN: Judge, I don't mind if they talk to
3 him now before he testifies.

4 THE COURT: Would you care to do that?

5 MR. JOHNSON: Yes, sir, I would.

6 THE COURT: All right, we'll allow you to do that.
7 Just everybody keep your seat, we'll allow you to speak
8 to him right outside the door.

9 MR. MARTIN: Thank you, Your Honor.

10 (WHEREUPON, a brief recess was taken at
11 11:23 a.m.)

12 MR. JOHNSON: Thank you, Your Honor.

13 THE COURT: The objection that was made creates an
14 interesting point in that this is indeed a civil
15 proceeding. And I imagine typically what happens is
16 you have the Applicant testify, and then you have the
17 lawyer, the trial lawyer, testify.

18 And I've never really seen any lawyers engage in
19 any extensive discovery or the filing of
20 interrogatories to find out who the witnesses are, what
21 the witnesses are going to say. What's been your
22 experience with that, Mr. Martin?

23 MR. MARTIN: Limited just like you. I don't
24 handle many PCRs.

25 THE COURT: All right. But it is a civil

1 proceeding. Did you file any interrogatories to find
2 out what witnesses he was going to call or what they
3 were going to say?

4 MR. JOHNSON: No, Your Honor. And the reason
5 being is that statutorily under 1727, et al, PCR
6 statute, there is no discovery in noncapital PCRs,
7 unless there is leave by the Court.

8 THE COURT: Okay.

9 MR. JOHNSON: That is written in the statute.

10 THE COURT: But you didn't file for any leave by
11 the Court?

12 MR. JOHNSON: I would have no reason to, Your
13 Honor. It's not my burden of proof.

14 THE COURT: Right. Say that again now.

15 MR. JOHNSON: It's not my burden of proof. We're
16 basically, we are acting on behalf of the State, but
17 we're defense lawyers. They've got to bring the
18 claims.

19 THE COURT: Right.

20 MR. JOHNSON: That's why I usually don't have any
21 reason to file any interrogatories.

22 THE COURT: All right.

23 MR. MARTIN: And accordingly, if there are no
24 rules, and he's right about that, I think there are no
25 rules, then there's nothing -- there's no requirement

WILLIAM M. CLEMMONS-DIRECT BY MR. MARTIN

1 for me to produce who I'm going to call as witnesses.

2 THE COURT: I think that's probably the case.

3 Obviously if you want to find out who they are, you

4 could petition the Court and ask to file certain

5 interrogatories, who are the witnesses and what are

6 they going to say. So in that respect you've been

7 given an opportunity to find out what he has to say.

8 And it's an interesting point because it generally

9 does not come up. And I've been on the bench for 11

10 years, and I've never had the issue of discovery ever

11 come up. So we learned something, didn't we,

12 Mr. Prioleau?

13 MR. PRIOLEAU: Yes, sir.

14 THE COURT: Very good, all right. Have a seat.

15 MR. JOHNSON: And I have to object to his

16 testimony, but I'll raise that at the time, Your Honor.

17 THE COURT: Very good.

18 MR. JOHNSON: Thank you.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. MARTIN:

22 Q If you would, give the Court your full name.

23 A William Michael Clemmons.

24 Q And you're employed with who?

25 A South Carolina Highway Patrol.

1 Q And as a result --

2 MR. MARTIN: Well, first of all, let me mark as an
3 exhibit this subpoena.

4 (WHEREUPON, Plaintiff's Exhibit No. 4 was marked
5 for identification only.)

6 Q Where are you stationed now?

7 A Here in Horry.

8 Q Okay. Let me show you what's marked as
9 Plaintiff's Exhibit No. 4 and ask you if you can
10 identify that.

11 A Yes, sir.

12 Q All right. And this is a subpoena that I issued
13 to Captain -- I don't know if he's a captain, but --

14 A Yes, sir, he is.

15 Q -- Trooper Nell of the -- Captain Nell of the
16 South Carolina Highway Patrol.

17 A Yes, sir.

18 Q And if you would, read for the record what I asked
19 for.

20 A Any and all South Carolina Department of Public
21 Safety records, data or other documentation utilized in
22 the vehicle license checkpoint operation that was
23 carried out on July the 30th, 2010, at the intersection
24 of SC secondary road 111 and Highway 57 North in the
25 Little River section of Horry County.

WILLIAM M. CLEMMONS-DIRECT BY MR. MARTIN

34

1 Q All right. And did you receive that subpoena from
2 Captain Nell?

3 A Yes, sir.

4 Q All right. And as a result of him giving it to
5 you, did you contact me --

6 A Yes, sir.

7 Q -- in connection with it?

8 A Yes, sir.

9 Q And you and I talked about the subpoena and
10 specifically what I was looking for?

11 A Yes, sir.

12 Q All right. And as a result of that, did you
13 search the records there in Florence to determine what
14 was on record?

15 A Here in Horry.

16 Q I mean, here in Horry?

17 A Yes, sir.

18 Q All right. And did you find any record, evidence,
19 data, anything, pre checkpoint on the case in question
20 on file with the South Carolina Highway Patrol?

21 A No, sir.

22 Q None?

23 A No, sir.

24 Q All right. Do you know whether or not those
25 records were even kept by the South Carolina Highway

1 Patrol?

2 A To my knowledge, I don't know. I can't answer
3 that.

4 Q But even if they were, in this particular case
5 there were none?

6 A No, sir.

7 Q In the checkpoint and driver's license checkpoints
8 that are implemented now, you do have a pre checkpoint
9 list that you utilize; do you not?

10 A Yes, sir.

11 Q All right. And that's done in every checkpoint?

12 A Yes, sir.

13 Q And it's done in every checkpoint because it is
14 the understanding of the highway patrol that it is
15 constitutionally mandated that there be records
16 justifying the purpose and the reason for any
17 particular checkpoint?

18 A Yes, sir.

19 Q Are there any records on file at the South
20 Carolina Highway Patrol like that in this case?

21 A No, sir.

22 Q Okay.

23 MR. MARTIN: That's all the questions I have.

24 THE COURT: Yes, sir.

25 MR. JOHNSON: May it please the Court, Your Honor.

WILLIAM M. CLEMMONS-CROSS BY MR. JOHNSON

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q Mr. Clemmons, what is your rank?

5 A First sergeant.

6 Q Sergeant Clemmons, were you involved in this
7 checkpoint for Mr. Brooks?

8 A No, sir.

9 Q Were you in the area at all?

10 A No, sir.

11 Q Were you stationed in Horry at the time?

12 A No, sir.

13 Q Did you have any knowledge of this checkpoint?

14 A No, sir.

15 Q Are you a records custodian? Are you the keeper
16 of the records there at the highway patrol?

17 A I guess you could say so, yes, sir.

18 Q Okay. But you have no knowledge of this case
19 whatsoever?

20 A No, sir.

21 MR. JOHNSON: That's all the questions I have,
22 Your Honor. At this point since he has no firsthand
23 knowledge, I would ask respectfully that his testimony
24 on direct be stricken from the record.

25 THE COURT: I think he did say that he was

1 custodian of records, and he indicates there are no
2 records. So I'll overrule it in that regard.

3 The checklist, does it require that you advertise
4 where the road -- where the license check is going to
5 be, at some point in time put it in the paper?

6 THE WITNESS: Judge, I think there is some
7 portion. But Columbia handles that part of it for us.

8 THE COURT: Okay. So you think it was indeed
9 advertised?

10 THE WITNESS: Yes, sir. I would have to go back
11 and pull the PO records and stuff from Columbia. But
12 they periodically send out those throughout the State.

13 THE COURT: All right. And before you can have a
14 road block, don't you have to justify some reason for
15 it to say that ordinary patrolling procedures won't
16 suffice, and there's a particular need --

17 THE WITNESS: Right. Yes, sir.

18 THE COURT: -- for this particular road block?

19 THE WITNESS: Yes, sir.

20 THE COURT: Do you know of any particular need for
21 there to be a road block in this area at this
22 particular time?

23 THE WITNESS: My personal opinion, since I've been
24 here for two years --

25 MR. MARTIN: Now, judge, I'd have to object to

1 your question there.

2 THE COURT: I want to hear what he's got to say.

3 THE WITNESS: It's a very heavily traveled area up
4 there, and we do have a lot of crashes, DUI crashes and
5 stuff in that general area.

6 THE COURT: So this was a sobriety checkpoint or a
7 license check?

8 THE WITNESS: I can't answer that, judge. I
9 really -- I don't know what the time it was. I know
10 that quite a few people on that particular checkpoint,
11 I couldn't answer why.

12 THE COURT: Any redirect?

13 MR. MARTIN: No, sir.

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

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: You're free to leave.

18 THE WITNESS: Thank you, judge.

19 THE COURT: Anything further?

20 MR. MARTIN: That would be the petitioner's
21 showing, Your Honor.

22 THE COURT: All right. Let me ask, Mr. Prioleau,
23 what your position is with regard to this. By virtue
24 of the fact that the Defendant pled guilty, did he
25 waive any objections with regard to the merits of the

1 search?

2 MR. PRIOLEAU: Yes, Your Honor. Our position is
3 that he waived all non-jurisdictional defenses.

4 THE COURT: Okay. Mr. Prioleau, what do you think
5 about the fact that -- how can he make an intellectual
6 decision to plead guilty if he was not really advised
7 that there were legitimate concerns about the search?

8 MR. PRIOLEAU: Your Honor, we intend to recall
9 Judge Welsh to the stand at your permission, sir.

10 THE COURT: Okay. Well, let me hear your position
11 on that.

12 MR. PRIOLEAU: Well, Your Honor, our position is
13 that he waived the benefits of going to trial once he
14 pled guilty to the charges. And we believe that
15 because of Judge Welsh and his effective counsel, he
16 waived those rights.

17 THE COURT: Of course, the Applicant is going to
18 say that it wasn't an intelligent waiver of his rights
19 because he wasn't told about the fact that there was a
20 legitimate objection to the procedure. What do you
21 have to say about that?

22 MR. PRIOLEAU: Well, Your Honor, if you look at
23 the facts of the case, he would have had -- he might
24 could have served life. He had charges of attempted --
25 assault and battery, attempted murder, he could have

1 served life. And the fact that he went from basically
2 a life sentence to a 12-year sentence, recommended
3 sentence from the State, I think he is basically,
4 that's one of the best deals you can get for his
5 situation.

6 THE COURT: All right.

7 MR. JOHNSON: Your Honor, if I may interject,
8 sorry, there actually is testimony from Mr. Brooks
9 himself that he discussed the search and seizure with
10 his attorney. That was his own testimony, Your Honor.
11 So I think the question kind of goes out the window
12 based on the discussion that Mr. Brooks admitting to
13 having with Judge Welsh concerning that exact issue.

14 THE COURT: Okay.

15 MR. JOHNSON: Thank you.

16 THE COURT: I'm going to allow you to recall
17 Mr. Welsh here in a moment. What do you have to say
18 about those issues and those concerns, Mr. Martin?

19 MR. MARTIN: Well, judge, let me address the
20 litany of them. First of all, what he could have got
21 is not relevant in this particular proceeding. He was
22 charged with A, B and C, we have no idea, you have no
23 idea of the validity or the evidence behind those
24 charges. So all that's irrelevant, at least in my
25 mind.

1 The question in this case is, was he provided
2 effective assistance of counsel with regards to the
3 charge that he pled guilty to. And I know Cliff Welsh,
4 and he is a fine attorney. And I know a lot more about
5 this case since I have researched it in connection with
6 this PCR than I would have before.

7 But I think, judge, that there's a couple of
8 things that are clear. And that is under federal case
9 law as of 2007, Brendlin versus California, the
10 passenger stands in exactly the same position as the
11 driver of an automobile. And I believe that Mr. Welsh
12 at the time did not believe that to be the case. And I
13 think he counselled his client that that wasn't his
14 case, and I think he entered on the record at the time
15 of the plea that was the case. That's the reason I put
16 the transcript in.

17 And it was also the law of the land that if the
18 particular seizure and search that you have is a
19 driver's license checkpoint that there are certain
20 constitutional requirements that have to be met before
21 you do that. And that is that there be some
22 justification for it.

23 I handed up to you the case of South Carolina
24 versus Vickery which is the last case about this, but
25 it encapsulates, I think, all of the law that existed

1 in 2010 and up until this date. And you got the United
2 States, you got Indianapolis versus Edmunds and
3 Michigan versus Sitz and a variety of cases, State
4 versus Grooms in South Carolina, and State versus
5 Vickery.

6 And by the way, judge, for the record, the case of
7 State versus Branham holds that the Court held that a
8 passenger is seized at the moment the car comes to a
9 halt, pulled his car over in the presence of the
10 police, a seizure of all occupants of the vehicle was
11 completed. And that's South Carolina versus Branham.

12 But in this case here, again, you know, when you
13 got a driver's license checkpoint, the question would
14 be, do we have a legal search and seizure. And, you
15 know, that's the reason I asked the attorney, did you
16 file a motion, did you talk to anybody, was there any
17 evidence shifted to you that would indicate to you that
18 this was a legal driver's license checkpoint pursuant
19 to South Carolina law. And he did not do those things.

20 And I even went a step further and brought a
21 trooper in, the records custodian, to tell you that
22 when he looks, he don't see anything. And he's not
23 sure they even kept them at the time. Now, if they
24 didn't, that was wrong and it's an illegal search, no
25 question about it, in my mind, at least, under the law.

1 Because if you look --

2 THE COURT: Now, what do you think about the fact
3 that he waived that by entering a plea?

4 MR. MARTIN: Well, judge, I think it's pretty
5 clear that without effective assistance of counsel, you
6 can't knowingly and intelligently waive your
7 constitutional rights. And I think that's what
8 happened here. And I think -- and I think the fact
9 that the transcript that you have before you indicates
10 that -- what he said, the Attorney General said, well,
11 he said there was conversation about search and
12 seizure.

13 I don't deny that there was some conversation
14 about that. But yet obviously Mr. Brooks doesn't know
15 what the law is related to it. And I recall him saying
16 that he discussed it, and he would want him to do
17 anything, file any motion that was necessary to protect
18 his constitutional rights.

19 And then what happened here is we got a case in
20 which in this case particular instance, Mr. Welsh
21 didn't do that. That effectively led to a plea, and it
22 was a plea where he, that is Mr. Brooks, was not made
23 aware of the issues arising out of the search and
24 seizure of this particular nature.

25 Because going back to be sure, from the moment

1 they stopped the car, that's an illegal search and
2 seizure unless it is correctly implemented, vehicle,
3 drivers license, whatever you -- sobriety checkpoint.
4 And I'll say whether or not they advertised it isn't a
5 relevant point. The point is what verification that
6 they have.

7 And if you look at the Vickery case, and then I'll
8 just answer your questions, but if you look at the
9 Vickery case on page eight which is the last page,
10 there's a couple of things that I think are important
11 in this case. It says there that the Court says the
12 case law does require some basis for the location of a
13 checkpoint, some basis.

14 They are trying to minimize it. It don't take a
15 lot, you know, they can use it anecdotally, the trooper
16 said, well, at that time it was a bad area, had a lot
17 of this, that and the other. Then they said, but as
18 the United States Supreme Court says, has stressed that
19 no evidence is not enough. And I think that's what
20 we've got here, there's no evidence in the record that
21 there was any evidence for the justification of this
22 particular checkpoint. And all of that leads back
23 around to a --

24 THE COURT: Did the officer say there was a lot of
25 drinking in that area?

1 MR. MARTIN: Well, now, what I'd say to you,
2 judge, is, again -- well, what did he say, they had a
3 lot of trouble with drinking and driving, I believe he
4 did say that. But I think the problem with that is,
5 and this was in 2010 when this checkpoint was done,
6 he's just recently been moved to Horry County. So what
7 his observations are on it I believe to be irrelevant
8 to the traffic stop in July of 2010.

9 THE COURT: All right.

10 MR. JOHNSON: May I respond, Your Honor?

11 THE COURT: Yes.

12 MR. JOHNSON: Thank you. First of all, with all
13 do respect to Mr. Martin, he's trying to take a
14 different position there saying he's now irrelevant
15 testimony because he wasn't there. But yet he presents
16 him as a witness.

17 The potential sentences are relevant in this case,
18 because Mr. Brooks needs to be fully apprised that if
19 he is successful here today, he faces all those
20 charges, not just the trafficking charge. And it
21 doesn't have to be lowered down to 28 to a hundred
22 grams, he's stuck with the hundred to 200 grams because
23 it was 102 grams of crack cocaine found on his person.

24 Second, just because the highway patrol did not --
25 allegedly did not document this search, this

1 checkpoint, the search itself is legal. Because the
2 testimony is in the record which is conclusive, because
3 Mr. Brooks accepted the guilty plea, and he agreed to
4 the facts of the case, is that there was an open
5 container in the car. That gives probable cause to
6 search that car.

7 THE COURT: Well, what did he -- in the very
8 threshold, if they didn't do what was necessary to
9 justify the checkpoint, then it doesn't matter what
10 they do, the seizure takes place once he's stopped.

11 MR. JOHNSON: Correct, Your Honor. But in the PCR
12 realm, it is Mr. Martin's burden of proof to prove that
13 that never happened. Just because you don't have
14 records doesn't mean that didn't happen.

15 THE COURT: Right.

16 MR. JOHNSON: You can infer that, I get that. But
17 you still have to have, you know, solid proof that that
18 did not happen. And then I would agree with Your
19 Honor's argument.

20 THE COURT: So you're saying that the burden is on
21 him --

22 MR. JOHNSON: Absolutely.

23 THE COURT: -- to prove that it did not take
24 place?

25 MR. JOHNSON: Yes, sir, absolutely. But as far

1 as the search --

2 THE COURT: And you're saying this officer falls
3 short in that regard because he doesn't really know?

4 MR. JOHNSON: Correct. And that's why I move to
5 strike his testimony from the record. He has no
6 personal knowledge of what or what didn't happen.

7 THE COURT: But he is the records custodian.

8 MR. JOHNSON: I agree. But he didn't have any
9 personal knowledge of that incident. He was from
10 Darlington County and --

11 THE COURT: What's your understanding of the law
12 as to whether or not they are to maintain records on
13 it?

14 MR. JOHNSON: They are supposed to maintain
15 records, I totally agree. But as far as whether or not
16 Judge Welsh is ineffective, it's Mr. Martin's burden of
17 proof that those things didn't exist or they never took
18 any type of documentation about the highway patrol and
19 that checkpoint. I just don't think he's met that
20 burden.

21 And as far as the search is concerned itself, is
22 that that open container gives the officers probable
23 cause to ask the driver and passenger out of the
24 vehicle. When Mr. Brooks -- the officer opens the
25 door, when Mr. Brooks exits the vehicle the crack

1 cocaine falls off of his lap.

2 THE COURT: I don't have a problem with all of
3 that.

4 MR. JOHNSON: Okay.

5 THE COURT: It's just the initial threshold as to
6 whether or not -- whether or not the road block itself
7 was unconstitutional.

8 MR. JOHNSON: I totally understand that, Your
9 Honor. And we still stick to our guns when we say when
10 he pled guilty, he waived all non-jurisdictional
11 issues. He could have challenged that through a
12 suppression motion, he could have done that. Counsel
13 has testified that he didn't think it was going to be
14 successful and didn't want to risk all of the other
15 charges that were getting dismissed for this 12-year
16 recommendation in order to challenge that.

17 THE COURT: What do you think about the fact that
18 Mr. Welsh was operating under the false assumption that
19 the passenger didn't have standing?

20 MR. JOHNSON: Your Honor, actually his testimony
21 was that he had standing, and if you look -- but then
22 it gets fuzzy once he comes out of the car. He says
23 initially that the passenger did have standing to
24 challenge that. But then issues arise later on. That
25 was what I have written in my notes about his

1 testimony, Your Honor.

2 THE COURT: Okay. Anything further, Mr. Martin?

3 MR. MARTIN: Well, two things simply to say I
4 think the testimony is he said that initially. Then
5 when he reviewed what he said at the hearing, I think
6 that the record's pretty clear that he thought a
7 passenger didn't have standing to object. And I
8 believe the record shows that.

9 THE COURT: Okay.

10 MR. MARTIN: But let me -- the other thing I would
11 say here, I believe we have demonstrated and carried
12 the burden that we have, that it was illegal search and
13 seizure. You know, when I file -- when I filed that
14 motion to have this stuff produced to me, if they
15 hadn't produced a lot of things it would be there. You
16 know, I had to figure out.

17 So I did that because I was afraid the Attorney
18 General's office will say you haven't carried your
19 burden, you know, who knows what's there. If Mr. Welsh
20 had looked, he would have found all this. It would
21 have been no need maybe to file a motion to suppress.
22 So I took that step. And as fate would have it, what
23 we find is there is nothing there.

24 Now, I don't know what else I can do on his behalf
25 to show that there wasn't a basis for the search and

1 seizure. And so, I would vehemently disagree that I
2 have no solid proof of what the situation was. I've
3 got the record custodian from the South Carolina
4 Highway Patrol to say he looked and he found no
5 records, period.

6 So, and again, I think all of that is in this
7 case, as happens sometimes with all of us lawyers, that
8 there simply was just some ineffective assistance in
9 this particular case because of the facts that we
10 produced.

11 THE COURT: Mr. Johnson.

12 MR. JOHNSON: Just one thing to bring to Your
13 Honor's attention. On page nine and ten down starting
14 at line 25 over to page 10, specifically -- excuse
15 me -- lines 8 through 13, Court says: All right. I
16 mean, I don't know if you were stopped illegally, I
17 don't know if you were searched illegally. But you
18 understand that you are waiving the defense by pleading
19 guilty here today, to which Mr. Brooks responded, yes,
20 sir.

21 So like I said earlier, we're sticking to our guns
22 in that he waived all non-jurisdictional challenges to
23 the evidence in this case, Your Honor.

24 THE COURT: And that was the plea judge?

25 MR. JOHNSON: That was the plea judge, yes, sir.

1 THE COURT: Or at least the sentencing judge.

2 MR. JOHNSON: No, this is the actual plea judge.

3 THE COURT: Plea judge.

4 MR. JOHNSON: Yes, sir. Thank you.

5 THE COURT: Anything further, Mr. Martin?

6 MR. MARTIN: No, sir.

7 THE COURT: We're going to take about a
8 five-minute recess. Good luck to you, Mr. Brooks.

9 We'll stand at ease for about five minutes.

10 MR. MARTIN: Thank you, Your Honor.

11 (The hearing concluded at approximately 11:50
12 a.m.)

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2600259

Stefano Brooks		South Carolina State of
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PLAINTIFF(S)	DEFENDANT(S)
Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant	
Submitted by: Clerk of Court	

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

Request for Post- Conviction Relief is Denied. Order will be Forthcoming from Attorney Rutledge Johnson

This order ends does not end the case.
Additional Information for the Clerk: _____

FILED
HORRY COUNTY
27 FEB 20 11:52
HORRY COUNTY COURT
HORRY COUNTY, SC

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

Michael G. Nettles

Circuit Court Judge - Hon. Michael G. Nettles

2140
Judge Code

2/7/2017
Date

For Clerk of Court Office Use Only

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

L. Morgan Martin 1121 Third Ave. Conway, SC 29526

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter -Teresa Bautz

Renee N. Elvis - Clerk of Court

Court Reporter:

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

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

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

Copy of Order/ _____
filed 2/10/17 mailed to all
parties not in default on 2/13/17
initials JK

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
)
)
 Stefano Brooks, #358949,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-259

ORDER OF DISMISSAL

CLERK OF COURT
 HORRY COUNTY, S.C.

17 MAR 24 AM 8:18

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 13, 2015. Respondent made its Return on July 31, 2015. An evidentiary hearing into the matter was convened on February 7, 2017 at the Horry County Courthouse. Morgan Martin, Esquire represented Applicant. Ralph Prioleau Jr., under the supervision of Rutledge Johnson, Esquire, pursuant to the Student Practice Rule under Rule 401 of the State of South Carolina, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, the Honorable Clifford Leon Welsh testified. Officer Clements of the South Carolina Highway Patrol also testified. This Court had before it a copy of the records of the Horry County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's return, the Guilty Plea transcript, the Sentencing Transcript, and the Motion for Reconsideration Transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the

January 2011 term of the Horry County Grand Jury for trafficking cocaine base, 100-200 grams (2011-GS-26-218). Clifford L. Welsh, Esquire, represented Applicant.

Applicant pled guilty to the lesser included offense of trafficking cocaine, 28-100 grams, on May 15, 2012. In exchange for Applicant's guilty plea, the State also dismissed three of Applicant's pending criminal charges.¹ The Honorable Benjamin H. Culbertson deferred sentencing until a later date, but Applicant failed to appear and absconded from the jurisdiction. He was later arrested in Louisiana and expedited back to Horry County for sentencing. On February 14, 2014, Judge Culbertson sentenced Applicant to twenty-five (25) years' imprisonment. Applicant filed a Motion for Reconsideration of his sentence. On March 31, 2015, the Honorable Culbertson denied Applicant's Motion for Reconsideration.

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

1. "Ineffective Assistance of Counsel"
 - a. "Defense counsel failed to conduct an adequate investigation into the Applicant's case."
 - b. "Defense counsel failed to adequately advise the Applicant of all possible defenses and legal and factual claims that could be made at trial, and failed to adequately advise the Applicant of all available plea offers."
2. "Involuntary Guilty Plea"
 - a. "The Applicant's pleas of guilty were not knowingly, voluntarily, or intelligently entered."

At the hearing, Applicant proceeded on his claims of ineffective assistance of plea counsel and involuntary guilty plea.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he was represented by Clifford L. Welsh, Esquire. Applicant stated that he discussed the facts of the case with Clifford L. Welsh,

¹ The dismissed charges include trafficking in MDMA or ecstasy, 100-500 dosage units (2011-GS-26-217), attempted murder (2011-GS-26-4023) and assault and battery, second degree (2013-A-26-10202537, not indicted).

Esquire. Applicant stated that he was the passenger during a vehicle checkpoint in the Little River Section of Horry County. Applicant testified that there was no open container in the vehicle. Applicant testified that search and seizure was discussed with his attorney. Applicant claims that he was not familiar with the appropriate motions to file so he left that responsibility to his attorney.

On cross-examination, Applicant admitted that he was under oath at the time of his Guilty Plea. Applicant also admitted that the facts presented during his Guilty Plea were accurate and that he attested to those facts.

Applicant admitted that he was a passenger at the vehicle checkpoint. Applicant also admitted that the open container was presented in the facts and he attested to those facts. Applicant stated that plea negotiations were brought to him by his attorney. Applicant stated that he did not recall if attorney went over his rights. Applicant admitted that he did not return for sentencing as instructed by the Honorable Benjamin Culbertson. Applicant admitted that he was arrested almost two years later in the state of Louisiana.

Counsel testified that he did not file a motion to suppress. Counsel testified that he did not file a motion pertaining to the legality of the Highway Patrol's checkpoint because there was no basis for it. Counsel testified that he was aware of the requirements for a valid checkpoint. Counsel testified that that he did not speak to Highway Patrol officers about the basis for the checkpoint or request records pertaining to it. Counsel knew that it was a common location used for checkpoints. Counsel testified that the District Captain and Major were present for the checkpoint so that took care of the notice and authority requirements. Counsel claimed that he questioned Applicant's standing to object to the initial seizure of the vehicle. However, in his cursory investigation of the checkpoint, he believed it was a valid stop in which officers had the

right to request the driver and passenger step out of the car. At which time, Applicant's drugs fell out of his lap and into plain view. Counsel testified that a passenger can have standing to challenge the search and subsequent seizure of drugs. Counsel testified that he did not think he would have been successful at a suppression hearing.

On cross-examination, Counsel testified that he had received discovery materials for the pending charges. Counsel testified that the problem was not with discovery, but the problem Applicant had is the fact that he had multiple, pending charges including attempted murder, assault and battery, second degree, and trafficking MDMA (ecstasy). Counsel testified that he negotiated a favorable plea deal for Applicant to plead to the *lesser* included offense, thus eliminating a minimum mandatory of twenty-five (25) years, a twelve (12) year recommendation by the Solicitor², *and* the dismissal of all of Applicant's other charges in exchange for his plea.

Counsel testified that he did not believe the Judge would have suppressed the drugs based on the facts presented. Counsel also testified that he did not file a motion to suppress based on fear that the Solicitor would retract the entire global plea offer, including the twelve (12) year recommendation. Counsel testified that he did not coerce Applicant or force him to plead guilty. Counsel testified that the ultimate decision to plead guilty was Applicant's. Counsel testified that Applicant's failure to appear at sentencing and ultimately absconding complicated the outcome. Counsel testified that he did not have any knowledge that the Applicant would abscond.

On re-direct examination, Counsel testified that the Applicant was not sentenced until he was arrested in Louisiana and expedited back to South Carolina. Counsel also testified that the

² Respondent notes that Applicant ultimately received the maximum sentence of twenty-five (25) years due to his failure to return for sentencing after the judge allowed Applicant to defer sentencing in order to be with his wife when she gave birth. Instead, Applicant absconded to Louisiana where he was later arrested on drug charges and expedited back to Horry County for sentencing.

Highway Patrol opened the door of the vehicle and Applicant was sitting on the cocaine and ecstasy was on his person.

Officer Clemmons testified that he is employed with the South Carolina Highway Patrol. Officer Clemmons testified that he is stationed in Horry County. Officer Clemmons testified that Applicant's PCR counsel requested Highway Patrol records and data for the checkpoint. Officer Clemmons indicated he could find no data, record, or evidence. Officer Clemmons testified that checkpoints are documented and recorded every time.

On cross-examination, Officer Clemmons testified that he was not involved with the checkpoint. Officer Clemmons also testified that he was not employed in Horry County at the time of the checkpoint. Officer Clemmons testified that he had no knowledge of the checkpoint. Officer Clemmons claims that he is a record's custodian. Officer Clemmons testified that some records are kept in Columbia, South Carolina and that he did not search there for any records. Officer Clemmons testified that the location of the checkpoint in this case was an area that is commonly known for accidents and DUIs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel and Officer Clemmons to be credible. This Court further finds that the testimony by Applicant is not credible, especially with regard to the open container that was found in the vehicle at the time of the traffic stop.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. Applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. (citing Rule 71.1 (e), SCRPC). When an applicant alleges ineffective assistance of counsel, 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

Applicant must prove that counsel's performance was deficient. Attorneys are held to an objective standard of "reasonably effective assistance" under "prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E. 2d at 625, citing Strickland. The presumption will always be that counsel was effective and the applicant must overcome the presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989). The probability must lie that because of counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). A guilty plea defendant is entitled to effective assistance of counsel. In a PCR action, the guilty plea defendant must prove that because of counsel's deficient performance, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985).

This Court finds that Counsel was effective in his representation concerning the decision not to file a motion to suppress. Counsel testified that it was a strategic decision not to file a motion to suppress. Counsel testified that his negotiations with the State led to Applicant pleading to a lesser charge, with a recommendation for less than half of the minimum mandatory

he was facing and in exchange for his other charges being dismissed. Counsel also testified that he was afraid that if he did file a motion to suppress, the plea offer would have been retracted. Counsel was not confident in getting the drugs suppressed based on his cursory investigation of the checkpoint. Counsel was familiar with the case law regarding driver checkpoints and that he believed this checkpoint met all of the requirements to be a valid one. This Court finds that Counsel was effective in his representation. This Court finds that Counsel effectively negotiated a sentence in the best interest of his client, but because of Applicant's failure to appear, the Court sentenced him to more time. This Court finds that Applicant waived all non-jurisdictional defenses when he pled guilty, including the right to challenge the checkpoint, challenge the search and seizure of the drugs, and the right to present any defenses.

This Court also finds that Counsel met the objective standard of "reasonably effective assistance" under "prevailing professional norms." Cherry, at 117 (citing Strickland). The standard does not require that Counsel deliver Applicant the most perfect representation with zero error, but rather that his advice, decisions, and conduct are reasonable based on the professional norms in criminal defense. This Court finds that it was certainly a reasonable decision not to file a motion to suppress in this case. Furthermore, Applicant has failed to overcome the presumption that Counsel was effective. Id. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed unprofessional errors in his representation of Applicant.

Even assuming *arguendo* that his performance fell below the standard of reasonable performance, no prejudice resulted to Applicant. Strickland, *supra*. There was insufficient

evidence presented at the PCR hearing to prove that Applicant would have been successful in a suppression motion. In order for Applicant to meet his burden of proof under the prejudice prong of Strickland, he must show that but for Counsel's deficient performance, he would not have pled guilty. Hill, supra.

Applicant's claim is that Counsel should have moved to have the drugs suppressed. The evidence presented at the PCR hearing with regard to a suppression hearing was from Counsel, who testified to his knowledge of the circumstances of the checkpoint and his knowledge of the requirements for the checkpoint to be lawful. He also testified that in his opinion, the checkpoint was lawful although he did not request official Highway Patrol checkpoint records. Officer Clemmons testified that upon request, he could not find any records in the Horry County Highway Patrol office with regard to a checkpoint that occurred over six (6) years ago. He also testified that he was not part of the checkpoint nor did he work in Horry County at that time.

Applicant has failed to present sufficient evidence that the checkpoint was unlawful. The evidence is speculative, at best, to show that a suppression motion would have proved successful. It is a stretch to assume that because an Officer with no connection to this case, who cannot find records in Horry County of a traffic checkpoint from over six years ago, that may or may not be in Columbia means that no records ever existed. Nor does the law require such records. The legal requirements for setting up a License or DUI Checkpoint in South Carolina are: (1) that law enforcement must have a valid reason for the checkpoint; (2) supervisory approval is needed; and (3) law enforcement must publicize the checkpoint. Without demonstrating by a preponderance of the evidence that the checkpoint was unlawful, Applicant equally fails to prove that had Counsel been successful in suppressing the drugs on that basis, Applicant would not have pled guilty. In fact, the evidence supports Counsel's claim that he would not have been successful at

suppression and would have risked Applicant's favorable plea deal. Applicant did not plead guilty because Counsel failed to make a winning motion for suppression, but rather, he pled guilty because Counsel negotiated the deal of a lifetime for Applicant.

Therefore, this Court finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance.³ The burden of proof has not been met. Therefore, these allegations are denied.

Involuntary Guilty Plea

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

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

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's

³ Applicant's only prejudice flows from his decision to abscond from the jurisdiction prior to sentencing.

errors, the defendant would not have pled guilty, but would have insisted on going to trial.

Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Court finds the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel and therefore, has been treated as such in the section *supra*.

CONCLUSION

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

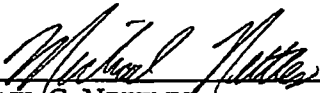
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. *See* Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21 day of March, 2017.



MICHAEL G. NETTLES
Presiding Judge
Fifteenth Judicial Circuit


3-21-17, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-26-00259

Stefano Brooks,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)

**MOTION FOR RECONSIDERATION AND
TO ALTER OR AMEND THE JUDGEMENT**

FILED
HONORARY CLERK
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SOUTH CAROLINA

This motion is made pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. It is also made pursuant to the Supreme Court’s decision in *Elam v. South Carolina Department of Transportation*, which instructs that a Rule 59(e) motion is not only a vehicle to ask a circuit court to “alter or amend” a judgment, but it also a vehicle to seek “reconsideration.” See 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004).

Rule 59(b) specifies that this motion may not be made more than 10 days after the moving party receives written notice that the court’s judgment has been entered. The applicant received that notice on April 4, 2017. This motion is accordingly timely.

The applicant respectfully request that the court grant reconsideration, withdraw its previous order, and substitute a new order that follows the reasoning articulated by applicant’s counsel at the initial post-conviction relief hearing. Applicant will supplement this motion with additional filings for the court’s consideration.

Respectfully submitted,



L. Morgan Martin
Law Offices of L. Morgan Martin, P.A.
1121 Third Avenue
Conway, South Carolina 29526
(843) 248-3177
(843) 248-2842 (fax)

April 11, 2017

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have on the 12th day of April, 2017 served a copy of the foregoing document upon the below listed attorney for the Respondent by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Valerie Garcia Giovanoli, Esquire
Assistant U.S. Attorney
P.O. Box 11549
Columbia, South Carolina 29211

Steph J. Hines

2017 APR 12 AM 8:48
OFFICE OF THE CLERK
COURT OF COMMON PLEAS
HARRIS COUNTY TEXAS

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State of South Carolina) Court of Common Pleas
County of Horry) 2015-CP-26-00259

Stefano Tyshawn Brooks)
vs.) Transcript of Record
State of South Carolina)

June 1, 2017
Conway, South Carolina

BEFORE:

Honorable Michael G. Nettles, Judge.

APPEARANCES:

L. Morgan Martin, Esq.
Attorney for the Plaintiff

Valerie Giovanoli, Esq.
Attorney for the State

Teresa J. F. Bautz, RPR
Official Court Reporter

1 E X H I B I T S

2 NO.	DESCRIPTION	ID	EV
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3	No exhibits submitted.		
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23	Exhibits retained by Clerk of Court.		
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1 (The hearing commenced at approximately 9:10 a.m.)

00:00:43 2 MS. GIOVANOLI: Your Honor, this is Case No.
00:00:43 3 2015-CP-26-259, Stefano Brooks versus State of South
00:00:50 4 Carolina. We are before the Court on a denied
00:00:52 5 application for post conviction relief. If Your Honor
00:00:54 6 will recall, you heard this case on February 7th, 2017.
00:00:59 7 Thereafter, you denied post conviction relief by order
00:01:03 8 filed March 24, 2017.

00:01:05 9 Subsequently, counsel for Applicant filed a 59-E
00:01:12 10 motion April 12th, 2017, and we are before the Court on
00:01:15 11 that motion. The State is present, ready to proceed.
00:01:19 12 Applicant is also present and represented by Mr. Morgan
00:01:22 13 Martin. And I will hand it over to Mr. Martin.

00:01:25 14 THE COURT: Mr. Martin, you're recognized.

00:01:31 15 MR. MARTIN: Judge, if it please the Court, let me
00:01:32 16 hand up to you some language in the boiler plate case
00:01:34 17 of Strickland versus Washington on this PCR. Let me
00:01:37 18 say, I don't know that my argument today is new in any
00:01:41 19 fashion, hopefully I'll do a better job of presenting
00:01:44 20 it to the Court as to why we think Mr. Brooks here is
00:01:50 21 entitled to a finding of ineffective assistance of
00:01:55 22 counsel.

00:01:55 23 And let me boil it down this way. I think a lot
00:01:58 24 of it does emanate out of the Washington versus
00:02:04 25 Strickland case and everything that goes with that.

00:02:06 1 But our argument to the Court is that the record would
00:02:09 2 show that the trial counsel's performance was deficient
00:02:15 3 and fell below the objective standard of reasonableness
00:02:19 4 for attorney's representation; and, secondly, that the
00:02:23 5 failure to act effectively changed the outcome of the
00:02:30 6 case and resulted in him pleading guilty.

00:02:35 7 And the standard there as I read it in Washington
00:02:39 8 is that there is a reasonable probability that the
00:02:42 9 result would have been different. And I think that's
00:02:45 10 part of our problem in this case. Of course, the
00:02:48 11 question is how would you prove it would be different.
00:02:51 12 But to go back, first of all, as to the whether or
00:02:56 13 not --

00:02:56 14 THE COURT: Mr. Brooks, you can have a seat if
00:02:58 15 you'd like.

00:03:01 16 MR. MARTIN: -- whether or not his attorney met
00:03:04 17 the standard that an attorney -- so let's go back and
00:03:09 18 think about it just a minute. This is a case in which
00:03:11 19 there was a traffic stop at a road block set up by the
00:03:15 20 South Carolina Highway Patrol. As a result of that
00:03:17 21 stop, they said they saw and/or found during the search
00:03:20 22 cocaine.

00:03:21 23 The only defense that I could see as a criminal
00:03:28 24 defense lawyer in a case like that that had any real
00:03:33 25 chance of success would have been a motion to suppress

00:03:38 1 the search in the case. It was a warrant to search.
00:03:41 2 That placed the burden on the State to prove that it
00:03:45 3 was a valid search. It was a search under the -- a
00:03:49 4 litany of cases with Michigan versus Sitz and Innis
00:03:56 5 versus Rhode Island having to do with how can the
00:03:58 6 police just set up a road block and stop people.

00:04:00 7 And South Carolina's case on that is State versus
00:04:05 8 Vickery. And so if you read that whole line of cases,
00:04:10 9 starting with the Supreme Court cases of Innis and
00:04:12 10 Michigan versus Sitz, and you come down to South
00:04:15 11 Carolina's, I believe, 2012 case of Vickery, there
00:04:20 12 is -- the bottom line is in Vickery says, quote, "there
00:04:25 13 has to be some basis and justification established by
00:04:31 14 the State to support the road block being set up and
00:04:36 15 administered." Got to be something. They have to
00:04:41 16 announce it before, announce it after, and there has to
00:04:44 17 be some basis in the record for it.

00:04:46 18 And in this case what happened is the discovery
00:04:48 19 that the attorney had nothing on that, just simply that
00:04:52 20 they stopped him at a traffic road block, found the
00:04:55 21 drugs, that's it. So there's nothing there.

00:04:57 22 So what he does, then, and this is why I say the
00:05:03 23 problem starts, is frankly, he just didn't do anything.
00:05:07 24 And the case I just handed up to you talks about in
00:05:12 25 that, even in that boiler plate case, that the Court

00:05:16 1 agreed that the Sixth Amendment imposes a counsel -- on
00:05:20 2 counsel a duty to investigate. Because reasonable
00:05:24 3 effective assistance must be based on professional
00:05:27 4 decisions and informed decisions based only after an
00:05:31 5 investigation of the options.

00:05:32 6 So if you remember what Mr. Welch said here was,
00:05:38 7 and it's in the record when he pled guilty, first of
00:05:41 8 all, was that we didn't worry about a motion to
00:05:45 9 suppress because he didn't have standing to object
00:05:48 10 because he was a passenger. Well, that's wrong, he was
00:05:51 11 wrong about that. He didn't investigate the law on
00:05:55 12 that point.

00:05:55 13 And then, secondly, if I recall the transcript, it
00:05:59 14 was essentially that, well, two things, two things.
00:06:05 15 Number one was, well, no, I didn't file a motion, but I
00:06:09 16 kind of know about that area. That's not relevant.
00:06:16 17 That's not got anything to do with whether or not the
00:06:18 18 highway patrol laid the proper foundation for a traffic
00:06:22 19 stop and a road block.

00:06:24 20 So, once again, if that was the investigation, it
00:06:29 21 was deficient. All you got to do is file a motion to
00:06:32 22 suppress and/or if you don't want to go that far to
00:06:35 23 start with, file a motion for discovery or an FOI with
00:06:39 24 the highway patrol to see what is the basis, what is
00:06:43 25 the basis of what you got.

00:06:44 1 He did not do any of those things. So I believe
00:06:47 2 that under the Washington case in its most basic form
00:06:51 3 that he failed to properly investigate the case. And
00:06:55 4 then the other defense, I think, cited by counsel and
00:07:02 5 maybe by the State was, well, it was a matter of
00:07:06 6 strategy. It was a matter of strategy because we could
00:07:10 7 get this plea for 12 years. He had other charges
00:07:14 8 pending that they were going to dismiss.

00:07:17 9 First of all, let me say, other charges aren't
00:07:21 10 relevant. We have no idea whether those other charges
00:07:24 11 were substantive, were going to be dismissed anyway or
12 anything of that nature. But when the option is,
00:07:30 13 although he wound up with 25, when the option is 12
00:07:32 14 years in prison, then wouldn't you want your counsel to
00:07:35 15 explore every opportunity to see if the State could
00:07:39 16 make the case. And in this instance, frankly, judge,
00:07:43 17 he just simply did not.

00:07:45 18 And if you go on in the case language that I've
00:07:48 19 handed up to you, it says specifically in there that
00:07:53 20 you can't -- you can't defend your actions on strategy
00:07:58 21 unless you do a basic investigation to see what your
00:08:02 22 strategy ought to be.

00:08:06 23 So, I believe that if you go back and look, in
00:08:13 24 summary, that this is a case in which -- well, let me
00:08:17 25 say this, too. So, okay, what's the reasonable

00:08:20 1 probability the outcome would have been different had
00:08:23 2 he filed that motion? Well, the best that the
00:08:27 3 government can say is, we don't know, we don't know
00:08:30 4 what it would have been.

00:08:31 5 So therefore, how do you say that he would have
00:08:34 6 got a new one. Well, what we did, when we sent a
00:08:37 7 subpoena to the highway patrol, and the officer came
00:08:40 8 and testified asking him to bring any and every record
00:08:43 9 they had in connection with that road block set-up, and
00:08:47 10 he came in and he did not bring anything. He could not
00:08:52 11 find anything in the records.

00:08:53 12 Now, what we do know is if that is what they would
00:08:58 13 have been able to present at the time, then it would
00:09:04 14 have -- the search would have been suppressed. Maybe
00:09:06 15 an officer would have gone up and testified to A, B and
00:09:11 16 C that would have supported that. But we don't know
00:09:13 17 that. There's nothing in the file to indicate that.
00:09:15 18 There's nothing in the discovery to indicate that.

00:09:18 19 I even asked him, did you catch the officer on the
00:09:20 20 side and ask him, why, what was the basis of it, and he
00:09:24 21 said he did not. And then the records of the highway
00:09:27 22 patrol, which they clearly should be according to
00:09:31 23 Vickery, the South Carolina case of 2012, there should
00:09:35 24 be some empirical data or basis for the stop. There
00:09:42 25 was nothing there.

00:09:43 1 Now, there was some testimony, and I believe the
00:09:46 2 government cross-examined him and said, well, how about
00:09:50 3 Columbia, and I can't remember it, but giving them the
00:09:54 4 benefit of the doubt maybe said, I didn't look in
00:09:57 5 Columbia or I didn't go to Columbia. Well, still,
00:10:01 6 there is a void of evidence in the record of data
00:10:05 7 establishing it.

00:10:06 8 I sent a subpoena and said, bring me everything
00:10:09 9 the highway patrol's got on this road stop, whether
00:10:12 10 it's Florence and Columbia, Greenville, wherever. He
00:10:18 11 brought nothing. So I think the only thing the Court
00:10:21 12 can glean from that is the fact there wasn't anything
00:10:24 13 there.

00:10:24 14 So judge, that is -- that is the basis of our
00:10:29 15 argument is it's simply in this case, in spite of the
00:10:33 16 low standard that counsel are held to, you got a case
00:10:38 17 in which the only possible way to defend Stefano is a
00:10:42 18 motion to suppress to figure out if the traffic stop
00:10:46 19 was legal. And he did not do that.

00:10:48 20 And we believe there's a reason to believe, as the
00:10:53 21 case requires, that there would have been a probability
00:10:56 22 of success had he done that. Because when we did that
00:11:00 23 to find out what documentation, data or verification
00:11:05 24 there was, as is required by Vickery, the highway
00:11:09 25 patrol produced nothing.

00:11:10 1 And so, again, we would reiterate that we believe
00:11:14 2 he's entitled to relief on this petition for post
00:11:17 3 conviction relief.

00:11:18 4 THE COURT: Very good. Thank you, Mr. Martin.
00:11:19 5 Mrs. Giovanoli.

6 MS. GIOVANOLI: May it please the Court.

7 THE COURT: Yes, ma'am.

00:11:22 8 MS. GIOVANOLI: I'm going to start at the first
00:11:25 9 prong of the Strickland standard, prove ineffective
00:11:26 10 assistance of counsel. And I'm going to first note
00:11:29 11 that it is the Applicant's burden of proof to prove by
00:11:32 12 a preponderance of the evidence that counsel performed
00:11:36 13 inefficiently.

00:11:37 14 The first prong is deficiency, and counsel
00:11:39 15 testified on the day of the hearing that he
00:11:41 16 investigated this case, reviewed the discovery, and he
00:11:44 17 considered a motion to suppress. His opinion was that
00:11:47 18 the motion to suppress would not have been successful.
00:11:49 19 And that was based off of his other testimony that he
00:11:52 20 knew the captain and the major were there, which
00:11:55 21 fulfilled the supervisory approval requirement of a DUI
00:11:58 22 check point.

00:11:59 23 He knew there was a problem with the traffic
00:12:02 24 offenses and DUIs at that location and that there were
00:12:04 25 regular road blocks conducted at that exact location.

00:12:07 1 So there was a history and a basis for establishing a
00:12:10 2 road block there. And then there had also been
00:12:13 3 published notice which was another requirement.

00:12:16 4 He also testified that he did first consider
00:12:19 5 whether or not Applicant had standing in order to make
00:12:21 6 a motion to suppress, but later realized that he did
00:12:25 7 have standing. He was incorrect in that initial
00:12:28 8 assessment. He opted not to pursue a motion to
00:12:32 9 suppress for a few reasons.

00:12:33 10 Applicant was facing four different charges, the
00:12:35 11 first being trafficking in cocaine, 100 to 200 grams.
00:12:38 12 He eventually pled guilty to the lesser offense of
00:12:40 13 trafficking, 28 to 100 grams. He was also charged with
00:12:45 14 attempted murder, assault and battery, second degree,
00:12:46 15 and trafficking in ecstasy, 100 to 500 units.

00:12:51 16 Those charges are very relevant because they were
00:12:53 17 actually dismissed as part of this plea deal which goes
00:12:56 18 to counsel's performance in this case. He negotiated a
00:13:01 19 very favorable deal for the Applicant. And those
00:13:04 20 charges can be reopened if the Court were inclined to
00:13:07 21 grant a new trial on the charges of trafficking on
00:13:11 22 cocaine for which he pled guilty.

00:13:13 23 Just on the trafficking cocaine 100 to 200 for
00:13:16 24 which he was originally charged, the minimum mandatory
00:13:19 25 is 25 years. He was recommended -- the State

00:13:22 1 recommended 12 years pursuant to the plea negotiations.

00:13:25 2 He was later sentenced to 25 years, but that was
00:13:27 3 because he absconded for two years to Louisiana and was
00:13:30 4 later arrested on other drug charges and extradited
00:13:35 5 back to South Carolina. So the judge eventually did
00:13:38 6 sentence him to 25 years.

00:13:39 7 But the State would submit to you that there was
00:13:43 8 no deficiency here. There was ample testimony that
00:13:47 9 counsel did not believe a motion to suppress would be
00:13:50 10 successful. He also testified that if he did make that
00:13:54 11 motion to suppress, the plea offer would likely come
00:13:56 12 off of the table. So that was a matter of strategy.

00:13:59 13 And even if the Court is inclined to find that
00:14:02 14 counsel was deficient, if you go to the next prong of
00:14:05 15 Strickland and that's prejudice, once again, the
00:14:07 16 Applicant has the burden of proving prejudice as well
00:14:09 17 by a preponderance of the evidence. And in order to
00:14:12 18 prove ineffective assistance of counsel for failing to
00:14:14 19 make a motion to suppress, Applicant would have to
00:14:18 20 prove a likelihood of success on that motion to
00:14:18 21 suppress. And the State submits that he has not met
00:14:21 22 that burden.

00:14:22 23 Mr. Martin contends that we don't know if a motion
00:14:28 24 to suppress would be successful. But we actually do
00:14:30 25 based on counsel's testimony, his testimony about the

00:14:34 1 fact that there was a history of DUIs and traffic
00:14:36 2 offenses at that place, that there was a history of
00:14:38 3 road blocks conducted there regularly. And not only
00:14:48 4 counsel's testimony supported the fact that the motion
00:14:51 5 to suppress would not have been successful, but the
00:14:53 6 Applicant failed to prove that they would -- the motion
00:14:55 7 to suppress would have been successful by putting
00:14:57 8 Officer Clemmons up.

00:14:59 9 Officer Clemmons had no relationship to this case
00:15:01 10 whatsoever. He actually wasn't even with Horry County
00:15:04 11 at the time of the road block. So he had no knowledge
00:15:06 12 of the history of road blocks being conducted there.
00:15:08 13 He was actually from Darlington. He had been with
00:15:11 14 Horry County for six months to a year, I believe was
00:15:14 15 the testimony. He did say that he searched for records
00:15:16 16 and found none, but keep in mind this was six years
00:15:18 17 later after that road block.

00:15:20 18 So I'm not sure what the retention policy is with
00:15:22 19 Horry County as far as records are concerned, but
00:15:24 20 that's something to take into account. He also did
00:15:27 21 mention that some records were kept in Columbia and
00:15:29 22 that he did not search there. But he also did testify
00:15:33 23 that he knew also there was a history of DUIs and
00:15:36 24 traffic offenses at that location, which once again
00:15:39 25 establishes the basis for the road block.

00:15:42 1 So the State would submit that Applicant has
00:15:46 2 simply failed to meet the burden of proving deficiency
00:15:49 3 and prejudice for --

00:15:50 4 THE COURT: Let me ask a little bit about the
00:15:53 5 empirical data. Typically, I think, what the cases
00:15:56 6 contemplate is that there is empirical data that talks
00:16:01 7 about DUI arrests and accidents at a particular area,
00:16:05 8 that there is empirical data to support that. But what
00:16:08 9 you're saying is that just by virtue of the fact there
00:16:11 10 have been a lot of road blocks in that area, it
00:16:15 11 obviates the necessity to have the empirical data to
00:16:20 12 legitimize the first road block?

00:16:24 13 MS. GIOVANOLI: And can you just repeat your
00:16:26 14 question.

00:16:27 15 THE COURT: My question is that what you're saying
00:16:30 16 is that by virtue of the fact that there were a number
00:16:33 17 of road blocks, that is enough empirical evidence to
00:16:39 18 establish that it was a legitimate road block to make
00:16:44 19 the search and the stop reasonable?

00:16:48 20 MS. GIOVANOLI: Yes. I think the issue here is
00:16:51 21 whether -- Applicant would contend that the road block
00:16:54 22 was not lawful. And the history of road blocks
00:16:58 23 definitely establishes empirical data --

00:17:00 24 THE COURT: I think what Mr. Morgan is saying
00:17:03 25 is -- Mr. Martin, Mr. Morgan Martin, is saying is that

00:17:07 1 there has to be some empirical evidence showing that
00:17:10 2 there are a number of wrecks there, there are a number
00:17:14 3 of DUIs there and that ordinary police practices aren't
00:17:19 4 good enough to do it; therefore, we have to have a road
00:17:23 5 block.

00:17:24 6 MS. GIOVANOLI: Right.

00:17:25 7 THE COURT: That's what I think the case is
00:17:27 8 contemplating. But you're saying just by virtue of the
00:17:30 9 fact that he knew that it was a bad area and that there
00:17:33 10 had been a lot of road blocks there, that's enough.

00:17:36 11 MS. GIOVANOLI: I'm not saying that that's enough,
00:17:38 12 but I'm saying making his strategic decision based on
00:17:41 13 what he knew, there was no deficiency. So had he
00:17:45 14 researched the issue more thoroughly, he may very well
00:17:48 15 have found more empirical data. But the history of DUI
00:17:52 16 offenses and other traffic offenses at that location as
00:17:56 17 well as established road blocks regularly was
00:17:59 18 essentially empirical data that there was a reasonable
00:18:02 19 basis to have a road block at that location.

00:18:04 20 THE COURT: What do you think about the general
00:18:09 21 law about when a person pleads guilty and admits
00:18:14 22 they're guilty? You look at the plea, you can say
00:18:17 23 that, you know, that the dope was his and he admits to
00:18:21 24 it and all that. What do you think about the fact that
00:18:24 25 when he enters a plea that he waives any defense that

00:18:28 1 he might have?

00:18:29 2 MS. GIOVANOLI: Well, I certainly believe that he
00:18:30 3 waives all the defenses, but he does not waive the
4 defense, or not necessarily defense, he does not waive
00:18:35 5 the claim of ineffective assistance of counsel.

00:18:36 6 THE COURT: I understand that. What I'm saying is
00:18:40 7 that you think that the challenge to the search was
00:18:49 8 obviated by the plea in his admission of guilt?

00:18:52 9 MS. GIOVANOLI: He certainly waived that defense
00:18:53 10 whenever he pled guilty. And that's demonstrated by
00:18:56 11 the guilty plea record, a thorough colloquy between the
00:19:00 12 plea Court and the Applicant.

00:19:01 13 THE COURT: All right. Mr. Martin is going to say
00:19:04 14 that he can't waive that if he didn't really understand
00:19:09 15 that there was a chance that he could get it suppressed
00:19:15 16 in a good discussion of what Sitz requires and actually
00:19:18 17 looking to see what kind of empirical data was there.

00:19:21 18 MS. GIOVANOLI: Well, counsel did investigate that
00:19:24 19 option of pursuing a motion to suppress. And I believe
00:19:26 20 there was testimony elicited at the PCR hearing that he
00:19:30 21 discussed that option with Applicant, so Applicant was
00:19:32 22 aware. But that counsel's opinion was that they would
00:19:35 23 not be successful in a suppression motion and that the
00:19:37 24 plea offer was a much better strategy than trying to
00:19:40 25 pursue an unsuccessful motion to suppress and then

00:19:42 1 later having to face four different charges and a plea
00:19:45 2 offer of 12 years being off the table.

00:19:47 3 THE COURT: All right. Mr. Martin, it's your
00:19:50 4 motion, I'll give you the last word.

00:19:55 5 MR. MARTIN: Judge, again, I think it's clear,
00:19:57 6 first of all, that this plea, and I think even the
00:20:00 7 order that you signed would establish this, that if
00:20:03 8 there was ineffective assistance of counsel which
00:20:06 9 played a role in his plea, then it was not a knowing
00:20:11 10 and voluntary plea.

00:20:12 11 So I think, I do believe that's crystal clear,
00:20:15 12 that if you find that the performance of Mr. Welch was
00:20:20 13 defective or deficient and that that played a role in
00:20:25 14 his advice to Mr. Brooks' plea, then I think that
00:20:29 15 clearly he can be granted the post conviction relief
00:20:32 16 under the current case law.

00:20:34 17 Secondly, it is just ironic, again, just seems to
00:20:41 18 be based on the validity of the search is based on
00:20:44 19 counsel's knowledge. I don't believe any counsel in
00:20:49 20 Horry County has got the knowledge about a particular
00:20:53 21 cross roads here as to whether or not a search -- a
00:20:59 22 road block could be justified.

00:21:01 23 But even if he did, that's not relevant at all.
00:21:04 24 Because he's not going to get up and testify against
00:21:07 25 his client at some sort of motion to do that. He's

00:21:11 1 going to see, as defense counsel to every case do, what
00:21:16 2 can the State prove. It was a warrantless search, the
00:21:23 3 burden of proof was on the State. The cases have been
00:21:25 4 up and down to the Supreme Court for years on the
00:21:28 5 legality of these type road blocks and checks, so there
00:21:32 6 are parameters which have to be explored. And counsel
00:21:37 7 just didn't do it here.

00:21:40 8 And, you know, another thing comes up is,
00:21:44 9 interestingly, because I think lawyers face this
00:21:47 10 sometime, and that is, well, if you file a motion to
00:21:49 11 suppress, well, the offer comes off the table. Well, I
00:21:54 12 don't know if it would or would not in this case,
00:21:56 13 whether it would or wouldn't in other cases.

00:21:58 14 But we got assistant solicitors here, Mr. Ervin
00:22:01 15 and Mr. Caraker, I know that we talk about this from
00:22:03 16 time to time. Okay, you make an offer to me, and I
00:22:05 17 say, wait a minute, I think there's a legitimate motion
00:22:08 18 to suppress search issue here, hey, if you explore
00:22:11 19 that, the offer is off the table. So where does that
00:22:14 20 leave defense counsel at that time, then?

00:22:16 21 Okay, I think there's a legitimate search issue.
00:22:24 22 But I can't protect my client's constitutional rights
00:22:27 23 without making a strategic decision of whether I'm
00:22:30 24 going to be successful or not with the judge, so I have
00:22:35 25 to forego that. I don't think that's -- I don't think

00:22:38 1 that's where the Constitution of the United States

00:22:41 2 leaves us. And I think --

00:22:42 3 THE COURT: Are you saying that that's a decision
00:22:44 4 that ought to be communicated to the client and let the
00:22:48 5 client make the call on that, or do you think that it's
00:22:53 6 vindictive prosecution to withdraw the offer; which do
7 you think?

00:22:58 8 MR. MARTIN: That's an interesting question. I
00:23:00 9 think you got to go to your client with it. But I do
00:23:02 10 think this, I do think that I don't know if vindictive
00:23:06 11 is the right word, and Gray Ervin and I have had this
00:23:09 12 conversation before, I don't think if vindictive is the
00:23:12 13 right word. But I do think that it should not be under
00:23:18 14 some theory of constitutional law, vindictive
00:23:22 15 prosecution or due process of law, that an individual
00:23:25 16 is deterred from having a motion to suppress by the
00:23:30 17 thought that if you lose, we're going to burn you.

00:23:34 18 THE COURT: If you're not going to call it
00:23:36 19 vindictive, what would you call it; just not right
00:23:41 20 maybe?

00:23:41 21 MR. MARTIN: Well, in Aynor we say it just ain't
00:23:44 22 right, you know.

23 THE COURT: Yes, sir.

24 MR. MARTIN: Or an exceeding problem.

25 THE COURT: Got you.

00:23:45 1 MR. MARTIN: But, but, it really -- it's an
00:23:49 2 interesting point. But it's kind of like going to jury
00:23:50 3 trial, if you have a trial we're going to burn you now.
00:23:52 4 We're going to burn you. You wouldn't say that, judge.

00:23:56 5 THE COURT: No. What most people would take the
00:23:58 6 position is that a judge gives them a fair sentence if
00:24:01 7 they go to trial, but they give them mercy if they
00:24:04 8 plead.

00:24:05 9 MR. MARTIN: Well, I don't know if we can allow
00:24:07 10 prosecutors to do that like we do the judges.

00:24:10 11 THE COURT: Right.

00:24:12 12 MR. MARTIN: But I do think that's an interesting
00:24:14 13 point. But I think in this case it really isn't
00:24:17 14 relevant ultimately, because if you look at the
00:24:20 15 language that I gave you, what it goes -- it goes on
00:24:22 16 down and says if counsel -- if there is more than --
00:24:26 17 and this is language out of Strickland versus
00:24:29 18 Washington -- if there is only one plausible line of
00:24:35 19 defense, the Court concluded counsel must conduct a
00:24:39 20 reasonably substantial investigation into that line of
00:24:43 21 defense, since there can be no strategic choice that
00:24:47 22 renders such an investigation unnecessary. That's the
00:24:51 23 Supreme Court of the United States. That's exactly
00:24:53 24 what you got here, that's exactly what you got.

00:24:56 25 The same duty exists if counsel relies at trial on

00:25:01 1 only one line of defense, and then it goes into other
00:25:04 2 things. But I don't know how to say it more succinctly
00:25:09 3 than that. And again, again, you never know, you never
00:25:15 4 know what the State is going to be able to produce in a
00:25:19 5 given situation.

00:25:21 6 And the last thing I will say is, again, now, to
00:25:25 7 be sure we're clear, the gentleman who came and
00:25:28 8 testified for you is a records custodian for the South
00:25:32 9 Carolina Highway Patrol in this district. He's out of
00:25:35 10 Florence. Horry County doesn't keep the records, the
00:25:38 11 South Carolina Highway Patrol keeps the records in
00:25:43 12 whichever office they deem appropriate. At this time
00:25:45 13 it would be Florence because that's the district that
00:25:48 14 we are in. That's why when I called and asked, who do
00:25:50 15 I send this subpoena to, they directed me to this
00:25:54 16 individual.

00:25:56 17 Now, the subpoena said, bring me what the South
00:25:59 18 Carolina Highway Patrol has. And whether they had --
00:26:05 19 but he also did testify there was no policy to destroy
00:26:09 20 these records. There's no policy to do that.

00:26:12 21 So if you -- the implication has to be there
00:26:16 22 should be some records, something on the record to
00:26:21 23 justify the traffic stop, the announcement of it, the
00:26:26 24 results of it, plus the justification for it. And they
00:26:31 25 don't have a policy to destroy those. And I subpoenaed

00:26:34 1 the guy and said, what you got on it, and he says,
00:26:37 2 found nothing; isn't that a reasonable probability, as
00:26:43 3 the law requires, that the results of a motion to
00:26:47 4 suppress would have been successful? We sure can't
00:26:50 5 prove anything else.

00:26:52 6 And if we got the burden of proof, we brought
00:26:57 7 that, we brought that. And so, I believe we've met the
00:27:01 8 standard. This is an interesting and a unique case, I
00:27:04 9 think. But I do think that it seems that -- and I've
00:27:09 10 been, you know, deficient myself on more than one
00:27:13 11 occasion, I'm sure, so I may recognize it.

00:27:15 12 But this is one of those cases in which, you know,
00:27:19 13 Mr. Welch who is a good lawyer but simply didn't do the
00:27:26 14 groundwork to determine the only relevant question that
00:27:35 15 regarded whether or not his client pled guilty or not.

00:27:39 16 And all that business about other charges,
00:27:43 17 strategic, not withdraw the offer, other charges to be
00:27:44 18 dropped, not be convicted of that, is covered in the
00:27:48 19 language that I just read you. If there is a line of
00:27:54 20 defense, if there is only one plausible line of
00:28:00 21 defense, the Court concluded counsel must conduct a
00:28:03 22 reasonably substantial investigation.

00:28:05 23 He didn't do that. He didn't file a motion for
00:28:07 24 discovery, he didn't file a motion to suppress, he
00:28:10 25 didn't call up the highway patrol and say, hey, tell me

00:28:13 1 on the side, have you got this or not. It was just
00:28:16 2 simply, well, I believe that they probably had it and
00:28:19 3 they had the supervisor there. So I didn't do that, I
00:28:26 4 didn't do that.

00:28:27 5 And, frankly, if he didn't think as he didn't at
00:28:30 6 the time they entered the plea, that he had standing as
00:28:33 7 a passenger to object, then why would he pursue it,
00:28:37 8 because that would have killed it. So maybe that's
00:28:40 9 what he was thinking, there's no need to do it because
00:28:42 10 he can't -- he doesn't have standing as a passenger to
00:28:45 11 object.

00:28:46 12 But if his conclusion not to file was based on
00:28:49 13 that, it was based on a wrong -- a wrong opinion of
00:28:55 14 what the law was. And so I do think, I don't want to
00:28:59 15 belabor it, you see it. I would encourage the Court to
00:29:02 16 read the language that I've handed up to you in
00:29:07 17 Strickland and Washington.

00:29:09 18 But, again, I believe that we've established that
00:29:12 19 his representation was deficient and there is a
00:29:16 20 reasonable probability that had he investigated as was
00:29:19 21 his duty, that they would have found that this
00:29:23 22 particular case that the motion to suppress would have
00:29:26 23 been granted.

00:29:26 24 THE COURT: Very good. All right. It is a very
00:29:30 25 interesting question and a very close call. And I'm

00:29:34 1 going to stand by my initial order. But I imagine, you
00:29:38 2 know, I might be wrong. And I'm sure the appellate
00:29:41 3 entities will tell me if I am. Thank you very much.
00:29:44 4 And I'll get you to prepare a short order to that
00:29:47 5 effect.

00:29:49 6 MS. GIOVANOLI: Okay. Thank you, Your Honor.

00:29:49 7 (The hearing concluded at approximately 9:39 a.m.)

8 (End of Transcript of Record)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Stefano Brooks, #358949,)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-0259

**ORDER DENYING MOTION TO ALTER
 OR AMEND**

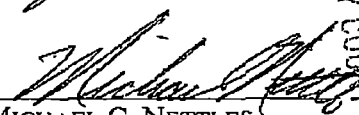
This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCF. A hearing into the matter was convened on June 1, 2017, at the Horry County Courthouse. Applicant was present at the hearing and was represented by L. Morgan Martin, Esquire. Valerie Garcia Giovanoli of the South Carolina Attorney General's Office represented the Respondent. I signed an Order of Dismissal in this matter on March 21, 2017.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment.

IT IS THEREFORE ORDERED:

1. That Applicant's motion is denied and dismissed.
2. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 12 day of June, 2017.


 MICHAEL G. NETTLES
 Presiding Judge
 Fifteenth Judicial Circuit

FILED
 Horry County
 2017 JUN 15 PM 2:01
 RECEIVED CIVIL
 CLERK OF COURT
 HORRY COUNTY, SC

, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Stefano Brooks, #358949,)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-0259

**ORDER DENYING MOTION TO ALTER
 OR AMEND**

FILED
 Horry County
 2017 JUL 27 AM 8:41
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRPC. A hearing into the matter was convened on June 1, 2017, at the Horry County Courthouse. Applicant was present at the hearing and was represented by L. Morgan Martin, Esquire. Valerie Garcia Giovanoli of the South Carolina Attorney General's Office represented the Respondent. I signed an Order of Dismissal in this matter on March 21, 2017.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment.

IT IS THEREFORE ORDERED:

1. That Applicant's motion is denied and dismissed.
2. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of July, 2017.

[Signature], South Carolina

[Signature]
 MICHAEL G. NETTLES
 Presiding Judge
 Fifteenth Judicial Circuit

RECEIVED

JUL 28 2017
 SC Court of Appeals

WITNESSES

Jeremiah Beam 15th Circuit Drug Enforcement Unit

DOCKET NO. 2011-GS-26-00218

**The State of South Carolina
County of Horry**

Lauree Richardson 10H03151

COURT OF GENERAL SESSIONS

January, 2011 TERM

ARREST WARRANT NUMBER

M506614
CDR: 0368 44-53-0375(C)(3)
DOA: 7/31/2010

THE STATE

VS.

**Stefano Tyshawn Brooks
B/ M**

ACTION OF GRAND JURY

TRUE BILL

Bruce R...

Foreperson of Grand Jury
Date:

JAN 27 2011

ATTORNEY: Galmore, James Cullen

Indictment for

**Trafficking Cocaine Base
(100-200 Grams)**

J. Gregory Hembree, Solicitor

VERDICT

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on January 27, 2011, the Grand Jurors of Horry County present upon their oath:


TRAFFICKING COCAINE BASE
(100 - 200 GRAMS)

CDR: 0368 44-53-0375(C)(3))

That Stefano Tyshawn Brooks did in Horry County on or about July 30, 2010, knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of one hundred grams or more but less than two hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(3), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

101

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


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 145

COUNTY OF Horry VS. STATE

Stefano Tyshawn Brooks

AKA:

Race: BLACK Sex: M Age: 27

DOB: [REDACTED]

Address: [REDACTED]

City: [REDACTED]

DL#: [REDACTED] STD#: [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Trafficking in cocaine, 28--100 g, 1st offense (1-25)

INDICTMENT/CASE#: 2011GS26002

A/W#: M506614

Date of Offense: 7/30/2010

S.C. Code § : 44-53-0370(e)(8)(a)(i)

CDR Code #: 2912

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359

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

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

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. 12 yrs.

ATTEST: Richardson, Lauree SCB76142 SC Bar# Stefano Brooks Defendant Raphael L. White 6024 SC Bar# Attorney for Defendant

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

for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ 50,000.00; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCJA Surcharge), 3% to County (if paid in installments), TOTAL \$104,030.00

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 2500 beginning 3/14/2013

\$ paid to Public Defender Fund

Other:

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

Clerk of Court/ Deputy Clerk Melanie Hugans-Ward Court Reporter Grace Hurley

Presiding Judge Judge Code: 2148 Sentence Date: Feb. 14, 2014 (MHC)